

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

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January 27, 2022

Gregory Pfof, Director  
Community and Economic Development Department  
City of Fullerton  
303 W. Commonwealth Ave.  
Fullerton, CA 92832

Dear Gregory Pfof:

**RE: City of Fullerton's 6<sup>th</sup> Cycle (2021-2029) Draft Housing Element**

Thank you for submitting the City of Fullerton's (City) draft housing element received for review on November 30, 2021. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. In addition, pursuant to Government Code section 65585, subdivision (c), HCD considered comments from People for Housing, Barry Ross, Anne Paulson, Public Law Center, Samuel Andreano, Fullerton Planning Partnership, Kennedy Commission, Harry Langenbacher, Patty Tutor, St. Joseph Justice Center, Josh Galiley, Kimberly Adams, Rusty Kennedy, and Mike Rodriguez.

The draft element addresses many statutory requirements; however, revisions will be necessary to comply with State Housing Element Law (Article 10.6 of the Gov. Code). The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

As a reminder, the City's 6th cycle housing element was due October 15, 2021. As of today, the City has not completed the housing element process for the 6th cycle. The City's 5th cycle housing element no longer satisfies statutory requirements. HCD encourages the City to revise the element as described, adopt, and submit to HCD to regain housing element compliance.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government fails to adopt a compliant housing element within 120 days of the statutory deadline (October 15, 2021), then any rezoning to accommodate the regional housing needs allocation (RHNA), including for lower-income households, shall 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).

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the City 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.

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 Strategic Growth Council and HCD's 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 City 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 City 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: [http://opr.ca.gov/docs/OPR\\_Appendix\\_C\\_final.pdf](http://opr.ca.gov/docs/OPR_Appendix_C_final.pdf) and [http://opr.ca.gov/docs/Final\\_6.26.15.pdf](http://opr.ca.gov/docs/Final_6.26.15.pdf).

HCD appreciates the responsiveness and dedication the City's housing element team provided during the review. We are committed to assisting the City 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](mailto:Jose.Ayala@hcd.ca.gov).

Sincerely,



Paul McDougall  
Senior Program Manager

Enclosure

## APPENDIX CITY OF FULLERTON

The following changes are necessary to bring the City'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 <http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>. Among other resources, the housing element section contains HCD's latest technical assistance tool, Building Blocks for Effective Housing Elements (Building Blocks), available at <http://www.hcd.ca.gov/community-development/building-blocks/index.shtml> and includes the Government Code addressing State Housing Element Law and other resources.

### **A. Review and Revision**

*Review the previous element to evaluate the appropriateness, effectiveness, and progress in implementation, and reflect the results of this review in the revised element. (Gov. Code, § 65588 (a) and (b).)*

As part of the review of programs in the past cycle, the element must also provide an evaluation of the effectiveness of goals, policies, and related actions in meeting the housing needs of special needs populations (e.g., elderly, persons with disabilities, large households, female headed households, farmworkers and persons experiencing homelessness). Programs should be revised as appropriate to reflect the results of this evaluation.

### **B. 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))*

The element provides a general overview of Affirmatively Furthering Fair Housing (AFFH), including general information on outreach and poverty. However, it generally does not address this requirement. The element, among other things, must include outreach related to AFFH, an assessment of fair housing, analysis of the sites inventory, identification and prioritization of contributing factors to fair housing issues and goals and actions sufficient to overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity. For further guidance, please visit HCD's AFFH in California webpage at <https://www.hcd.ca.gov/community-development/affh/index.shtml>.

2. *Include an analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected needs for all*

*income levels, including extremely low-income households. (Gov. Code, § 65583, subd. (a)(1).)*

Extremely Low-income (ELI) Households: The element identifies the projected need for ELI households, but it should quantify and analyze the housing needs of ELI households to understand the housing needs and formulate an appropriate programmatic response. This is particularly important given the unique and disproportionate needs of ELI households. For example, the element should analyze tenure, cost burden and other household characteristics then examine trends and the availability of resources, including effectiveness of past actions, to determine the magnitude of gaps in housing needs. In turn, this analysis should guide the formulation of responsive policies and programs.

- 3. Include an analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition. (Gov. Code, § 65583, subd. (a)(2).)*

While the element provides general data, additional information is needed regarding the overpayment, particularly data regarding overall owner versus renter, and lower-income household owner versus renter. Additionally, the element should include discussion of rents based on current market conditions.

- 4. 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 Regional Housing Needs Allocation (RHNA): The element indicates (p. H-B-3) 20 units affordable to very low-income households have been approved or pending approval, but it must also demonstrate affordability. Affordability should be based on actual sales price or rent level or other mechanisms ensuring affordability (e.g., deed restrictions).

Parcel Listing: In addition to the other factors listed for identified sites (e.g., parcel number, size), the inventory should sufficiently describe existing uses of nonvacant sites to facilitate an analysis of the potential for redevelopment in the planning period. In addition, for religious institution sites, the element should list the general plan designation and anticipated affordability level of the identified sites.

Realistic Capacity: The element generally identifies two types of sites: (1) religious institution and (2) housing incentive opportunity zone sites. While the element lists these sites with a calculation of residential capacity, it must describe the methodology for calculating residential capacity. The calculation of residential capacity may assume minimum densities and no analysis is necessary. Otherwise, the methodology must account for land use controls and site improvements, typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction. For religious institution sites, the element indicates a typical density of 30 units per acre.

However, the element must support this assumption based on a methodology as described above. For example, the element could list recent projects by zone or zone similar to anticipated zoning, allowable density, built density, level of affordability and presence of exceptions or modifications to development standards. For housing incentive opportunity zone sites, the element appears to assume an anticipated minimum density of 30 units per acre. If so, the element should clearly state this approach and reflect the appropriate minimum density in programs (Policy Action 1.1). If not, the element should include a methodology and analysis as described above.

In addition, the element should clearly state and commit, in programs, to whether the anticipated zoning and general plan designation will be for residential only uses. If the zones or designations are anticipated to allow 100 percent nonresidential uses, the element must account for the likelihood that 100 percent nonresidential uses will occur on identified sites. For example, the element could analyze all development activity in non-residential zones that allow residential uses, how often residential development occurs and adjust residential capacity calculations, policies, and programs accordingly.

Suitability of Nonvacant Sites: The element must include an analysis demonstrating the potential for additional development on nonvacant sites. The analysis must consider factors including the extent to which existing uses may constitute an impediment to additional residential development, the City's past experience with converting existing uses to higher density residential development, the current market demand for the existing use, an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites. For example, the element includes sites identified as commercial, religious institutions, and industrial, but analysis must be provided to demonstrate whether these existing uses would impede development of these sites within the planning period. The element can summarize past experiences converting existing uses to higher density residential development, include current market demand for the existing use, provide analysis of existing leases or contracts that would perpetuate the existing use or prevent additional residential development and include current information on development trends and market conditions in the City and relate those trends to the sites identified. The element should also consider additional indicators such as age and condition of the existing structure, expressed developer or property owner interest in housing development, existing versus allowable floor area ratios and other factors. Other examples include:

- APN #293-091-10: This site appears to be part of a large shopping center. The element should note the type of development that the City anticipates occurring. For example, the element can note that development will occur on the parking lot or provide evidence that the retail uses will discontinue. The City can use this analysis for other sites with similar characteristics.
- APN #072-242-15: This site has a variety of tenants but does not specify any lease information or whether the site has common ownership. The element should note this for sites with multiple tenants and provide the substantial evidence to show the potential for redevelopment.

In addition, since the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households, it 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.

Religious Institution Sites: The element significantly relies on religious institution sites to accommodate the RHNA for lower-income households. The element must demonstrate the potential for additional development on these sites and should consider rescaling the approach to utilizing these sites based on the outcomes of an analysis. For example, the element could remove smaller sites and identify sites based on interest from these religious institutions to develop portions of their property with housing or as noted above, provide specific evidence of how these uses will not impede additional residential development. Absent this information, HCD will not consider these sites to accommodate the RHNA for lower-income households.

Small and Large Sites: Sites larger than ten acres in size or smaller than a half-acre in size are deemed inadequate to accommodate housing for lower-income households unless it is demonstrated sites are suitable to accommodate housing for lower-income households. The analysis should demonstrate that sites of equivalent size and affordability were successfully developed during the prior planning period or provide other evidence such as analysis and programs to demonstrate the suitability of these sites. For example, the element could provide specific examples of lot consolidation with the densities, affordability and, if applicable, circumstances leading to consolidation. The element could relate these examples to the sites identified to accommodate the RHNA for lower-income households to demonstrate that these sites can adequately accommodate the City's lower-income housing need. Alternatively, the element can show the consolidation of small sites to a site larger than a half-acre. Based on a complete analysis, the City should consider adding or revising programs to include incentives for facilitating development on small and large sites.

Sites Identified in Prior Planning Periods: Sites identified in prior planning periods are not deemed adequate to accommodate the housing needs for lower-income households unless a program, meeting statutory requirements, requires rezoning within three years. The element should clarify if sites were identified in prior planning periods and if so, which sites and include a program if utilizing previously identified sites in the current planning period. For more information on program requirements, please see the Department's Housing Element Sites Inventory Guidebook at <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>.

Environmental Conditions: The element generally describes environmental conditions, but it should relate these conditions to identified sites. The analysis should specifically address whether environmental or any other conditions impact or preclude the development of identified sites and, if appropriate, discuss where and how mitigation is possible. For example, the element notes (p. H-3-42) a number of land uses with

hazardous materials and lists several sites with industrial uses. In this case, the element should address whether hazardous materials preclude development on identified sites in the planning period. In another case, the element indicates the presence of an airport compatibility zone. The element should discuss if sites are identified in this zone and whether that impacts residential development.

Availability of Infrastructure: While the element provides information regarding water capacity to accommodate the RHNA, the element must also provide information regarding sufficient total sewer capacity (existing and planned) to accommodate the regional housing need and include programs if necessary.

In addition, water and sewer service providers must establish specific procedures to grant priority water and sewer service to developments with units affordable to lower-income households. (Gov. Code, § 65589.7.) Local governments are required to immediately deliver the housing element to water and sewer service providers. The element should discuss compliance with these requirements and if necessary, add or modify programs to establish a written procedure by a date early in the planning period. For additional information and sample cover memo, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/other-requirements/priority-for-water-sewer.shtml>.

Accessory Dwelling Units (ADU): The element projects 800 ADUs over the planning period or approximately 100 ADUs per year over the eight-year planning period. The element also notes the City has received 67 applications in the first 8 months of 2021. However, this information is not sufficient to justify the ADU assumptions for the planning period. While applications can be utilized to indicate interest and enhancing past trends, the analysis should be benchmarked from past permitted ADUs and should consider more than one year of information. For example, the element could utilize permitted ADU trends since 2018. For your information, HCD annual progress reports (APR) show 18 permitted ADUs in 2018, 37 in 2019 and 41 in 2020 which does not appear to support an assumption of 100 ADUs per year. To support assumptions for ADUs in the planning period, the element should reduce the number of ADUs assumed per year or include analysis based on past and recent permitted units, applications and inquiries, resources and incentives, other relevant factors and modify policies and programs as appropriate. Further, programs should commit to additional incentives and strategies, frequent monitoring (every other year) and specifically commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., 6 months) if trends are not being met.

Map of Sites: While the element includes a general map of the Housing Incentive Overlay Zone, the element must provide a map that shows the location of the sites included in the inventory. (Gov. Code § 65583.2, subd. (a)(7).)

Electronic Sites Inventory: For your information, pursuant to Government Code section 65583.3, the City must submit an electronic sites inventory with its adopted housing element. The City 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 City can reach out to HCD at [sitesinventory@hcd.ca.gov](mailto:sitesinventory@hcd.ca.gov) for technical assistance.

### Zoning for a Variety of Housing Types:

- *Emergency Shelters*: While the element lists development standards, it should also analyze those standards as potential constraints on the development of emergency shelters and for compliance with statutory requirements. Specifically, the analysis should address separation requirements such as distance to parks and residential property. In addition, the element states emergency shelters are permitted by right but it should also clarify the use is permitted without discretionary action or include programs if necessary.
- *Employee Housing Act*: The element must demonstrate zoning is explicitly compliant with the Employee Housing Act (Health and Safety Code, § 17000 et seq.) and include programs if necessary. For example, Section 17021.5 requires employee housing for six or fewer employees to be treated as a single-family structure and permitted in the same manner as other dwellings of the same type in the same zone. Section 17021.6 requires employee housing consisting of no more than 12 units or 36 beds to be permitted in the same manner as other agricultural uses in the same zone.
- *Manufactured Housing*: The element indicates the City complies with Government Code section 65852.3 to permit manufactured housing on lots zoned for single-family uses. However, the element also shows manufactured housing is only permitted in the R-1/R1-P zones, unlike single-family uses. The element should demonstrate compliance with these statutory requirements and add or modify programs if necessary.
- *Accessory Dwelling Units*: The element notes (p. H-3-31) the City has amended its ADU regulation. For your information, ADU regulations should be submitted to HCD pursuant to Government Code section 65852.2, subdivision (h). HCD does not have record of receiving the ordinance and it should be submitted to [ADU@hcd.ca.gov](mailto:ADU@hcd.ca.gov). In addition, the element should demonstrate compliance with ADU law such as discussing where and how ADUs are permitted and development standards, including parking requirements. Based on the outcomes of this analysis, the element should modify programs to amend the ordinance and comply with statutory requirements.

5. *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 address cumulative impacts on housing supply (e.g., number of units), costs, timing and ability to achieve maximum densities. For example, the analysis should address garage



requirements for multifamily uses and heights. Based on the outcomes of a complete analysis, the element should include programs to address or remove the identified constraints.

Fees and Exaction: While the element provides general information regarding total fees on typical single-family and multifamily development, it should also list and analyze planning fees (e.g., site plan review, rezoning, general plan amendment, conditional use permit (CUP), variance) for impacts on housing costs. The analysis could provide a comparison of these fees to other jurisdictions in the region.

Local Processing and Permit Procedures: While the element includes information about site plan review and design guidelines, it should analyze these procedures for impacts on housing cost, supply (number of units), timing and approval certainty. For example, the element lists decision making criteria for the site plan review but should analyze those criteria, particularly subjective criteria such as “pleasant character”, “harmonious with the past” and “desired developing character”. In addition, the element briefly explains design guidelines and review but should also evaluate the standards and process for impacts on approval certainty. Finally, since the element only discusses the timing of entitlement up until public hearings, it should analyze the typical number of hearings and impacts on the timing of approvals, especially for site plan review.

Constraints on Housing for Persons with Disabilities:

- *Reasonable Accommodation:* The element lists approval findings for the reasonable accommodation, but it should analyze the process for potential constraints on housing for persons with disabilities. The analysis should address application submittal requirements, approval body, fees, timing and any other relevant factors. In addition, the analysis should specifically address approval findings such as “character of the neighborhood” and add or modify programs to address the constraint.
- *Group Homes for Seven or More Persons:* The City’s zoning code appears to isolate and regulate various types of housing for persons with disabilities based on the number of people and other factors. Examples include small group homes, large group homes, small residential care facility and large residential care facility. The element should analyze this regulatory framework for potential constraints on housing for persons with disabilities. For example, the analysis should address licensing requirements, exclusion of larger group homes (seven or more persons) from several residential zones, particularly lesser density, and permit procedures such as CUPs.

Building Codes and Their Enforcement: The element generically mentions some local amendments to the building code, but it should also identify and analyze those amendments for impacts on housing costs.

Zoning, Development Standards and Fees: The element must clarify compliance with new transparency requirements for posting all zoning, development standards and fees on the City’s website and add a program to address these requirements, if necessary.

6. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, the cost of construction, the requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Government Code section 65583.2, and the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a locality's share of the regional housing need in accordance with Government Code section 65584. The analysis shall also demonstrate local efforts to remove nongovernmental constraints that create a gap between the locality's planning for the development of housing for all income levels and the construction of that housing. (Gov. Code, § 65583, subd. (a)(6).)*

Approval Time and Requests for Lesser Densities: The element must include analysis of requests to develop housing at densities below those identified in the sites inventory and the length of time between receiving approval for a housing development and submittal of an application for building permits that potentially. The element must address any hinderance on the development of housing to accommodate the RHNA and include programs as appropriate.

7. *Analyze any special housing needs such as elderly; persons with disabilities, including a developmental disability; large families; farmworkers; families with female heads of households; and families and persons in need of emergency shelter. (Gov. Code, § 65583, subd. (a)(7).)*

Farmworker: The element indicates on Pages H-2-18 and H-2-19 that there is minimal agricultural activity in Fullerton. However, farmworkers from the broader area and those employed seasonally may have housing needs, including within the City's boundaries. As a result, the element should at least acknowledge the housing needs of permanent and seasonal farmworkers at a county-level (e.g., using USDA county-level farmworker data) and include programs as appropriate.

Large Households: The element reports data on large households but it should also analyze their needs. For example, the analysis should address trends, comparisons to other household types, past strategies to address needs, available resources and the magnitude of the needs.

Persons Experiencing Homelessness: The element identifies the number of persons experiencing homelessness. However, the element should also examine the characteristics and magnitude of the needs to better formulate policies and programs. For example, the City could engage service providers in this analysis and add or modify programs as appropriate.

## **C. 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 through the administration of land use and development controls, the provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available. The program shall include an identification of the agencies and officials responsible for the implementation of the various actions. (Gov. Code, § 65583, subd. (c).)*

To have a beneficial impact in the planning period and address the goals of the housing element, programs must be revised with specific commitment and discrete timelines, instead of “ongoing” for example. Programs to be revised with discrete timelines include Policy Actions 1.2 (Expedited Permit Processing), 1.3 (Facilitate Infill Development), 1.4 (Encourage Mixed Use Development), 1.6 (Support Community Housing Development Organizations), 2.2 (Proactive Identification of Substandard Housing Areas), 2.3 (Affordable Housing Acquisition and Rehabilitation), 2.4 (Funding for Resident-Initiated Rehabilitation), 4.6 (In-Kind Technical Assistance to Housing Developers) and 4.7 (Persons with Special Needs). In addition, Policy Action 4.7 (Persons with Special Needs) should include actions beyond investigating regulatory incentives and should explicitly add persons with development disabilities, farmworkers and persons experiencing homelessness.

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 B4, 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 City 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:

- *Policy Action 1.1 (Provision of Adequate Sites for Housing Development):* In addition to meeting requirements pursuant to Government Code section 65583.2, subdivision (h), the Policy Action should also commit to meet section 65583.2, subdivision (i) and permit multifamily uses without discretionary action. In addition, the Policy Action should commit to a shortfall, minimum acreage to be rezoned, allowable densities and uses, anticipated development standards or ensuring development standards will facilitate achieving maximum allowable densities, reference to candidate sites to be rezoned, capacity assumptions and a date of

completion consistent with either 3 years or 1 year from October 15, 2021 depending on the circumstances (See cover letter).

- *Policy Action 1.5 (Use of Surplus City-Owned Land)*: The Policy Action should include a schedule of actions to facilitate development on sites identified (e.g., sites described on p. H-B-4). In addition, the Policy Action should commit to comply with all requirements pursuant to the Surplus Land Act, commencing with Government Code section 54220.
- *Policy Action 1.10 (Lot Consolidation and Small Lot-Subdivision)*: Based on the outcomes of the analysis, the Policy Action should be revised with specific commitment and timelines to promote consolidation on sites anticipated to consolidate in the planning period.

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 B5 and B6, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address and remove or mitigate any identified constraints.

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 protected by the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2), Section 65008, and any other state and federal fair housing and planning law. (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding B1, the element must include a complete analysis of AFFH. The element must be revised to add goals and actions based on the outcomes of a complete analysis.

5. *Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households... (Gov. Code, § 65583, subd. (c)(7).)*

The element includes Program 1.9 (Accessory Dwelling Units) and provides a general description of the program. However, the program does not meet statutory requirements. Program 1.9 must commit to specific actions to incentivize the creation of accessory dwelling units that can be offered at affordable rent. For example, the program can include project milestones for the OCCCO partnership and the creation of pre-approved ADU plans. Additionally, the element should conduct a review of ADU production every two years (instead of a mid-cycle review) and commit to additional actions such as adjusting assumptions of rezoning within a specified timeframe (e.g., six months). Also,

the element must be more specific regarding actions to create ADUs that can be offered at affordable rents. These actions are particularly important if the City's assumptions exceed recent trends. Finally, the Policy Action should commit to amend the City's regulations to comply with ADU law as appropriate early in the planning period.

#### **D. Quantified Objectives**

*Establish the number of housing units, by income level, that can be constructed, rehabilitated, and conserved over a five-year time frame. (Gov. Code, § 65583, subd. (b)(1 & 2).)*

While the element includes quantified objectives for new construction, rehabilitation and conservation by income group, it could consider quantified objectives for conservation (beyond at-risk preservation). For your information, the quantified objectives do not represent a ceiling, but rather set a target goal for the City to achieve, based on needs, resources, and constraints.

#### **E. 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 element describes the public participation process, additional information is required. For example, the element must describe how the public input was considered and incorporated into the element, including commenters on this review. Further, the City must continue to make a diligent effort to include all economic segments of the community. For example, the City could continue its representative advisory committee, circulate the housing element among low- and moderate-income households, engage organizations that represent lower-income and special needs households in the preparation and adoption of the element. If necessary, the City should employ additional methods, moving forward, to effectively engage all segments of the community.

Finally, the element should clarify when or if the draft was proactively made available to all segments of public to allow sufficient time to comment prior to submittal to HCD. If the element was not made available with sufficient time for the public to comment, the City has not yet complied with statutory mandates to make a diligent effort to encourage the public participation in the development of the element and it reduces HCD's ability to consider public comments in its review. The availability of the document to the public and opportunity for public comment prior to submittal to HCD is essential to the public process and HCD's review. The City must proactively make future revisions available to the public, including any commenters, prior to submitting any revisions to HCD and diligently consider and address comments, including making revisions to the document where appropriate. HCD's future review will consider the extent to which the revised element documents how the City solicited, considered, and addressed public comments in the element. The City's consideration of public comments must not be limited by HCD's findings in this review letter.