December 7, 2016

Sophia Pagoulatos
Development and Resource Management Department
Long Range Planning Division
Fresno City Hall, Rm. 3065
2600 Fresno Street, Fresno, CA 93721

Sent via Email

Re: 2015-2023 Housing Element Amendment

Dear Ms. Pagoulatos:

We are writing on behalf of our clients, Familias Addams por un Mejor Futuro, in response to the email sent by Amber Piona on December 2, 2016 entitled, "Housing Element amendment" and addressed to "Housing Element Stakeholders". The proposed public participation process for the Housing Element amendment is not sufficient. We ask that the City take steps to effectively engage the public.

The City must "make a diligent effort to achieve public participation of all economic segments of the community" in developing its housing element amendment. Gov. Code § 65583(c)(8). As stated in HCD's letters dated March 7, April 17, and August 11, 2016, the City must release draft revisions to the public for review and input prior to submission by HCD. The City's failure to do so for the drafts of the 2015-2023 "denied the public an important opportunity for public input" and violated its duty to make a diligent effort to engage the public in the development of the housing element pursuant to section 65583(c)(8). HCD, March 7, 2016 Letter, p. 4. The City must incorporate the input received at the resident and stakeholder workshops into the draft housing element revisions before releasing them for public review and allow adequate opportunity for public review of these revisions prior to submission to HCD in order to comply with the law's public engagement requirements.

As we noted to the City via written correspondence dated September 6, 2016, HCD emphasized in August 11th findings that the Housing Element does not comply with state law that:

> "*Throughout the housing element process, the City must engage the community, including organizations that represent lower-income and special needs households, by making information and revisions regularly available in a timely fashion and considering and incorporating comments where appropriate. Revisions should be well noticed and available prior to submitting the element to the Department. In addition, the City should provide a variety of meaningful opportunities for input, beyond testimony at a public hearing*."

Accordingly, the City must ensure that opportunities to provide input on the housing element amendment are well-noticed. Any notices released by the City should be in terms that are easy to

understand for residents and stakeholders not versed in state housing element law and that encourage input. For instance, the email advisory mentioned above in this letter uses technical terminology like "Housing Need from Prior Housing Element Cycle (2015-2023)" that most residents and stakeholders are unlikely to understand and which will not effectively solicit input on the topic of the availability of sites for affordable housing.

In addition, the City must make efforts to inform residents of all income levels and stakeholders of the opportunity to provide input in ways other than email, which many low-income residents lack access to. Just four people attended the first public workshop on the housing element amendment on December 6, 2016. This poor attendance mirrors the poor attendance of the City's workshops on the draft housing element last fall, which the City also relied used email notices to advertise. Email announcements of public workshops are clearly not an effective or adequate method of achieving public participation in the housing element update process, especially if the announcements provide little advance notice of the meeting dates and use technical terminology. In order to comply with Government Code section 65883(c)(8), the City must modify and supplement its efforts to inform the public of the opportunity to provide input on the housing element amendment in a manner designed to *actually* achieve public participation.

As we have recommended in the past, we suggest that the City use local foreign language media, such as Univision, Radio Bilingue, and Hmong TV -- which reach thousands of low-income residents on a daily basis and provide free advertising for community-oriented events -- to encourage the public to attend public workshops. We also suggest that the City directly inform resident leaders of the opportunity to provide input and request that they inform their networks of the opportunity, and that the City partner with schools and local non-profits to hold public workshops in conjunction with regularly scheduled meetings which are attended by residents. Please let us know if we can assist the City in implementing these recommendations by providing the City with contact or other information.

The Housing Element Amendment process must also allow and encourage the public to provide input and incorporate input on all areas of the 2015-2023 Housing Element which are currently deficient in order for the City's to substantially comply with state Housing Element Law. The City's December 2nd email states that the City "is beginning the process of amending its adopted Housing Element to incorporate changes in 3 areas" – the "Mobile Home Park Conservation Program," "Equitable Communities Program," and "Housing Need from Prior Housing Element Cycle (2008-2015)" -- and informs recipients that they may provide input on these topics by submitting written comments to the City by email or at City Hall and by attending one of three public workshops. Yet the Housing Element's deficiencies include not only but extend beyond the topic areas listed in the December 2nd email.

In addition to deficiencies in the topic areas listed, as described in our July 7, 2016 comments, the Housing Element deficiencies include but are not limited to its failure to (1) identify adequate sites to meet the need for housing affordable to all income groups for the current planning; (2) include program actions to zone sites to meet the need for affordable housing, including outside of racially and ethnically concentrated areas of poverty and economically distressed areas and in high opportunity neighborhoods; and (3) analyze the special housing needs of the population, including the needs of Limited English Proficient speakers and undocumented residents. The City's housing element amendment process must not limit input to the three topic areas identified

in the City's December 2nd email but must allow and encourage input on *all* aspects of the 2015-2023 Housing Element which do not currently comply with state law. For your convenience, attached hereto are our comments on the 2015-2023 Housing Element dated July 7, 2016 which identify deficiencies with the Housing Element and provide recommendations for revisions to address those deficiencies. In addition, we have attached our letter to the City dated October 19, 2016 regarding the requirements established by Government Code section 65583.2(h) for sites identified by the City to satisfy its carry-over obligation.

Please contact me at my office at (559) 369-2786 if you have any questions or would like to discuss this letter over the phone or in person.

Sincerely,

Ashley Werner
Atttorney
Leadership Counsel for Justice and Accountability

Valerie Feldman
Attorney
Public Interest Law Project

cc: Mayor Ashley Swearengin
Councilmember Esmeralda Soria, District 1
Councilmember Steve Brandau, District 2
Councilmember Oliver Baines, District 3
Councilmember Paul Caprioglio, District 4
Councilmember Sal Quintero, District 5
Councilmember Lee Brand, District 6
Councilmember Clint Olivier, District 7
Douglas Sloan, City Attorney
Paul McDougall, California Department of Housing and Community Development

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Development and Resource Management Department
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Sincerely,

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Councilmember Lee Brand, District 6
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Douglas Sloan, City Attorney
Paul McDougall, California Department of Housing and Community Development

El 12 de enero de 2017

Sophia Pagoulatos
Development and Resource Management Department
Long Range Planning Division
Fresno City Hall
2600 Fresno Street
Fresno CA 93721

RE: Comentarios sobre el Borrador Público de la Revisión del Elemento de Viviendas de 2015-2023 de la Ciudad de Fresno

Querida Sr. Pagoulatos:

Escribimos para hacer comentarios sobre el Boarrador Público del la Revisión del Elemento de Viviendas de 2015-2023 de la Ciudad de Fresno. Gracias por la oportunidad de submitir comentarios y por su atencción a ellos.

Hay un grand necesidad para y falta de aceso a viviendas de precios acesibles a personas de bajos ingresos y de buena calidad en lugares a través de la ciudad. Muchismas residentes tienen que luchar para pagar la renta y la costa de utilidades. Viven en departamentos rentales en pesimas condiciones que amenzan la salud. Encuentran barreras especiales a accede a vivendas seguras y de precios justos por razon de su status de inmigracción, idioma, o otro factor. Y viven en barrios en el sur de Fresno que faltan aceso a infrastructura basica y donde haya más contaminacción debido a la poca atencion pagado por la ciudad en estos lugares y la falta de oportunitidades de viviendas de precios acesibles en lugares en el norte de Fresno con más recursos. Por eso, es muy importante a nosotros que la Ciudad

prepare y implemente un Elemento de Viviendas que realamente elimina las barreras al aceso a viviendas justas para todos residentes, sin importa el nivel de ingreso o riqueza.

1. Proceso Público

Es crítico que la Ciudad verdaderamete busca las opiniones de residentes sobre sus necesidades y prioridades relacionado a viviendas para preparar su elemento de viviendas. La Ciudad no hizo suficiente para informar el público sobre la oportunidad de contribuir a la revisión del elemento de viviendas. A muchisimas residentes les gustarían proporcionar sus opiniones pero no saben de la oportunidad de hacerlo. La Ciudad debería extender la oportunidad de dar comentarios, porque la mayoría del periodo de comentario público fue durante los feriados cuando muchas personas están viajando y con su familia. También, la Ciudad debería compartir la oportunidad con padres que participen en los concejales y horas de cafés de las escuelas y usar otros maneras efectivas de solicitar información del público.

2. Necesidades de Viviendas de Inmigrantes Que No Son Documentados

El Borrador de la Revisión del Elemento de Viviendas no reconoce las barreras a aceso de viviendas a precios justos y de buena calidad que tienen inmigrantes sin estatus legal (inmigrantes no documentados). Estos personas trabajan, pagan impuestos, y deberían tener la misma oportunidad a otros personas. El Elemento de Viviendas debería de reconocer las siguientes barreras e incluir los siguientes programas y compromisos para responder a las necesidades de esta población:

- Analysar las necesidades de viviendas de personas sin documentos.

- En la medida que es posible, abre todos los programas de ayuda en temas de viviendas a personas no documentados. Personas sin ciudadanía o un numero de seguridad social no pueden beneficiar de casi todos los programas que existen en Fresno para ayudar en el acceso a viviendas de precios acesibles.
- Creer un programa de ayuda para la compra de casas para personas sin documentaccion, a través de ayuda con la engancha y préstamos de bajo interés. Anteriormente, existen un programa así para personas con un numero ITIN, pero se eliminó. Un programa así es especialmente importante para personas no documentados, porque tienen mucho dificultad en obtener crédito en términos buenos por falta de un numero de seguro social. También, es muy difícil ahorrar el dinero por la engancha todo en efectivo.
- Elimina el requisito de la Ciudad de Fresno de que personas sin un numero de seguridad social paga un deposito a la Ciudad para tener servicio de agua. Personas no documentados, a menudo, son de muy bajos ingresos y el pago extra para servicio de agua es más aún dificil pagar.

3. Necesidad de Invertamiento en Barrios Desfavorecidas y Creación de Oportunidades de Viviendas de Precios Accesibles en Barrios Con Más Oportunidades

Muchos de nosotros han vividos en barrios en el sur de Fresno y Fresno central con muchas necesidades por muchos años, pero no hemos visto cambio. No debería ser diferencia entre los barrios de Fresno en términos de aceso a recursos básicos – banquetas, luces, drenaje, parques, supermercados, clinicas de salud, etc. --- y de aceso a viviendas de precios acesibles y de buena calidad. Todos somos humanos con las mismas necesidades, visión, derechos y ambición, aunque unos ganen más. Esto significa que la Ciudad y el Elemento de Vivienda

debería de tener programas claros y fuertes para eliminar las deficiencias de infrastructura y servicios en barrios desfavorecidas en el sur de Fresno y *también* debería de creer oportunidades que ya no existen en barrios en el norte de Fresno, donde estos recursos si existen, para viviendas para personas de cada nivel de ingreso.

Recomendamos que:

- Incluir compromisos *claros* para crear oportunidades de viviendas a precios acesibles en todos lados de la Ciudad.
- Re-incluya el programa de analysar y prioritizar la eliminacción de barreras a infrastructura en el Programa 27. El Borrador elimina el este compromiso sin explicar porque, pero fue lo compromise lo más claro del programa y debería ser incluido.
- No permiten o ponen negocios que causan daño dentro de los barrios. Esto incluye facilidades de reciclaje y fabrícas que emiten pollución y generan trafico de camiones. Hay muchas facilidades así en barrios en el sur de Fresno que causan daño a la calidad de vida. La Ciudad de Fresno deberián de cambiar sus reglas y zonificcación para no permitir que más de ellos ubican dentro de nuestros barrios y deberían hacer y implementar el Estudio de la Compatibilidad de Industrias que lo prometió hacer lo más pronto possible para hacer un plan de como va a eliminar conflictos entre facilidades industriales y la buen estar de la comunidad. El Elemento de Viviendas debería de incluir un compromiso de hacer esto estudio dentro de un año y implementarlo inmediatamente.

4. Programas para los Duaños y Residentes de Casas Mobiles

Los residentes de casas mobiles a menudo pagan más de la mitad de sus ingresos para la renta y también el alto costo de utilidades y muchas veces faltan el dinero para mantener adequadamente sus trailers. El Elemento de Viviendas debería incluirlo siguente:

- Compromisos claros de la Ciudad de tomar acción que ayudará con el maintainamiento de y la renta y utilidades para las casas mobiles. El Programa 10A solamente contiene compromisos de la ciudad de dar informacción a otros sobre recursos que existen para ayudar pero no incluya un compromise sobre acción la Ciudad misma va a tomar que va a ayudar directamente.
- Políticas para proteger inquilinos de casas mobiles y/o la tierra debajo su casa mobil en contra de aumentas del precio de la renta, incluso un programa de control de rentas. Cada año, se aumenta la renta en parques de casas mobiles en Fresno, pero las ganancias de los residentes no suben igualmente. Entonces, cada año, es más dificll pagar la renta.
- Programas para apoyar con la remodelación de casa mobiles y ayuda para la compra de la tierra donde casas mobiles están estacionados.

Gracias por su attención a esta carta. Esperamos su respuesta.

Betty [illegible]

Claudia

Adriana Gutierrez

Rosalba Cárdenas

Virginia Zaragoza

Guillermina León

Reyna León

Margarita Salgado

Alejandro J.

Zulmer B.

Monica Vidal Cruz.

Arnulfo Cruz

Eligia Santos

Jose Galindo

Consuelo de la Cruz

Teresa Pablo Díaz

Sergio León Vasquez

Lino Perez G.

Basilio Aguilar

Maria del Carmen Padrón

Sincerementé,

Estelado Distrito 7

Yesenia Jimenez District 3

Rosalina Cano Distrito 3

ADRIANA FIGUEROA Distrito 7

Claudia Valdez Distrito 7

Rosa Tafoya Distrito 7

Maria B. Distrito 7

January 12, 2017

Sophia Pagoulatos
Development and Resource Management Department
Long Range Planning Division
CITY OF FRESNO
2600 Fresno Street
Fresno, CA 93721

RE: Comments on the City of Fresno's Revised Housing Element Public Draft 2015-2023

Dear Ms. Pagoulatos:

We are writing to make comments on the City of Fresno's Housing Element Revised Public Draft 2015-2023. Thank you for the opportunity to submit comments and for your attention to them.

There is a big need for and lack of access for affordable housing for people of low income and good quality places throughout the city. Many residents struggle to pay rent and the cost of utilities. They live in apartments in poor conditions that threaten their health. They encounter special barriers to access safe and fair-priced homes because of their immigration status, language, or other factors. They live in neighborhoods in south Fresno where they lack access to basic infrastructure and where there is more air pollution due to the city's lack of attention in these places and the lack of affordable housing opportunities in locations with more resources like north Fresno. For this reason, it is very important for us that the City prepare and implement a Housing Element that effectively eliminates barriers to fair housing for all residents, regardless of the level of income or wealth.

1. Public Process

It is critical that the City truly seeks the opinions of residents about their needs and priorities related to housing to prepare their housing element. The City did not do enough to inform the public about the opportunity to contribute to the revision of the housing element. Many residents would like to provide their opinion but do not know of the opportunity to do so. The City should extend the opportunity for comment because most of the public comment period was during the holidays when many people were traveling and with their family. Also, the City should share the opportunity with parents who participate in school councils and coffee hours and use other effective ways to solicit information from the public.

2. Housing Needs for Immigrants That Are Not Documented

The Housing Element Revised Draft does not recognize barriers to fair and good-quality housing that non-legal immigrants (undocumented immigrants) have. These people work, pay taxes, and should have the same opportunity as other people. The Housing Element should recognize the following barriers and include the following programs and commitments to respond to the needs of this population:

- Analyze the housing needs of undocumented people.
- To the extent possible, open all housing assistance programs to undocumented persons. People without citizenship or a social security number cannot benefit from almost all the programs that exists in Fresno to help in access to affordable housing.
- Create a help program for the purchase of homes for people with documentation through help with down payment and low interest loans. Previously, there was a program like this for people with an ITIN number, but it was eliminated. A program like this is especially important for undocumented people because they have a difficult time getting good credit because they lack a social security number. Also, it is very difficult to save the amount of money needed for a cash down payment.
- Eliminate the City of Fresno's requirement that people without a social security card pay a deposit to the City for water service. Undocumented people are often very low income and the extra payment for water service is even harder to pay.

3. Need for Investment in Low Income Disadvantaged Communities and the Creation for Affordable Housing.

Many of us have lived in neighborhoods located in South Fresno and Central Fresno with many needs for many years, but have seen no change. There should not be a difference between the districts of Fresno in terms of access to basic resources - sidewalks, lights, drainage, parks, supermarkets, health clinics, etc. – and access to affordable prices and good quality housing. We are all humans with the similar needs, dreams, rights and ambition, although some earn more. This means that the city and the housing element should have clear and strong programs to eliminate the shortcomings of infrastructure and services in disadvantaged districts in south Fresno and should believe opportunities that no longer exist in neighborhoods located North of Fresno, where these resources if they exist, for housing of people of every income level.

We recommend that:

- *Clear* commitments are included to create opportunities for housing at affordable prices on all sides of the city.
- Re-introduce the program that analyzes and prioritizes eliminating barriers to infrastructure in Program 27. The draft eliminates this commitment without explaining why, but was the most clear commitment, and should be included.

- The City should not allow or put business that do harm within neighborhoods. This includes recycling facilities and factories that emit pollution and generate traffic from trucks. There are many facilities already in neighborhoods in South Fresno that cause harm the quality of life. Fresno should change its rules and zoning to not allow more of these facilities be located within our neighborhoods and should make and implement the industrial compatibility study it promised to make as soon as possible to make a plan to eliminate industrial facilities conflicting with neighborhoods and the wellbeing of the community. Housing element should include a commitment to do this study within a year and implement it immediately.

4. Programs for Mobile Home Owners and Residents

The mobile home residents often pay more than half of their income for rent and also the high cost of utilities and often lack of money to properly maintain their trailers. The Housing Element should include the following:

- Clear commitments from the City that it will take action to help with the maintenance of the rent and utilities for the mobile homes. Program 10A only contains commitments from the City to give information to others about resources that exist to help but does not include a commitment from the City itself on how it's going to help directly.
- Policies to protect tenants from mobile homes and/or the land under their mobile home against rent price increases, including a rent control program. Every year, rent in mobile home parks in Fresno increases, but residents' earnings do not rise as well. Then, each year, it is more difficult to pay the rent.
- Programs to support with the remodeling of mobile homes and help with the purchase of land where the mobile homes are parked.

Thank you for your attention to this letter.

We wait for your response,

Sophia Pagoulatos, Planning Manager
Development and Resource Management Department
Long Range Planning Division
Fresno City Hall, Rm. 3065
2600 Fresno Street, Fresno, CA 93721

January 13, 2017

Re: City of Fresno 2015-2023 Housing Element Amendment December 2016 Public Review Draft

Dear Ms. Pagoulatos:

We are writing on behalf of our clients, Familias Addams por un Mejor Futuro, Rosalina Carson, and Rosalba Cardenas, with respect to the City of Fresno's 2015-2023 Housing Element Amendment December 2016 Public Review Draft (Draft Amendment). We provide these comments in order to assist the City in developing a final housing element that substantially complies with the requirements of state Housing Element Law and furthers the "early attainment of decent housing and a suitable living environment" for every Fresnan, as envisioned by the Legislature. Gov. Code § 65580(a).

1. **<u>The City Continues to Flout the Housing Element Statute's Public Process Requirements</u>**

After failing to meet the statutory deadline to adopt a valid housing element by December 31, 2015, the City's hurry to seek HCD's approval of its housing element, resulted in the City repeatedly failing to make a diligent effort to include the public in the housing element's development in violation of Government Code section 65583(c)(8). See HCD's March 7, April 7, and August 11, 2016; Leadership Counsel & Public Interest Law Project letters dated February 6 and 26, March 31, April 21, July 7, 2016. HCD's March 7th letter to the City found that the City "denied the public an important opportunity for public input' by submitting its January Draft Housing Element to the state prior to releasing a draft to the public for review and comment. Nevertheless, the City developed and submitted multiple additional draft housing element revisions to the state with little or no prior public review following HCD's issuance of its March 7th letter. HCD's August 11th letter on the City's adopted Housing Element emphasizes that the City "must engage the community" and "provide a variety of meaningful opportunities for input, beyond testimony at a public hearing."

Despite HCD's clear and repeated direction to the City to engage the public, the City has continued to demonstrate a lack of regard for the Housing Element Statute's public process requirements in the development of its Housing Element Amendment. The City noticed its three public workshops for the Draft Amendment just a few days before the first workshop. The email sent by the City to notify stakeholders used technical terminology (e.g., "Housing Need from Prior Housing Element Cycle (2015-2023)") not readily understandable to the general public.

We advised the City in written correspondence dated December 7, 2016 that notices from the City relating to the housing element update must use clear language that is accessible to residents and must modify its efforts to achieve public participation, particularly due to the City's poor track record of attaining public participation through email notices in the previous housing element workshops. Exhibit A, attached hereto.

The City's efforts to date to obtain public input into the Draft Amendment do not meet the Government Code's standard. The City's previous efforts related to the current Adopted Housing Element, including workshops hosted by the City last fall do not substitute for public engagement in the Housing Element Amendment process, as City staff suggested at the stakeholder workshop. We urge the City to undertake additional efforts to provide meaningful opportunities for public input into the preparation of the final Housing Element Amendment that reach a greater number and cross-section of residents and stakeholders, including low-income residents with the greatest housing needs We have provided various recommendations in our December 7, 2016 comment letter and other comment letters we have issued to the City pertaining to the 2015-2023 Housing Element for free and low-cost efforts the City can make to engage the public. We encourage the City to consider and utilize those recommendations.

The City also fell short of state law's standards by releasing a draft housing element amendment prior to the completion of public workshops for the amendment. Several residents and commissioners expressed their concern at the City's stakeholder workshop over the City's release of the Draft Amendment before seeking any public input on it.[1] Staff indicated that the timing of the release was a response to requirements of the state to amend their housing element. Yet HCD clearly stated in its August 11th letter and in its previous letters that the City must make diligent efforts to include the public in the **development** of its housing element.

The City further impeded public participation in the development of the Draft Amendment by releasing the Draft for a 30-day comment period during the middle of the holidays, with a comment period of December 13, 2016 to January 13, 2017. HCDC Commissioner Barbara Fiske asked staff at the stakeholder workshop if it could extend the public comment period beyond this period, noting that it is an "unusual time to ask community members and non-profits to engage people on housing." Staff indicated that they would not extend the comment period, but that there would be "public hearings" in March when the public could comment further. The City's actions and statements directly conflict with the direction provided by HCD that the City must make "meaningful opportunities for input, beyond testimony at a public hearing" available for residents.

The City continues to fall short of meeting the law's requirement to make a diligent effort to engage residents of all income levels, preventing the City from developing a housing element that addresses the housing needs of *all* residents.

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[1] As West Fresno resident Brunette Harris stated regarding the draft, "The City is supposed to get public input *before* making the plan. How is it that the City can come and plan things in a community, and they don't ask us what we want?"

2. Draft Revisions Ignore Deficiencies Raised in Other Comment Letters.

The Draft Amendment ignores deficiencies in the Adopted Element raised in previous comment letters that we have submitted, including in letters dated February 6 and 26, March 31, April 21, July 7, 2016. In addition to the deficiencies discussed in this letter below, the deficiencies that the Draft Amendment does not address include but are not limited to the following:

- Failure to analyze and address the needs of household with special housing needs, including in particular large households, single-parents households, non-English and Limited English Proficient speakers, immigrants, and undocumented residents.
- Failure to analyze and address barriers to affordable housing.
- Failure to demonstrate that each of the programs will achieve beneficial impacts within the planning period through the inclusion of specific action steps and time frames for implementation.
- Failure to address governmental constraints on the maintenance and development of affordable housing.
- Failure to address the findings of the 2016 Analysis of Impediments to Fair Housing.

Despite repeated requests by the public for the City to address these deficiencies, the Draft Amendment does not. The City must prepare a revised draft amendment that addresses the deficiencies raised in previous public comment letters before it may be found in compliance with state Housing Element Law.

3. The Inventory Remains Inadequate to Meet the Housing Needs of the Current RHNA and Carry-over from the 2008-2013 RHNA.

a. Carry-over Calculation

The December Draft's carry-over calculation begins with the carry-over calculation[2] that HCD includes in its November letter regarding the City's Adopted Element - 6,476 units for low, very-low and extremely low income households. The City then reduces the carry-over by taking credit for affordable housing permitted or constructed during the last planning period without identifying the development projects by name or location. For approximately 738 units of affordable housing the City provides no information about the projects in order for the public to verify the project and the affordability of the sites. Simply referring to the Annual Progress Reports for the years indicated on Table 3-4 does not provide adequate information for the public or HCD to verify these units can be credited against the City's carry-over obligation. For

[2] The City refers to the calculation of the unmet need that must be accommodated in the current housing element with several different terms: the unmet need and the roll-over. We refer to the same with the term "carry-over." The calculation is completed by determining the RHNA for the applicable income levels for the past planning period, then subtracting the number of units approved or constructed by income level from the RHNA, then subtract the number of sites that could be accommodated on sites identified in the housing element for the previous planning period, then subtract any sites re-zoned to meet the housing needs during the last planning period. See HCD's Memorandum AB1233, Updated June 3, 2010.

example, when HCD calculated the City's carry-over at 6, 476 units, HCD gave the City credit for 1,740 units for the 2008-2013 planning period based on sites identified and available in an inventory in 2008 and 2009 Adopted Housing Elements and for units approved or constructed during the same time frame. It is unclear, and therefore problematic, whether the City is taking credit for some of the same units that HCD has already given the City credit for constructing or approving in its calculation of 6,476 carry-over units.

For the years 2013 to 2015, City takes credit for units approved or constructed and does identify the name of the project along with the number of units by income level. But there are errors in some of total units that indicates these numbers may not be reliable. For example, for 2013 the draft element includes a project called Fultonia West with 34 units affordable for extremely-low or very-low income and 10 units affordable for low income households and one unit affordable to moderate income households. The corresponding 2013 Annual Progress Report lists the Fultonia West development as including 13 units affordable for low income and 19 units affordable for moderate income households. This error, and any others, must be corrected in order to determine whether the City can reduce its carry-over from HCD's 6,476 units.

b. Carry-over site specifications

1.Size

The December draft element correctly re-states the law regarding the specific requirements of site re-zoned to accommodate the unmet need from the prior planning period: the site must allow development by right on a site that can accommodate at least 16 units and permits a density of at least 20 dwelling units to the acre. Fifty percent of the sites must allow only residential use, unless a mixed use site allows 100 percent residential and require that residential use occupy at least 50 percent of the floor space. Government Code § 65583.2(h). The draft element goes on to state on p. 3-27 that six parcels with a capacity of less than 16 units are included in the carry-over inventory. (Appendix B-2) On p. 6-17 of the draft element it states that 7 of the parcels in the carry-over inventory have a capacity for less than 16 units per acre. Notwithstanding the inconsistency between the statements, and a review of Appendix B-3 supports at least 7 parcels with a capacity of less than 16 units, no site with a capacity of less than 16 units per acre can be used to accommodate the unmet housing need from the prior planning period. No exceptions exist in the statute to include sites with a smaller capacity.

2.<u>By Right</u>

Excluding the parcels that do not meet the requirement that sites re-zoned to address the carry-over accommodate at least sixteen units can be accomplished when the draft housing element is modified to incorporate the public comments the City receives prior to submitting the draft to HCD. The more difficult challenge is to demonstrate that all of the carry-over sites allow by right development. By right is typically defined as development that is not required to seek any discretionary approvals. Gov. Code § 65583.2(i). The City's Development Code indicates zone clearance, a ministerial review to determine if a residential development meets all applicable standards, is available for single family homes and single duplexes and all other

developments must seek a development permit. §15-5203. The development permit process is not a ministerial process and allows for discretionary review of a development.

The Draft Amendment contends in Chapter 3, page 24, that projects subject to the Downtown Development Code ("DDC") are subject only to a zone clearance process. However, as we explained to the City prior to the City's adoption of the DDC in correspondence dated October 19, 2016, attached hereto as Exhibit B, the DDC allows projects located in certain areas of the Downtown to obtain zone clearance approvals only if they have a residential density of 20 units per acre, where at least 50% of the floor area is occupied by residential uses and which have no historic uses on site. Government Code section 65583.2(h), however, requires that the City identify sites to meet its carry-over need where *only* projects meeting the requirements established by that section are permitted. The DDC does not meet this standard, because it does not *require* development projects to satisfy the standards contained in section 65583.2(h) on the sites identified but *allows* them to proceed with zone clearance if they do. The distinction between the Government Code's requirements and the DDC's provisions is significant: the Government Code requires that the City identify sites where projects must meet the minimum density and development standards and may proceed only subject to a zone clearance in order to ensure that projects that proceed on those sites in fact address the city's unmet need for housing for lower-income residents from the prior planning period.

3.<u>Capacity</u>

The City's recent modifications increasing permitted densities and height limits in the downtown area are a recent change and there is no development pattern for the City to rely on to support the estimated capacity included for the sites on the carry-over inventory (Appendix B-2). The City relies on the projected capacity of several proposed projects but cannot point to development patterns that support calculating future capacity on the downtown sites at 283 units/acre - Table 3-9, on page 3-24 and 3-25, gives examples of affordable housing in the past that had a build out averaging 18.9 units a floor in a 2 or 3 story development, the new height limits have no track record and assuming that all projects that **can** build out at 10 or 15 stories **will do so** is speculative and not an adequate analysis to support the capacity included in the inventory.

c. Current RHNA Inventory

1.<u>Underutilized Sites</u>

Non-vacant parcels are included in both the carry-over inventory and 2013-2023 RHNA inventory as is permitted if the housing element includes a comprehensive analysis of the development potential during the planning period on the non-vacant sites. Gov. Code § 65583.2(g). [3] In the Draft Amendment inventories, the current use of the non-vacant parcels is identified but this falls short of the analysis required by law. As HCD's building blocks explains the analysis must assess whether non-vacant or underutilized sites can be realistically developed

[3] This analyses is required for all non-vacant sites whether the site is identified to meet the 2015-2023 RHNA or the unmet housing need from the last planning period.

within the planning period. Further analysis is necessary for sites in both the carry-over and current RHNA inventories to determine whether re-development of these non-vacant sites is realistic during the remaining time in the planning period. The City's inventory include non-vacant parcels that include operating businesses, including a church, and the City must complete the analysis of the specific sites and their realistic development potential and not simply identify what the current use is on the site.

2.Site Capacity

As indicated in previous comment letters the capacity of the City's identified sites to accommodate housing affordable to lower income households is greatly overstated on large sites of over 10 acres in size. The available funding sources and past development patterns do not support affordable residential projects developing at 30 units/acre on thirty acres resulting in 913 affordable units on one site. See parcel 2027 in Inventory B-1, Appendix B. The City uses one example of an affordable residential development on a large site, the proposed Fracher project which will support 440 affordable units on 91 acres on p. 3-15. That results in a development of less than 20 units/acre and does not support the development predictions of other large sites at 30 units/acre and higher. The capacity calculation for large sites, more than 10 acres in size, overstates the actual development capacity because of available financing for affordable housing. On the City's list of TCAC funded projects on p. 4-28, only two of the 34 developments built with tax credits has more than 250 units. The lack of availability of tax credit financing for developments of over 250 units poses limit on the development of large sites for affordable housing. And by including such large sites, which cannot compete the available funding for affordable housing in the inventory, the City has created a constraint on the production of affordable housing.

3.Mixed Use Sites

The Draft Amendment identifies a specifics' that would allow some of the mixed use sites to allow commercial-only development on p. 3-9 (projects less than 20,000 sq. ft, beyond a certain distance to a BRT route, and for projects with a development permit application before 2019). These sites do not belong in the inventory identified to meet residential housing needs, and although the parcels that meet the first two criteria should be somewhat easy to isolate and remove from the B-1 and B-2 inventories, it is unclear how to identify the sites that may submit a development application between now and 2019.

4. Governmental Constraints

The site inventory for the Draft Amendment includes numerous parcels indentified to meet the housing needs of lower income households that are ten acres or greater in size, including parcels over 20 acres in size. The decision to identify sites for affordable housing development that cannot compete for tax credit financing because of the size of the parcels and the number of units on one parcel. This is a constraint on the development of affordable housing that the City has chosen to impose. Because the City is required to identify any governmental constraints on development and remove those constraints, the City must either remove the constraint by identifying parcels for affordable housing that can compete for tax credit financing,

or adopt a program to commit City funds to develop these sites for affordable housing. All of he sites in the inventory should suitable and available for residential development within the current planning period, a phasing plan to help large size parcels develop for affordable housing limits the development potential during the current planning period and is an inadequate mitigation to this self-imposed constraint on development.

5. The Draft Revisions Exacerbate the Unlawful Concentration of Sites for Affordable Housing in R/ECAPs and Economically Disadvantaged Neighborhoods

As noted in our previous letters, the high-density sites identified in the Housing Element Sites Inventory to meet the housing needs of lower income households are located almost entirely in, or immediately adjacent to, racially and ethnically concentrated areas of poverty (R/ECAPs) and economically distressed neighborhoods that lack access to essential infrastructure, services, and amenities and that are disproportionately exposed to multiple sources of pollution, and that a revised housing element must include programmatic commitments to rezone sites to higher densities in higher income and higher opportunity areas.. HCD's August 11th letter also states that a revised housing element should include a "specific commitment to rezone more housing choices in high opportunity areas."

Nevertheless, the Draft Amendment does nothing to identify or commit the City to rezone sites for affordable housing in high opportunity areas. In fact, the City proposes in the Draft Amendment to meet *100%* of its carry-over need with sites located in an R/ECAP, the Downtown. p. 3-26. The City's persistence in refusing to make sites available to meet the need for housing affordable to lower income residents outside of R/ECAPs and low income neighborhoods lacking critical infrastructure and services violates the Housing Element Law's requirement that jurisdictions "[p]romote housing opportunities for all persons" regardless of protected class status. § 65583(c)(5) and other state and federal laws prohibiting housing discrimination. 42 U.S.C. § 2000d; 42 U.S.C. 3601, *et seq.*; Gov. Code §§ 11135, 12900, 65008.

In fact the Draft Amendment's only analysis of racially and ethnically concentrated areas of poverty is to determine that these concentrations of poverty occur in certain areas because of the proximity of these areas to transportation. p.3-31. Although this response is insufficient and fails to assess Fresno's status as the most segregated city in America, the next logical step would be to identify a program, including specific actions, to zone sites and provide incentives for affordable housing development and increase the access to transportation in other areas of the City in order to de-concentrate poverty. **Since the City is currently updating its transportation system network, the City could include a program in a revised Draft Amendment that includes a commitment to analyze the impact of the transportation network on affordable housing opportunities and extend or modify the network as necessary to eliminate transit-related barriers to fair housing identified.**

The City must identify sites or include a program to rezone sites to meet the need for housing affordable to lower-income residents outside of R/ECAPs and economically distressed neighborhoods and in higher income and higher opportunity neighborhoods that currently lack affordable housing options.

6. Additional Analysis is Required to Conserve the Existing Housing Stock

The City has identified numerous efforts to redevelop sites in the downtown area. As an R/ECAP, the Downtown is disproportionately comprised of low, very-low, and extremely-low income residents compared to the City as whole. The Housing Element indicates that lower-income residents face extremely high levels of housing cost burden, including 92.9% of ELI, 82.7% of VLI, and 59.5% of LI renter households. Thus, residents in the Downtown subject to revitalization efforts are extremely vulnerable to price increases resulting from sustained investment in the area by the City. The City's revitalization efforts therefore may give rise to a governmental barrier to affordable housing and must be accompanied by programs in the housing element to prevent the displacement of existing residents and to maintain the existing stock of housing in these neighborhoods. These include but are not limited to implementation of the Anti-Displacement Task Force identified in the Downtown Neighborhoods Communities Plans; requirements that City property sold for private development include housing affordable to ELI, VLI, and LI residents; inclusionary zoning requirements; rent control; and/or other mechanisms to ensure long-term affordability for existing lower-income residents.

7. The Draft Revisions Fail to Rectify the Housing Element's Programmatic Deficiencies

As we explained in previous comments, programs contained in the Housing Element and its various draft iterations lack the specificity and "specific action steps" necessary to demonstrate that those programs will result in beneficial impacts on the City's housing goals within the planning period as required by the Housing Element Law. § 65583(c); HCD's Building Blocks for Effective Housing Elements. HCD's August 11th letter states that the Housing Element must include "additional revisions to assure a beneficial impact towards Fresno's goals and objectives" and specifically identifies Program 10A (Mobile Home Parks) and Program 27 (Equitable Communities) as requiring revision. The City's proposed revisions to fail to rectify these deficiencies.

a. Program 10A - Mobile Home Parks

The revisions to Program 10A represent a positive but insufficient step towards compliance with the Housing Element Law's beneficial impact requirement. The City's commitment to provide assistance with funding applications should specify a target number of applications with which the City will assist. In addition, instead of simply making a list of organizations that "can assist in the preservation of mobile home units," the City should commit to take specific action itself to facilitate the preservation of these units. This may, for example, take the form of conducting a assessment of housing-related needs in mobile home parks through communications with residents and owners, identifying city, state, federal, and private resources available to address those needs, and identifying actions the City will take to use the resources and policy-options available to it to address those needs.

b. Program 16 Requires Action in Response to Survey Results.

The Draft Amendment includes Program 16 to monitor development on sites identified in the inventory but does not identify any action or commitment that the City will take based on

the outcome of the survey. For all of the reasons stated above regarding large parcels included in the inventory, it is an important step to monitor the actual development of these sites for affordable housing. However, the housing element must also identify an action the City will take if survey results show that challenges exist to the development of these sites as affordable housing.

c. Programs Needed to Prevent Displacememnt Activity.

The draft element described the comprehensive plans the City is taking to encourage new development in the downtown area. pp. 3-23 to 3-28. As discussed above, these efforts toward revitalization in the downtown area must be paired with efforts to prevent the displacement of existing housing in and around the downtown area not only as a direct result of identifying non-vacant sites in the City's inventory but also due to increased housing costs associated in the surrounding area.

a. Program 27 – Equitable Communities

The City's proposed revisions to Program 27 fail to include "specific action steps and timelines" that "assure a beneficial impact" on the City's housing goals, as HCD's August 11th letter directed, and in fact would undermine the program's goal of the equitable distribution of housing and investment by eliminating the program components which are most likely to result in a beneficial impact due to the specificity of the actions, outcomes and timelines of those programs. The City must modify its proposed revisions to Program 27 to assure that the program will result in a beneficial impact pursuant to section 65583(c).

i. **The Draft Revisions Do Not Enhance but In Fact Weaken Program 27's Commitment to Facilitate Investment in Older Neighborhoods**

The Draft Revision's modifications relating to public and private investment priorities do not include specific action steps necessary to result in a beneficial impact on the City's goal of investment in older neighborhoods but rather consist of broadly worded proposals not tied to a clear outcome and the elimination of Program 27's strongest commitments.

The first bullet point included under Program 27 in the Draft Revisions states that the City will:

> "Publish a General Plan Annual Report every December which will detail the location of public investments…in addition to the location of building permit activity by sector as a metric of private investment."

The Draft Revision's proposal to provide information about the location of investment nor does not act to achieve the stated goal of equitable distribution of housing and investment during the planning period. Gathering information to inform a further action would be relevant, but only gathering information does not result in equitable distribution.

The second bullet point included under Draft Revision Program 27 proposes to, "Establish a General Plan Implementation Committee…to review progress on the priorities established in the General Plan" and states that the "committee will convene in early 2017 and have opportunities to provide recommendations to the City on prioritization of future investments." Again, this bullet point indicates no specific action the City will to achieve the goal of the equitable

distribution of housing and investment: the formation of a committee which will have "opportunities to provide recommendations" – recommendations which the City may or may not adopt -- does not move toward the attainment of any impact on the city's housing and investment goals at all.

At the same time, the Draft Revisions would delete the following commitments contained in Housing Element Program 27:

- "Identify areas of high need and target an integrated approach to service provision in those neighborhoods."
- "Establish written policies and procedures that ensure that infrastructure and public services provisions and code enforcement activities are prioritized for high need areas. Prioritize basic infrastructure improvements like water, sewer, and street lights in high need communities and potential strategies for addressing those needs."

The Draft Revisions would also eliminate the associated objective, that the City: "Identify high need areas and create a list of infrastructure and public service needs in high need areas and potential strategies by January 2017."

Unlike other components of Program 27, the commitments and objectives which the Draft Revisions propose to delete identify specific actions and clear outcomes that will achieve a beneficial impact on the distribution of the investment of public resources in Fresno pursuant to an established timeline. The deletion of these commitments coupled with the addition of broadly worded commitments to provide information about the location of investments and form a committee do not assure that Program 27 will result in a beneficial impact on Fresno's housing goals, but in fact make it less likely to do so.

ii. **The Draft Revisions Do Not Identify Specific Actions that Will Result in a Beneficial Impact on the Equitable Distribution of Housing Opportunity**

HCD's August 11th letter states that Program 27 should "include specific commitment to rezone more housing choices in high opportunity areas." The Draft Amendment includes no such commitment by the City and in fact, *further exacerbates* the nearly complete concentration of sites included in the Sites Inventory for affordable housing in R/ECAPs and economically distressed neighborhoods. See above. The City must revise the Draft Amendment to include a commitment rezone sites for multi-family housing affordable to low and very-low income residents outside of low and moderate income and in higher income / opportunity neighborhoods.

The Draft Amendment states that the steps the City will take to expand affordable housing opportunities "[include], but [are] not limited to, supporting owner-initiated zoning and General Plan land use amendments that expand affordable housing opportunities outside of low- and moderate-income areas." Yet the Draft Revision provides no information about what "support" the City will provide for owner-initiated zoning or land use amendments or any indication that that "support" will result in a beneficial impact on the distribution of affordable housing

opportunities in Fresno and abdicates the *City's* duty to affirmatively further fair housing to developers. The City itself must take action to create housing opportunities outside of R/ECAPs. Further, historical development patterns in Fresno indicate that market-driven zoning does not further fair housing but rather leads to the lack of diverse housing opportunities for residents across the income spectrum.

The Draft Revisions' statement that the actions the City will take to expand affordable housing opportunities "includ[e], but [are] not limited to" supporting owner-initiated zoning and land use amendments indicates that there are additional but unspecified actions the City may take to this end. The City cannot rely on vague commitments to take unspecified actions to expand affordable housing opportunity but must state the "specific actions" it will take achieve them.

The Draft Amendment include additions to Programs 5 and 8 to include language relating to the expansion of affordable housing opportunities outside of low and moderate income neighborhoods. While these proposed revisions represent a positive step by the City to address HCD's comments with respect to Program 27, they, like the revisions to Program 27, do not assure that they will result in a "beneficial impact" as drafted. Program 5 includes provisions to pursue funding to assist the development and preservation of housing, with an "emphasis on the development mixed-income residential neighborhoods and the expansion of affordable housing opportunities outside of the City's low- and moderate-income areas" but does not identify any objective for the number of units that will be constructed in those areas or timeline to assure that the revision will result in a beneficial impact on the expansion of affordable housing opportunities in the City. The Draft Amendment must be revised to identify specific objectives and timelines for the City's attainment of funding to facilitate the development and preservation of affordable housing in higher income areas.

Draft Amendment Program 8 includes modifications that indicate that program regulations for Home Buyer Assistance limit homebuyers to purchase housing in low and moderate income census tracts in Fresno but state that the City will work with HCD to "explore" the potential for homebuyers to purchase homes outside of those areas. While the addition represents a positive step by the City to consider options to expand affordable housing opportunities within its limits, the Housing Element does not indicate what – if any – potential exists for the City to bypass state funding regulations with respect to the CalHome program and therefore whether the program in fact has the potential to result in a beneficial impact on the expansion of affordable housing opportunities in Fresno. In addition, revised Program 8 does not identify any specific actions the City will take that will result in a beneficial impact on the expansion of affordable housing opportunities in the City, since "exploration" by the City of the possibilities for homebuyers to purchase homes outside of low and moderate income areas will not actually result in the purchase of any homes outside of those areas. To address this deficiency, the City could revise the Draft Amendment to state that the City will pursue funding to support the purchase of a certain number of homes per year in high opportunity census tracts if permitted by HCD regulations and that the City will identify and pursue alternative sources of local, state, and federal funding to meet the objective if not.

The City must modify its Draft Revisions to identify and include specific programmatic commitments that will result in the expansion of affordable housing opportunities outside of low and moderate income neighborhoods.

* * * * *

Thank you for your attention to our comments. Please contact Ashley Werner at awerner@leadershipcounsel.org or (559) 369-2786 if you would like to find a time to discuss them over the phone or in person.

Sincerely,

Ashley Werner
Attorney
Leadership Counsel for Justice & Accountability

Valerie Feldman
Attorney
Public Interest Law Project

LEADERSHIP COUNSEL FOR JUSTICE & ACCOUNTABILITY

October 19, 2016

Mayor Ashley Swearengin
2600 Fresno Street, Room 2075
Fresno, CA 93721

Fresno City Council
2600 Fresno Street, Room 2097
Fresno, CA 93721

Sent via E-mail & U.S. Mail

RE: Council Agenda Item ID 16-1158, Downtown Development Code: Compliance with Housing Element Law Adequate Sites Requirements

Dear Mayor Swearengin and Councilmembers:

We are writing with respect to Council Agenda Item ID 16-1158, which includes a hearing by the City Council to consider adoption of the Downtown Development Code, to remind the City of its obligations under state housing element law to make sites available to meet the City's need for affordable housing pursuant to its regional housing needs allocation for the current housing element planning period and satisfy its unmet need for housing for the prior planning period.

The October 2016 Public Hearing Draft Downtown Development Code posted on the Council website for Agenda Item 16-1158 includes redline revisions that would allow downtown housing projects to obtain by right approval via a Zone Clearance permit for projects that are located Downtown, include a minimum of 16 total dwelling units, have a residential density of at least 20 dwelling units per acre, where at least 50% of the floor area is occupied by residential uses and which have no historic resources located onsite. City Planning Manager Dan Zack, during his presentation to Council as part of a workshop on the Downtown Development Code and City Housing Element on October 5, 2016, stated that staff believes these proposed revisions will satisfy the City's obligation to make sites available to satisfy the City's current RHNA and its unmet need for housing in a manner that satisfies the requirements of Government Code section 65583.2(h). Staff's assessment reflects an inaccurate interpretation of the City's obligations under State Housing Element Law for several reasons.

First, Section 65583.2(h) requires the City to make sites available to accommodate 100% of the un-accommodated need for housing for very low and low

income households by right on sites zoned with minimum density and development standards of 16 units per site, at least 20 units per acre and ensure that at least 50% of the sites allow only residential uses or require that residential uses occupy 50% of the total floor area of a mixed use project. The Downtown Development Code revisions do not require development projects to satisfy these standards on identified sites, but rather would allow them to obtain by right approval if they do.

Second, an attempt by the City to accommodate the portion of its RHNA that is not satisfied through its sites inventory and to meet its carry-over obligation solely through sites in the Downtown area would impermissibly exacerbate the concentration of sites for lower-income housing in areas of racially and ethnically concentrated poverty and economically distressed neighborhoods. As we explained to the City in our letter to the City dated July 7, 2016, high density sites identified in the Housing Element Sites Inventory are predominately located in and around Highway City, an economically disadvantaged "Inner City" area as designated by the City that lacks basic services and amenities, as well as in Racially and Ethnically Concentrated Areas of Poverty (R/ECAPs) in the Downtown, West Fresno, and Pinedale. Except for two locations within and adjacent to Pinedale, the Housing Element meanwhile contains *no* high density sites on or North of Herndon Avenue. As explained in our July 7th letter, these areas are characterized by deficient and absent infrastructure and services, including transit service and amenities to support walking and biking; a lack of retail options and health services; and high levels of pollution burden according to the EPA. The City must not further concentrate sites to meet its need for housing affordable to lower-income households in R/ECAPs and economically distressed neighborhoods and must instead make sites available in higher income and higher opportunity neighborhoods that currently lack such housing opportunities. Gov. Code § 65583(c)(5).

Finally, the City must make a diligent effort to achieve the participation of all economic segments of the community in its preparation and adoption of a housing element that substantially complies with state law. Government Code § 65583(c)(7). HCD's findings on the City's 2015-2023 Housing Element dated August 11, 2016 specifically direct the City to engage the community and "provide a variety of meaningful opportunities for input, beyond testimony at a public hearing" to develop revisions that bring the Housing Element into compliance with state law. The City's duty to engage the public in the development of revisions to the Housing Element includes revisions necessary to satisfy the City's RHNA and carry-over need and to comply with Section 65583.2(h). The City has not made efforts to engage the public in the development of revisions to the Housing Element, including revisions to address is RHNA and carry-over need. Therefore, it is premature for the City to indicate that it adoption of the Draft Downtown Development Code redline revisions will satisfy its obligations under Section 65583.2(h) or other provisions of the housing element statute.

The City must prepare revisions to its Housing Element that identify sufficient adequate sites to satisfy its current RHNA as well as its carry-over obligation in accordance with Government Code section 65583.2(h) and address the Housing Element's other deficiencies as detailed in our previous written and oral comments to the City and by HCD in collaboration with residents and community stakeholders.

Please feel free to contact met at (559) 369-2786 to find a time to discuss this letter over the phone or in person.

Sincerely,

Ashley E. Werner
Attorney

Cc: Douglas Sloan, City Attorney
Paul McDougall, HCD

July 7, 2016

Mayor Ashley Swearengin
2600 Fresno St., Rm. 2075
Fresno, CA 93721

Fresno City Council
2600 Fresno St., Rm. 2097
Fresno, CA 93721

Sent via Email

Re: City of Fresno 2015-2023 Housing Element Adopted April 28, 2016

Dear Mayor Swearengin and City Councilmembers:

We are writing on behalf of our clients, Familias Addams por un Mejor Futuro, to submit comments on the City of Fresno's ("City") 2015-2023 Housing Element ("adopted Housing Element" or "Housing Element") that it adopted on April 28, 2016. These comments supplement previous written and oral comments provided by Leadership Counsel for Justice and Accountability ("Leadership Counsel"), Public Interest Law Project ("PILP"), members of Familias Addams por un Mejor Futuro ("Familias Addams") and other members of the public to the City on the public review draft housing elements circulated by the City prior to its adoption of the Housing Element. We hereby incorporate those comments herein by reference. For your convenience, we have attached written comments submitted by Leadership Counsel and PILP on behalf of Familias Addams and other Fresno residents on this matter dated February 6, February 26[1], February 29, March 30, and April 27, 2016 (hereafter, respectively, "February 6th", "February 26th", "February 29th", "March 30th" and "April 27th" Letters) to this letter as Exhibit A.

HCD determined the City's January 2016 Draft Housing Element did not substantially comply with requirements of state law through findings issued on March 7, 2016 ("March 7th Findings"). Despite this and our extensive written comments detailing procedural and substantive deficiencies, the adopted Housing Element continues to fall short of the standards set forth in the State Housing Element Statute and conflicts with state and federal fair housing statutes, for the same reasons already outlined in our comments and in HCD's findings. Our

[1] Erroneously dated January 29, 2016 but sent via email to the City on February 29, 2016.

comments below, and in our previous letters, identify deficiencies in the adopted Housing Element.

1. **The City Has Failed to Correct its Pattern and Practice of Inadequate Public Process**

Our previous comment letters on the City's draft housing element explained in detail the deficiencies in the City's public process and identified corrective measures available to the City in order to satisfy the requirement that it make a "diligent effort... to achieve public participation by all economic sectors of the community". See February 5th Letter, pp. 3-4; February 26th Letter, pp. 4-6; April 27th Letter, pp. 1-2. HCD notified the City in its March 7, 2016 findings that the City's public process with respect to the housing element update had "denied the public an important opportunity for input," and that "the City must make diligent efforts to achieve public participation" up through the adoption of the housing element. Appendix, p. 4.

Nevertheless, the City took no action to rectify its failure to engage the public in its housing element update following HCD's issuance of its March 7th findings. Rather, the City continued and compounded its pattern and practice of inadequate public process by hastily adopting the March Draft Housing Element and revisions without any additional public engagement outside of the hearing for adoption. In fact, as we explained in our April 27th Letter, the City provided no public notice whatsoever of the proposed revisions to the March Draft Housing Element Chapter 6, the "Housing Plan," other than to post them to the City website under the titles "Supplemental Information Pack" and "Supplement – Additional Material" just days before the adoption hearing. The City did nothing to directly reach out to residents and other stakeholders who have engaged in the Housing Element process to inform them of the proposed revisions to the Housing Plan -- the most critical component of the housing element which contains the City's goals, objectives, and program commitments to address identified housing needs.

At the same time, the City enforces a "24 hour rule" whereby it refuses to accept written comments relating to a City Council agenda item within 24 hours of a public hearing. By posting housing element revisions with no notice to the public just days before the Council hearing and enforcing the 24 hour rule, the City provided only a narrow window to the public – and effectively denied the opportunity to most residents -- to submit written comments on the revisions. The City limits public testimony at City Council hearings to a maximum of three minutes; thus the opportunity to submit written comments is critical to allow residents and stakeholders to provide the City with more detailed feedback than they may provide through oral testimony and that can be considered by staff and elected officials in advance of the public hearing. In addition, the failure to allow opportunity to submit written comments deprives residents who cannot attend the Council hearing due to work and/or family obligations or who may feel more comfortable making comments via letter than through the formalities of a hearing of an important alternative means of participation.

The City's rushed process without adequate public notice not only fell short of its duty to "make diligent efforts to achieve public participation by all economic sectors of the community" pursuant to Government Code Section 65585, but in fact chilled public participation by unreasonably limiting opportunities for the public to provide input into Housing Element's development. HCD must not sanction the City's continuing failure to satisfy and its disregard for HCD and the public's admonishments that the City take steps to comply with its duties under Section 65585.

2. **The Housing Element Fails to Address Deficiencies Identified in Our April 27th Letter**

Our April 27th Letter describes deficiencies remaining in the March Draft Housing Element considered alongside staff's proposed revisions thereto. These deficiencies include:

- inadequate public process pursuant to Government Code Section 65583 (pp. 1-2);
- inadequate support for carry-over calculations (p. 2);
- failure to demonstrate that re-zoned sites meet all of the requirements of Government Code section 65583.2(h);
- failure to demonstrate realistic capacity on parcels included in the site inventory;
- failure to make sites available for affordable housing outside of Racially and Ethnically Concentrated Areas of Poverty (R/ECAP) and economically distressed neighborhoods (pp. 2-3);
- failure to analyze and address the needs of households with special housing needs, including in particular large households, single-parent households, non-English and Limited English Proficient speakers, immigrants, and undocumented residents (p. 3);
- failure to demonstrate that programs will achieve beneficial impacts within the planning period through the inclusion of specific action steps and time frames of implementation. In particular, our April 27th Letter explains that March Draft Housing Element Programs 3A – Annual Reporting; 10A – Mobile Home Parks; 15 – Large and Small Lots; and 26 – Equitable Communities fail to include specific steps necessary to ensure that a beneficial outcome is achieved (pp. 3-5) and;
- failure to identify and address barriers to affordable housing. Our April 27th Letter explains that the March Draft Housing Element fails to address several barriers to affordable housing identified in our previous comment letters, including but not limited to inadequate funding for the creation and maintenance of affordable rental and owner-occupied housing; barriers created by the 2015 Development Code; and habitability violations in unpermitted second units which do not undergo regular inspection (or any inspection at all) (pp. 5-6).

The adopted Housing Element includes no changes or additions to address these deficiencies. HCD must require the City to address these deficiencies, before it may find the City in substantial compliance with the Housing Element Statute.

3. The Housing Element Does Not Adequately Address Constraints Identified in HCD's March 7th Findings

HCD's March 7th Finding A(2) identifies two potential government constraints upon the maintenance, improvement, and/or development of affordable housing: (1) pending zoning and potential residential unit cap for the downtown area, and (2) on/off-site improvement requirements. Finding A(2) outlines additional information and analysis which the City should incorporate into the Housing Element relating to these constraints and which should inform programs included to address those constraints. The Adopted Housing Element fails to include information, analysis, and programs as suggested by Finding A(2) and consequently fails to adequately address the potential governmental constraints identified by HCD.

a. The Adopted Housing Element does not ensure that the pending downtown zoning changes will not constrain residential development

With respect to the downtown, Finding A(2) suggest that City include a program to ensure that zoning will not act as a constraint or preclude the ability to accommodate the RHNA and states that such a program could assist the City in meeting its unaccommodated need from the prior planning period.

In response to HCD's Findings, the March Housing Element added Program 11 – Downtown Development Standard. Ch. 6, p. 10. Program 11 states that the City has adopted a Zoning Designation Translation Table that identifies the Development Code standards applicable to the current zoning of Downtown parcels pending adoption of the Downtown Development Code around mid-2016 and the Downtown zoning standards "will contain a residential capacity limit for the area with unlimited density on individual Downtown properties…" p. 6-10. In so doing, Program 11 simply reiterates the facts that form the basis of HCD's finding but does not respond to or address that finding. Nor does the City provide any information to demonstrate that the Zoning Designation Translation Table in fact functions as the Housing Element claims by preventing the pending Downtown zoning ordinance update from acting as an impediment to residential development at adequate densities and does not create a new impediment in itself. Program 11further contains the general statement that, "The City will ensure that the proposed Downtown development standards will not constrain the potential for developing [*sic*] of housing and that interim zoning standards for the sites ensure continued adequate capacity to meet the City's RHNA obligation." Program 11 does not identify any *specific* action the City will take according to any timeline to implement this commitment with respect to interim zoning standards applicable to the downtown, the standards contained in the pending Downtown

Development Code, or the anticipated 9,000 residential unit density cap for the Downtown Area. As explained in Section 4 below, the Housing Element does not demonstrate that adequate sites exist to meet the current RHNA and the carry-over from 2008-2013 planning period. Program 11 therefore does not adequately respond to or address HCD's findings.

In addition, we note that though it is now mid-2016, the City has yet to adopt or even release a hearing schedule for the Downtown Development Code. The City must provide a current and realistic timeline for the adoption of the Downtown Development Code and analyze how the amended timeline impacts its ability to accommodate its RHNA and carry-over obligation.

b. The Adopted Housing Element does not analyze and address constraints imposed by on/off-site development requirements

HCD Finding A(2) states that:

> "The element must identify *and analyze* actual ...on/off site improvement required by the jurisdiction which could potentially be a constraint on the development of housing. In addition, the element must describe any generally applicable level of service standards or mitigation thresholds. Based on the outcomes of this analysis, the element should include programs as appropriate."

The Adopted Housing Element recites certain information about improvement requirements of the Citywide Development Code and then concludes:

> "These improvements are not seen as constraints to development as efficient site planning should balance necessary on-site improvement costs to make affordable housing feasible. While required on- and off-site improvements may add to the cost of housing on affected properties, it is not evidenced that these requirements and associated costs represent a higher standard than other jurisdictions in the County and beyond. On- and off-site improvement requirements do not constitute extraneous requirements, and the additional cost associated with these requirements may enhance property value." Ch. 4, p. 16.

As a result of these conclusions, the Housing Element contains no programs to address constraints created by on- and off-site improvements.

The Housing Element lacks the analysis – the critical link between the information provided and the conclusion reached – required by Finding A(2). The Element further does not provide any information about the improvement requirements of other jurisdictions to compare to those of the City. The Element's statement that, "it is not evidenced that these requirements and associated costs represent a higher standard than other jurisdictions in the County and beyond" therefore

fails to have meaning. Nor does the Housing Element include information obtained from non-profit and/or affordable housing developers which could inform the analysis of the improvement standards recited.

The City must *analyze* its improvement standards, including by incorporating and examining information about the standards applied in other jurisdictions, feedback by non-profit and affordable housing developers relating to the impact of development standards on housing costs and development, and other relevant sources of information and must include programs to address any constraints identified through this analysis.

4. **Revisions Contained in the adopted Housing Element Highlight and Exacerbate the City's Failure to Address Barriers to Affordable Housing and Housing Choice**

In adopting the Housing Element, the City Council did not approve modifications to the March Draft Housing Element and staff's proposed revisions thereto that would address deficiencies identified in public comments and HCD's review letters. Rather, City Council approved a motion to add the following text to the Housing Element:

> "Nothing in this element shall be interpreted as creating an inclusionary zoning ordinance or a rent control ordinance." (Resolution No. 2016-60, p. 6)

In so doing, the City not only failed to take steps to identify and address barriers to affordable housing and housing choice in Fresno as required by the Housing Element Statute but in fact, further fortified existing barriers. Inclusionary zoning and rent control ordinances are two principal tools used by jurisdictions across the state and country to maintain and expand the affordable housing stock and to further housing choice for low-income populations and protected classes. The City's inclusion of the statement above sends a message to residents, affordable housing developers, advocates, and other stakeholders that the City is unwilling to consider those tools as potential options to address barriers to affordable housing in Fresno and potentially reflects unlawful intentional discrimination against protected classes which would stand to benefit from the City's use of such tools. It also constitutes a new barrier to affordable housing and housing choice in Fresno, as any policy or program approved by the City as a Housing Element or General Plan Amendment that could potentially be deemed an "inclusionary zoning ordinance" or a "rent control ordinance" -- neither of which are defined in the resolution -- would arguably give rise to internal inconsistency in the General Plan in violation of Government Code Section 65300.5. The inclusion of a provision in the Housing Element which has as its sole purpose to restrict options to expand affordable housing and housing choice in a jurisdiction is antithetical to the goals and directives of the Housing Element Statute and cannot stand. Gov. Code §§ 65583(a)(5) & (c)(3) (requiring jurisdictions to analyze, address, and remove governmental constraints to the maintenance, improvement, and development of housing for all income levels).

The City's adoption of the above-referenced statement follows the City's previous adoption via motion of Article 15-2201(D) into its 2014 Development Code prohibiting the adoption of an inclusionary zoning ordinance without the adoption of a new General Plan. See February 26th Letter, p. 17. The City's repeated action to specifically identify inclusionary housing as prohibited, or non-viable, in Fresno add weight to the inference that the City's actions are motivated by intentional discriminatory sentiment and may result in an unlawful disparate discriminatory impact on protected classes that stand to benefit from the tool. 42 U.S.C. § 2000d; 42 U.S.C. § 3601, *et seq.*; Gov. Code §§ 65583(c)(5), 11135.

Accordingly, the City must adopt an amended housing element which identifies and removes provisions in the Housing Element, Development Code, or other City policy that prohibit or restrict the use of inclusionary zoning or rent control as governmental constraints to affordable housing. Gov. Code §§ 65583(a)(5) & (c)(3).

5. **The Sites Inventory Continues to Concentrate Sites for Affordable Housing in R/ECAPs and Economically Disadvantaged Areas**

Our March 31st Letter explains that high density sites (30-45 dpu) contained in the March 2016 Draft Housing Element Sites Inventory are predominately located in Racially and Ethnically Concentrated Areas of Poverty (R/ECAPs) in Fresno, including Downtown, West Fresno, and Pinedale, and that other high density sites are primarily located in and around Highway City, an economically disadvantaged "Inner City" area as designated by the City of Fresno. pp. 11-12. The Adopted Housing Element contains no changes or additions to the March Draft Sites Inventory and therefore fails to adequately make sites available for affordable housing outside of R/ECAPs and economically distressed areas and in higher opportunity neighborhoods.

The adopted Sites Inventory also fails to address the San Joaquin Valley Fair Housing and Equity Assessment (SJV FHEA) as an opportunity to affirmatively further fair housing, despite HCD's March 2016 findings outlining the need for this analysis. In response to HCD's findings, the March 2016 Draft Housing Element and the Housing Element add a paragraph on page 3-20 that explains what the SJV FHEA is. The only information specifically relevant to Fresno that the March Draft and Housing Element incorporate from the FHEA is a citation that concentrated poverty declined by seven percent in Fresno between 2000 and 2009. Neither the March Draft Housing Element nor the Adopted Housing Element mentions that the FHEA identifies the City of Fresno as one of the most highly segregated cities in the Central Valley. According to the FHEA, Fresno has the highest rate of Latino segregation among the 14 cities that participated in the FHEA's development and among the greatest number of densely concentrated black neighborhoods in the region, with approximately 16% of blacks, 15% of Asians, 19.57% of Latinos living in racially and ethnically concentrated areas of poverty (R/ECAPs) compared to 4.53% of whites. p. 21. In addition, more recent studies from the Brookings Institute have found

that Fresno did not experience a decline in rates of concentrated poverty during the 2000s but rather experienced some of the steepest increases in and maintained among the highest levels of concentrated poverty in the nation in the wake of the recession.[2] Neither does either document include any other information from the 58-page FHEA or incorporate the findings or policy suggestions contained in the FHEA into its analysis, policies, or programs.

In addition to the information provided in our letter March 30th Letter and other comment letters on the City's draft housing elements, we provide the following additional information on the Sites Inventory which further demonstrates inadequacy of the sites selected:

- **Sites in DA-1 North.** Our careful review of the Site Inventory shows a total of 5,790 total sites in Development Area 1 North (DA-1 North)[3]. The total zoned for residential use at a minimum of 30 to 45 units per acre is 4,001 sites. pp. 3:17-18.[4] This constitutes *67%* of the total high density (30-45 dpu) sites contained in the Sites Inventory. Though the Housing Element does not define the borders of the development areas, the General Plan Chapter 1 (Introduction) Figure 1-3, Residential Capacity Allocation shows that DA-1 North is bordered by Highway 99 to the North and East, Garfield Avenue to the West, and Clinton Avenue to the South. According to the Housing Element's "Housing Element Sites by Zoning Density" map (3:21), all of the high density sites in DA-1 North are concentrated in and around Highway City -- a designated Inner City Area -- between Shaw Avenue on the South, Highway 99 to the North and East, and Polk Avenue and Hayes Avenue to the East and West respectively and along Shaw Avenue North to Barstow Avenue between Bryan and Grantland Avenues.

  The City's own documents make clear that the high density sites included in the Site Inventory and located in DA-1 lack proximity to the basic infrastructure, services, and

[2] See Elizabeth Kneebone, Brookings Institute, The Re-Emergence of Concentrated Poverty: Metropolitan Trends in the 2000s, pp. 1, 18-19 (Finding that Fresno experienced among the greatest increase in concentrated poverty rate among U.S. metropolitan areas following the collapse of the housing market and subsequent economic downturn), available at http://www.brookings.edu/~/media/research/files/papers/2011/11/03-poverty-kneebone-nadeau-berube/1103_poverty_kneebone_nadeau_berube.pdf; Elizabeth Kneebone, Brookings Institute, The Growth and Spread of Concentrated Poverty, 2000 to 2008-2012 (Finding that Fresno ranked highly among U.S. metropolitan areas for shares of poor suburban residents living in high-poverty or distressed census tracts in 2008-2012, with more than three-quarters of its suburban poor in such tracts), available at http://www.brookings.edu/research/interactives/2014/concentrated-poverty#/M10420; Elizabeth Kneebone, Brookings Institute, U.S. concentrated opvertty in the wake of the Great Recession (Finding that Fresno is among the metro areas that registered the largest growth in concentrated poverty between 2005-09 and 2010-14 and that Fresno is among the metro areas with the greatest share of poor Latinos – 49.7% -- who were living in areas of concentrated poverty between 2010 and 2014), available at http://www.brookings.edu/research/reports2/2016/03/31-concentrated-poverty-recession-kneebone-holmes.

[3] This number differs from the 6,508 shown on the Sites inventory Summary Table which does not accurately reflect the actual number of sites included in the inventory. Housing Element Table 3-7.

[4] This includes 469 units on sites zoned Residential Multi-Family, High Density and 3,532 units on sites zoned Regional Mixed Use.

amenities necessary to support a decent standard of living. Fresno's 2014 General Plan, Chapter 10, "Healthy Communities," reports that areas West of Highway 99, where the high density sites contained in the Site Inventory are primarily located, are underserved by medical facilities and parks and are "largely devoid of grocery options". 10:8, 15, 17. The General Plan also notes that "there are notable exceptions to transit accessibility," including in the western edges of the urban area. The General Plan further notes that, "The bus system has not been expanded commensurate with peripheral urban development over the past decade, leaving predominately lower density developed areas on the city's outer edges without public transit services." 4:23.

Indeed, the City's Fresno Area Express ("FAX") System Map[5] shows that bus service does not extend West of Polk Avenue along Shaw nor North of Shaw Avenue West of Highway 99. A resident seeking to access public transit from affordable housing developed on high density sites contained in the Site Inventory for this area would have to walk up to two miles along streets that currently lack sidewalks, street lights, and stormwater drainage and other basic infrastructure and services necessary to support active transportation and in the extreme heat and dense fog that respectively characterize Fresno's summers and winters. See Exhibit B attached hereto. This clearly is untenable. Not only do the high density Site Inventory sites located in DA-1 lack access to basic infrastructure, services, and amenities, they are also located in a census tract that ranks in the 96th percentile for pollution burden as compared to census tracts throughout California according to California Environmental Protection Agency's California Communities Environmental Health Screening Tool (CalEnviroScreen). See Exhibit C attached hereto. The census tract ranks in the 95th percentile among California census tracts under CalEnviroScreen for PM 2.5 exposure, a known cause of heart and lung disease.

- **Sites in Downtown**. Housing Element Table 3-7 indicates that the Site Inventory contains a total of 1,468 high density units in the Downtown or 18% of the total high density units in the Site Inventory.[6] This figure is more than double the amount of high density units located in the Established Neighborhoods North of Shaw Avenue, where just 659 units are projected or 8% of total high density units. The high density sites in the Downtown are located in and immediately adjacent to the R/ECAP that encompasses the Downtown; Established Neighborhoods North of Shaw Avenue on the other hand includes the City's most affluent neighborhoods with predominantly white residents.

[5] Available at http://www.fresno.gov/NR/rdonlyres/E1B45744-443D-4575-BD2F-286945C54C04/0/SystemMap614.pdf

[6] This includes 477 units zoned Downtown Core; 304 units zoned Downtown General; 677 units zoned Downtown Neighborhood; and 10 units zoned Regional Mixed Use. Housing Element Table 3-7.

- **Sites in DA-1 South.** Approximately 6% of the high density sites contained in the Site Inventory are located in DA-1 South.[7] *All* of these high density sites are located in an R/ECAP and in a census tract that ranks in the top 98th percentile for pollution burden among California census tracts. See Exhibit D attached hereto. The sites are located in close proximity to various polluting, industrial, and/or heavy commercial operations and traffic corridors heavily used by trucks that serve those operations.

- **Sites in Established Neighborhoods North of Shaw.** As mentioned above, the Site Inventory identifies sites to support 659 high density units or 8% of total high density units in the Site Inventory in Established Neighborhoods North of Shaw. Notably, as mentioned in our March 30th Letter, the Sites Inventory contains no high density sites located on Herndon Avenue or further North, with the exception of two locations respectively located within and adjacent to the R/ECAP of Pinedale.

  The General Plan specifically identifies Herndon Avenue as the Northern boundary of the "neighborhoods that are the most distressed in the City and among the most distressed in the nation". p. 12:11. Despite failing to identify any opportunity for high density housing development to support housing affordable to low-income populations North of Herndon other than Pinedale, the Sites Inventory contains numerous sites zoned for low-density single-family residential development spanning from the City's Western limits at Highway 99 to its Eastern limits at Willow Avenue and including a significant concentration of such sites from Copper Avenue North, the location of the proposed Copper River Ranch luxury housing development. The locations of these low-density sites include neighborhoods with some of the lowest poverty rates, lowest pollution burden rankings under CalEnviroScreen, and greatest proportion of white residents in the entire City of Fresno.

  For example, the census tract that includes low-density Sites Inventory Sites just North of the Fort Washington Country Club has a demographic composition of 66% white residents, a 43rd percentile CalEnviroScreen pollution burden ranking, and a 15th percentile CES poverty ranking compared to Fresno's total composition of 50% white residents and 22% white resident composition of the census tract where the DA-1 high density Sites Inventory sites are located.[8]

This analysis and the analysis contained in our March 30th and other comments letters on the City's draft housing elements make abundantly clear that the Housing Element Site Inventory fails to equitably distribute high density sites for affordable housing throughout the City,

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[7] This includes 523 units zoned Residential High Density. Housing Element Table 3-7.

[8] Data obtained through California EPA and OEHHA s Map of CalEnviroScreen 2.0 Results available at http://oehha.ca.gov/calenviroscreen/report/calenviroscreen-version-20.

including in relatively higher income and white neighborhoods. Rather, the Site Inventory impermissibly concentrates those sites in R/ECAPs and economically distressed neighborhoods which lack access to basic infrastructure and services and a healthy environment.

6. The Adopted Housing Element Does Not Demonstrate There Are Adequate Sites to Meet the Current RHNA and the Carry-Over from the Last Planning Period

As we have detailed in our previous letters, the City does not provide adequate support for the calculation of the un-accommodated remaining housing need from the last planning period – the carry-over. The adopted element does not demonstrate the availability of particular sites listed in the Housing Element nor the affordability of projects identified in therein. Without sufficient evidence to reduce the un-accommodated need, the City's Housing Element is not in substantial compliance with the law.

a. The Adopted Housing Element does not demonstrate that there are adequate sites that meet the requirements of Government Code section 65583.2(h)

In addition to the issue of whether the number of un-accommodated units is accurate, the adopted Housing Element does not demonstrate that the sites within the City's inventory are adequate to meet the strict requirements detailed in Government Code section 65583.2(h). The sites identified that were required to be rezoned to meet the RHNA must allow by right development, be of an appropriate size to accommodate a minimum of 16 units per site, and at least 50 percent of the sites identified to accommodate the carry-over must be solely for residential use. Table 1 below illustrates that the City's adopted Element relies on hundreds of acres of sites less than one acre in size. While this size parcel may be appropriate for some types of development, in order to comply with 65583.2(h), the sites that must be rezoned to meet the RHNA for low and very-low income households must be adequate in size to allow 16 units on the site. In order for the City's adopted Element to comply with state law, the City must remove 1,116 units from the inventory on sites with a capacity of less than 16 units to meet un-accommodated need from the prior planning period.

Table 1: Lower Income Sites Inventory Sites That Are Smaller Than One Acre or With a Capacity Under 16 Units

Description	Totals	Percentage
Acreage (0.00-0.99 acres)	67.76 acres/840.19 acres LI sites	8%
Capacity (1-15 units)	1,116 units/16,480 units LI capacity	7%

The City must also demonstrate that 50 percent of the sites identified to meet the carry-over are solely for residential use. Table 2 below indicates that the adopted Housing Element relies heavily on mixed use sites to address the RHNA for low and very-low income households for the

current planning period and the carry-over from the prior planning period. The City must provide additional analysis to demonstrate that despite the number of mixed use sites included in the inventory, the City is able to meet the requirements as explained in 65583.2(h).

Table 2: Lower Income Units by Zoning Designation as Percentage of Total Lower Income Sites Inventory Units

Zoning Designation	LI and VLI Units/Total Low and VLI inventory	% of Total Low/Very Low Units
CMX	**3,950/16,440**	**24%**
CR	**440/16,440**	**3%**
DTC	128/16,440	1%
DTG	282/16,440	2%
DTN	607/16,440	4%
NMX	**89/16,440**	**1%**
RM-2	4,974/16,440	30%
RM-3	1,172/16,440	7%
RMX	**4,798/16,440**	**29%**

The finding issued by HCD in March 2016 require an analysis of the realistic residential capacity of the mixed use sites based upon development trends, performance standards and programs to encourage residential use.

Although the adopted element states that 32 percent of all residential capacity is on mixed use sites, that percentage is significantly higher for sites identified to meet the needs of lower income households – 54 percent when combining the number of CMX, NMX, and RMX sites identified to meet the needs of lower income households. In addition, very small mixed use sites (less than 20,000 square feet), projects more than 1,000 feet from a planned or existing BRT route and pipeline projects have no minimum residential density. See Adopted Element p. 3-7. The City supplies no information about how many mixed use sites meet these three exceptions to the minimum residential densities.

b. The City cannot demonstrate an adequate inventory of sites for the current RHNA and carry-over when using a realistic calculation of capacity based on development patterns in the City for housing affordable to low and very-low income households

HCD's findings request that the City include additional analysis to show the feasibility of development on large sites for housing affordable to lower income households. The Adopted Element's attempts to provide evidence of the feasibility of these large sites (over ten acres) at the capacities cited in the inventory fall flat. The development pattern in Fresno, and included on the chart below, show the expected capacity of these large sites is grossly over-stated.

Table 3 below compares the development capacity listed in the Sites Inventory for the parcels over ten acres in size with affordable housing developments that received 9% tax credits over the life of the TCAC program. . Comparing the properties, it is undeniable that the City's estimation that these large sites will develop at 80 or 90 percent of capacity is not supported by past development practices and will not be realistic in this planning period, despite the City's assurances about phasing plans. The number of units funded varied from four units in size to 222 units, with ten of the seventeen projects between 37 units and 150 units. This development patterns does not support the capacity the City relies on to meet its RHNA.

Table 3: Development Capacity listed in Sites Inventory for Parcels Over Ten Acres Compared to Actual Capacity of Affordable Housing Developments That Received 9% Tax Credits

9% TC	Date Built	APN	Acreage	# of LI Units	Location/Development Area
9%	10/23/87		N/A	4	4833 E. Lane, Fresno, CA 93727
9%	05/29/97		N/A	4	3780 West Dakota, Fresno, CA 93722
9%	12/12/94		N/A	14	3460 North Brawley, Fresno, CA 93722
9%	11/06/92		N/A	20	3207 West Shields Avenue, Fresno, CA 93722
9%	02/01/02	434-201-27	N/A	37	3950 N. Del Mar, Fresno, CA 93704
9%	N/A	430-050-47	N/A	39	4250 Chestnut Ave, Fresno, CA 93726
9%	N/A	452-274-05, 452-274-16 and 471-220-55T	N/A	44	541 N. Fulton St, Fresno, CA, 93728
9%	08/30/05	472-161-08/11; 17/19	N/A	47	962 South Pierce Avenue, Fresno, CA 937210000
9%	06/03/11	463-050-27	N/A	55	5161 East Kings Canyon Road, Fresno, CA 93727
9%	07/03/09	480-080-14	N/A	72	2187 S. Maple Avenue, Fresno, CA 93725
9%	06/29/09	480-080-14	N/A	78	2147 S. Maple St., Fresno, CA 93725
9%	12/01/95		N/A	99	2060 East Spruce Ave, Fresno, CA 93720
9%	07/31/02	433-080-10	N/A	99	3615 N. Pleasant Avenue, Fresno, CA 93705
9%	01/28/94		N/A	139	2533 North Marks Ave., Fresno, CA 93722
9%	N/A	446-020-36t	N/A	147	2660 E. Clinton Avenue, Fresno, CA 93703
9%	N/A	471-211-01T; 471-212-01T; 471-220-01T; 463-050-22T	N/A	191	4216 E. Hamilton Avenue, Fresno, CA 93702
N/A	Proposed	50409117	12.81	205	Existing Neighborhoods North of Shaw
9%	12/20/11	44602023t	N/A	213	2674 E. Clinton Ave., Fresno, CA 93703
9%	05/31/95		N/A	222	949 E Annadale Avenue, Fresno, CA 93706

N/A	Proposed	50506040	14.31	229	DA-1 North (West Growth Area North of Clinton)
N/A	Proposed	51102301	14.57	233	DA-1 North (West Growth Area North of Clinton)
N/A	Proposed	31602221	14.98	240	Existing Neighborhoods South of Shaw
N/A	Proposed	50613028	16.45	263	Existing Neighborhoods North of Shaw
N/A	Proposed	31020103	18.77	300	Existing Neighborhoods South of Shaw
N/A	Proposed	50506008	19.10	306	DA-1 North (West Growth Area North of Clinton)
N/A	Proposed	51203082	10.57	317	DA-1 North (West Growth Area North of Clinton)
N/A	Proposed	41734223	10.65	319	BRT Corridors (Non-Vacant Land Infill)
N/A	Proposed	56801020	20.02	320	Existing Neighborhoods North of Shaw
N/A	Proposed	50506017	20.31	325	DA-1 North (West Growth Area North of Clinton)
N/A	Proposed	57909022S	20.71	331	Existing Neighborhoods North of Shaw
N/A	Proposed	50803005	11.16	335	DA-1 North (West Growth Area North of Clinton)
N/A	Proposed	50803014	22.38	358	DA-1 North (West Growth Area North of Clinton)
N/A	Proposed	51204317S	22.57	361	DA-1 North (West Growth Area North of Clinton)
N/A	Proposed	50506074	24.32	389	DA-1 North (West Growth Area North of Clinton)
N/A	Proposed	31002086S	25.35	406	Existing Neighborhoods South of Shaw
N/A	Proposed	50506016S	14.57	437	DA-1 North (West Growth Area North of Clinton)
N/A	Proposed	31302101	46.84	440	BRT Corridors (Non-Vacant Land Infill)
N/A	Proposed	50506019	16.52	496	DA-1 North (West Growth Area North of Clinton)
N/A	Proposed	50803006	28.06	842	DA-1 North (West Growth Area North of Clinton)
N/A	Proposed	50506007	30.43	913	DA-1 North (West Growth Area North of Clinton)

Even assuming that residential projects of 200 units could be competitive for funding on these large sites, which is highly unlikely when compared to past projects, the capacity of these large sites is only 4,400 units, as opposed to the 8,365 unit capacity the City relies on to meet the RHNA.

The City has reduced its unmet need without adequate evidence, has relied on sites that cannot accommodate at least 16 units, and has grossly overestimated the realistic capacity of the sites over 10 acres in size. When the sites that cannot accommodate at least 16 units are removed and a more realistic capacity is used, the City has a shortfall of over 3,000 units to meet the housing needs of lower income households, as delineated in Table 4 below.

Table 4: City of Fresno's Adopted Housing Element Capacity Versus Actual Capacity to Meet the Housing Needs of Lower Income Households

Description	Fresno's Adopted HE Capacity/RHNA	Actual Capacity/RHNA
2008-2013 RHNA	8,216	8,216
New Identification of Sites from 2008 HE	2,088	0
New Identification of Sites from 2009 HE Amendment	1,040	0
Built or Permitted Sites from 2006-2012	1,573 (738 Very Low+835 Low)	1,573* (738 Very Low+835 Low)
Remaining 2008-2013 RHNA	3,515 (8,216-4,701)	6,643 (8,216-1,573)
2013-2023 RHNA	8,955	8,955
Low Income Housing Credits from 2013-2015	548	548
Remaining 2013-2023 RHNA once LIHC's are subtracted	8,407 (8,955-548)	8,407 (8,955-548)
2013-2023 Remaining RHNA and 2008-2013 Remaining RHNA	11,922 (3,515+8,407)	15,050 (6,643+8,407)
Sites Inventory	16,440	16,440
Total unit count of parcels that have less than 16 units per site		1,116
Revised Sites Inventory total minus total units on sites that have less than 16 units		15,324 (16,440-1,116)
For sites claiming more than 200 units, realistic unit capacity reduction		3,965**
Revised Sites Inventory adjusting for realistic capacity of sites over 200 units		11,359 (15,324-3,965)
Total capacity	4,518 overage (16,440-11,922)	3,691 shortfall (11,359-15,050)

* Based on the Annual Element Progress Report, for reporting period 1/1/2013-12/31/2013, this total should be 1,544 units, increasing the shortfall to 3,751 units.

**See Exhibit E for detailed calculation.

Because the City grossly overestimates the capacity of sites over 10 acres in size and failed to remove parcels that cannot accommodate at least 16 units, the result is an inventory that can only accommodate 11,359 units affordable to lower income households and yet has a housing need of 15,050 units for lower income households. This shortfall requires the housing element to include a program to re-zone additional sites to meet this shortfall within three years.

7. **The Housing Element Fails to Address Findings of the 2016 Analysis of Impediments to Fair Housing Demonstrating the Persistence of R/ECAPs and Discriminatory Siting of Subsidized Housing**

As noted in our previous comments, the City conducted its 2015-2023 Housing Element update simultaneously with its 2016 Analysis of Impediments to Fair Housing ("Analysis of Impediments" or "AI"). The City released its draft Analysis of Impediments in March and adopted the AI on May 12, 2016.[9] The AI contains data identifying housing needs and governmental and non-governmental constraints to housing that disproportionately impact Fresno residents on the basis of protected class status. However, the Housing Element fails to incorporate the data or findings of the AI into the Housing Element and as a result, does not adequately or accurately capture the housing needs of Fresno residents, in particular, protected classes and special needs populations.

One of the key findings contained in the AI includes the persistence of racially and ethnically concentrated poverty in Fresno and disproportionate location of subsidized housing in the City of Fresno in R/ECAPs. pp. 13-14. As noted in comments submitted by Leadership Counsel to the City of Fresno on its Draft AI, attached hereto as Exhibit F, the City's failure to zone sites for affordable housing outside of R/ECAPs is a critical contributing factor to the City's racially and ethnically concentrated poverty and the concentration of below-market rate housing in low-income neighborhoods of color. The City's failure to take steps to reverse these trends through its Housing Element Update or Analysis of Impediments[10] and its affirmative steps to concentrate high density zoning in low-income neighborhoods of color results in a disparate impact and indicates potential discriminatory intent by the City to facilitate segregation on the basis of race, ethnicity, country of origin, or other protected class status.

The City must adopt an amended housing element which incorporates the data and findings from the AI regarding housing needs and constraints to affordable housing in Fresno and adopts additional or modified program actions to address and eliminate those constraints. Gov. Code §§ 65583(a); 65583(a)(5)&(6); 65583(c)(3). In doing so, the City must further ensure that the Housing Element that promotes housing choice for all in Fresno. 42 U.S.C. § 2000d; 42 U.S.C. § 3601, *et seq.*; Gov. Code §§ 65583(c)(5), 11135.

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[9] Available at http://www.fresno.gov/NR/rdonlyres/A41A11DE-B913-46D7-8F3B-2D34312F5E1F/0/2016analysis.pdf. Fresno City Council adopted the Draft AI without modification. The City did not post a Final AI to its website following adoption.

[10] See Leadership Counsel's comment letter to the City of Fresno dated May 10, 2016, pp. 9-11, attached hereto as Exhibit F. The City adopted the Draft AI without modification.

8. <u>The City's Adoption of the Housing Element Violated Government Code § 65585</u>

The City violated Government Code Section 65586(b) and (e) when it adopted its Housing Element on April 28, 2016. As Leadership Counsel attorney Ashley Werner advised the City at that housing element hearing, Sections 65585(b) and (e) respectively require that jurisdictions submit a draft housing element amendment to the Department of Housing and Community Development ("HCD") at least 60 days prior to adoption of that element and consider findings made by HCD within the 60 day review period also prior to adoption. The City submitted its March Draft Housing Element to HCD for review on or around March 18, 2016. As of the April 28th City Council hearing, HCD had not completed its review of the March Draft Housing Element and approximately three weeks remained before the expiration of the 60 day review period. Further, along with the March Draft Housing Element, the Fresno City Council considered at the April 28th hearing proposed revisions to the March Draft that were never previously submitted to HCD and that were released to the public just days before via posting to the City Council's meeting agenda website. Thus, Fresno's adoption of the March Housing Element, with staff's last minute proposed revisions, violated Government Code Sections 65585(b) and (e). HCD must not sanction the City's failure to observe the Housing Element Statute's procedural requirements. Govt. Code § 65585(d).

* * * * *

Thank you for your consideration of our comments. We look forward to continuing to work with HCD and the City of Fresno towards the City's adoption of an amended housing element which complies with state and federal housing laws and will enable the City to effectively expand access to safe and affordable housing for all of its residents.

Sincerely,

Ashley Werner, Esq.
Leadership Counsel for
Justice and Accountability

Valerie Feldman, Esq.
Public Interest Law Project

cc: Doug Sloan, City Attorney, City of Fresno
Jennifer Clark, Director, DARM, City of Fresno
Paul McDougall, Manager, Cal. Dept. of Housing & Community Development