

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

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December 18, 2023

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 6<sup>th</sup> 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 October 19, 2023. Pursuant to Government Code section 65585, the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by a conversation on December 12, 2023 with you, Michael Meehan, principal planner, and several others from the housing element update team. In addition, HCD considered comments from Stanford University, pursuant to Government Code section 65585, subdivision (c).

The revised draft housing element addresses many statutory requirements described in HCD's August 02, 2023 review; however, additional 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.

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 (January 31, 2023), then any rezoning to make prior identified sites available or accommodate the regional housing needs allocation (RHNA) shall be completed no later than one year from the statutory deadline pursuant to Government Code sections 65583, subdivision (c) and 65583.2, subdivision (c). For your information, jurisdictions that do not have an adopted element that was found in substantial compliance by HCD by January 31, 2024, will not substantially comply until the necessary rezones are completed.

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.

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 County will meet housing element requirements for these and other funding sources.

HCD is 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 Armando Jauregui, of our staff, at [jose.jauregui@hcd.ca.gov](mailto:jose.jauregui@hcd.ca.gov).

Sincerely,



Paul McDougall  
Senior Program Manager

Enclosure

## APPENDIX COUNTY OF SANTA CLARA

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).)*

Patterns and Trends in the Unincorporated County: The element was revised to discuss various fair housing issues at the County level but should also address patterns and trends at a local (patterns within a community) and regional (community compared to the region) level for the unincorporated County. The analysis should compare the unincorporated areas to the broader region and examine patterns and trends of socio-economic characteristics within the unincorporated areas. The analysis should address all components of the assessment of fair housing (e.g., segregation and integration, disparities in access to opportunity) and may aggregate geographic sub-areas of the County (e.g., southern, northern, western). For Racially/Ethnically Concentrated Areas of Poverty or Racially Concentrated Areas of Affluence (RCAA) in the unincorporated County, the element should include specific analysis of trends and characteristics and incorporate local data and knowledge and other relevant factors.

Contributing Factors to Fair Housing Issues: The contributing factors listed in the element is specific to the County as a whole including incorporated areas. However, the element should assess and, particularly, prioritize contributing factors to fair housing issues that are specific to the unincorporated County.

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).)*

*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).)*

*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).)*

Housing Stock Conditions: The element was not revised to address this finding. Please see HCD's prior review.

Extremely Low-Income (ELI) Households: While the element was revised to include data on households' characteristics for ELI, it must also analyze characteristics of housing needs, disproportionate impacts relative to other income groups and evaluate the magnitude of housing needs given gaps in resources to address the housing needs.

Housing Costs: The element should provide estimates of housing costs in unincorporated areas of the region. For example, the County can supplement ACS data utilized with estimated on other data sources such as Zillow.

Special Needs Population: The element was revised to include data and a general discussion for persons with disabilities and female headed households in the assessment of fair housing analysis; however, it must also discuss the challenges face by the population, existing resources to meet those needs, and an assessment of the gaps, including unincorporated areas, to determine the magnitude of gaps in housing needs.

In addition, the element was not revised to include a complete analysis for farm workers. Please see HCD's prior review.

3. *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).)*

Parcel Listing: While the element lists sites by parcel number or unique reference, parcel size, zoning, general plan designation, it must also list the anticipated affordability level, existing use, and realistic capacity on each parcel. Please see HCD's prior review for additional information.

Realistic Capacity: The element was generally not revised to address HCD's prior review. The County must support its low and high potential density assumptions and clarify which assumption is being utilized to accommodate the regional housing need allocation (RHNA). For example, the element can identify existing, annexed, or approved residential projects that have developed at similar affordability within the County. In addition, the element must address the likelihood of residential development in zoning where 100 percent nonresidential uses are allowed. Please see HCD's prior review for additional information.

Small and Large Sites: While the element was revised to include a general statement on the history of development in nearby unincorporated areas of San Jose on sites less than half an acre, it must also relate past experiences to the sites in the West San Carlos Urban Village Plan Area and discuss the potential for small lot consolidation. For example, the County should include analysis that supports the suitability of these sites based on past trends, including experience and potential for consolidation related to the sites identified in the inventory to meet the lower-income RHNA and add or modify programs as appropriate. Alternatively, the element could utilize sites less than half an acre toward the moderate and above-moderate income RHNA instead of the lower-income RHNA and no further analysis is necessary. Please see prior HCD reviews for additional information.

In addition, the element was revised to include Program 2.30 to research and consider amendments. However, the element should include specific commitments that go beyond researching and considering amendments. This is important since the Parkmoor neighborhood generally consists of sites less than half an acre. For example, the County can include additional incentives such as streamlining the process for projects that include affordable housing units, reduced impact fees, increased densities and other incentives, annual collaboration with property owners to facilitate lot consolidation.

Zoning for Lower-Income Households: As found in HCD prior review, sites must demonstrate densities appropriate to accommodate housing for lower-income households. The County must demonstrate appropriate zoning for lower-income households on consolidated Site O. The analysis should be based on factors such as market demand, financial feasibility, and development experience within identified zones. Alternatively, the element could utilize the site toward the moderate income RHNA or rezone the site to appropriate densities.

Suitability of Nonvacant Sites: The element was revised to include some additional information on nonvacant sites; however, it generally was not revised to address HCDs prior review. Please see HCDs prior review for additional information.

In addition, 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.

Pleasant Hills Golf Course: The County should include analysis that supports the adequacy of sites larger than ten acres suitable for lower-income households. For example, the analysis could address how large sites could be parceled to facilitate sites that can accommodate a typical state or federally funded development of 50 to 150 units. The analysis could also describe how parcels could be subdivided or built in

phases or how the assumptions for the lower-income RHNA have been scaled to only assume a portion of the site for lower-income households.

Stanford Specific Plan: The element was revised to discuss current existing uses on the three Stanford Sites; however, these revisions generally do not address this finding. As found in HCD prior review, the element must discuss permit and procedures for entitlements, including any known barriers to development in the planning period. Please see HCD's prior review for additional information.

Infrastructure: The element was not revised to address this finding. Please see HCD's prior review.

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](mailto:sitesinventory@hcd.ca.gov) for technical assistance.

4. *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 was revised to acknowledge parking requirements and development standards as potential constraints and added Program 2.02 (Planning for Housing Development in Unincorporated USAs and Stanford University Lands) to modify development standards for sites listed in the inventory. However, this generally does not address this finding. The element must list identify and analyze all land use controls independently and cumulatively. The analysis and program should not be limited to accommodating the RHNA. Please see HCD's prior review for additional information.

Constraints on Housing for Persons with Disabilities: The element must include an analysis of zoning, development standards, building codes, and process and permit procedures as potential constraints on housing for persons with disabilities, as follows:

- *Family definition*: The element was revised to provide a general statement that the count's current definition of family does not impose as a constraint; however, no definition was provided. The County must identify the definition and evaluate its potential impacts on housing for persons with disabilities. Following a complete analysis, the County may to add or modify programs as appropriate.
- *Reasonable Accommodation*: The element was not revised to address this finding. Specifically, the element must evaluate approval findings or the lack of appropriate approval findings as potential constraints for individuals seeking

reasonable accommodations. Following a complete analysis, the element should add or modify programs as appropriate.

- *Group Homes for Seven or More Persons*: The element now states community care facilities are allowed in all zoning districts except Open Space and Fields research zones and have not been denied; however, this generally does not address HCD prior review. Specifically, the County must discuss the approval findings and approval body for the Conditional Use Permit (CUP) process. Following a complete analysis, the County may need to add or revise programs with specific commitments to amend zoning and permit procedures to allow these uses in all zones allowing residential with objectivity to facilitate approval certainty similar to other residential uses of the same type in the same zone.

5. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including... ..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... (Gov. Code, § 65583, subd. (a)(6).)*

While the element includes a general discussion of approval times, it must still identify the actual length of time between receiving approval for housing development and submittal of application for building permits (rather than length of time to process a building permit).

## **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).)*

Programs must demonstrate that they will have a beneficial impact within the planning period. Beneficial impact means specific commitment to deliverables, measurable metrics or objectives, definitive deadlines, dates, or benchmarks for implementation. Deliverables should also have discrete timelines and occur early in the planning period to ensure actual housing outcomes. To address this requirement, programs must be revised to include specific commitments and definitive timeline as follows:

- *Program 1.24 (Community Plan to End Homelessness)*: The element should provide a schedule of actions for when and how the plans discussed will be implemented.
- *Program 1.29 (Farmworker Affordable Homeownership)*: The element should reconcile identified timelines listed in the objectives. In addition, the County

should include additional actions with specific commitments to promote farmworker affordable home ownership programs.

- *Program 2.08 (Housing Adjacent to Transit)*: The Program was revised to include annual coordination with the VTA site; however, the County should go beyond its outreach efforts. For example, while the County now commits to annual outreach with the VTA, it should also list schedule of actions the County will commit to help facilitate development to the VTA Site.

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 A3, 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 2.01 (Housing Suitability and Prioritization Tool for County-Owned Properties): This Program was not revised to address this finding. Please see HCD's prior review.
- Annexation: Program 4.03 (Coordinated Annexation and RHNA Transfer) should be revised to include a list of actions the County will pursue and complete to facilitate annexation of sites identified in inventory. For example, the County can include actions to collaborate with local governments and developers; assist with funding; facilitate all entitlements as necessary and alternative actions if annexations do not occur by a specified date in the planning period (e.g., by 2028)
- Stanford Specific Plans: The County revised Program 2.02 (Planning for Housing Development in Unincorporated USAs and Stanford University Lands) to create a ministerial approval process for sites in the inventory that comply with all affordability requirements and for sites who do not comply will require them to go through a discretionary process. However, the Program must still commit to a schedule of actions to facilitate development in the planning period, including alternative actions by a specified date if the sites do not progress toward completion in the planning period. Please see HCD's prior review for additional information.
- 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 must include a rezone program to comply with Government Code 65583.2 subdivision (c).

- Replacement Housing Requirements: As noted in the prior review, the housing element must include a program to provide replacement housing. (Gov. Code, § 65583.2, subd. (g)(3).) The replacement housing program must adhere to the same requirements as set forth in Government Code section 65915, subdivision (c), paragraph (3).

In addition, the element includes Program 2.25 (Variety of Housing Types) and Program 2.35 (Zoning Ordinance) to amend zoning to allow a variety of housing types, including single-room occupancy (SRO), transitional and supportive housing, employee housing, emergency shelters, accessory dwelling units (ADU), low barrier navigation centers and by-right permanent supportive housing. However, the Program does not clearly commit to amend zoning, using verbiage such as “may require updating”. As of the writing of this review, zoning is required to be updated and the Program should specifically commit to amend zoning. In addition, the Program should commit to at least parameters or certainty for the outcome of these commitments such as comply with state law citing government code or describing requirements (e.g., permit without discretionary action). For example, for low barrier navigation centers and permanent supportive housing, the Program should commit to amend zoning to permit the uses without discretionary action in zones that allow multifamily uses pursuant to Government Code section 65651 and 65661, respectively. Also, for emergency shelters, Program 2.35 should be modified to comply with AB 2339 and commit to amend the definition of emergency shelter, a zone that allows residential uses, appropriate development standards and sufficient capacity to accommodate the need for emergency shelters, including proximity to transportation and services.

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 was revised to modify programs 1.01-1.31 with some metrics; however, these programs were not revised to address HCD prior review. Programs designed to assist in the development of ELI housing should include specific commitments with identified timelines. Please see HCD’s prior review for additional information.

In addition, Program 2.05 (Assess Farmworker Housing Needs and Collaborate with Other Jurisdictions) must be revised to include additional actions to assist in the development of housing for farm workers. For example, the County can include actions to provide proactive and annual outreach with service providers to share information developed by the agricultural worker housing plan. HCD will send examples of farmworker housing programs.

4. *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 Finding A4, the element requires a complete analysis of potential governmental 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 2.25 (Tracking and Ongoing Compliance with state law) should be revised to include at least parameters or certainty for the outcome of these commitments such as comply with state law citing government code or describing requirements (e.g., permit without discretionary action) for SB 35 and SB 330.
- Program 2.27 (Objective Standards for Multi-Family Housing) should go beyond considering adoption and specifically commit to adopting objective standards or other measures to promote approval certainty.

5. *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 above, the element must include a complete analysis of affirmatively furthering fair housing (AFFH). The element must be revised to add goals and actions based on the outcomes of a complete analysis. In addition, actions must have specific commitment, milestones, geographic targeting and metrics or numeric objectives. Particularly, metrics should target beneficial impacts or outcomes for people; households, and neighborhoods (e.g., number of people or households assisted, number of housing units built, number of parks or infrastructure projects completed). Finally, while the element was revised to include a list of fair housing issues and corresponding programs and actions to address the issues, it must include additional place-based strategies toward community revitalization and environmental justice and actions to mitigate displacement risk.

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).)*

The element was not revised to address this finding. Please see HCD prior review.

### **C. 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 was revised to revise quantified objectives for units needing rehabilitation and conservation/preservation for ELI, and low-income households; however,

no numeric objectives are listed for rehabilitation and conservation for moderate or above-moderate income households. Rehabilitation and conservation objectives may include other activities intended to rehabilitate and conserve housing such as those outlined under Table 4.1.