

Multijurisdictional Housing Element
Revised HCD Draft
Public Comment Period:
July 31, 2024 - August 7, 2024*

*public comment accepted on an ongoing basis
until the MJHE is adopted

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From: [Brooke Frost](#)
To: [HousingElement](#)
Subject: Comment on Fresno Housing Element
Date: Thursday, August 8, 2024 9:34:12 AM

External Email: Use caution with links and attachments

Hello,

Below are some comments on the housing element. I am a resident in southeast Fresno who is not a housing expert.

Program 21 - Advocate for Repeal of Article 34 - this references a ballot measure that occurred in March 2024, shouldn't the result status be included and the effect of whether the City will place its own measure on the ballot in a subsequent election? I realize this was first prepared before the vote, but since it is being resubmitted in August 2024, shouldn't it be updated?

Vacancy rate math adds up to more than 100%. You say 95.5% are occupied and 5.5% are vacant. Shouldn't it be 4.5% vacant?

Overpayment seems to not include any reference to increases after 2020. There have been significant housing cost increases since COVID and that is not reflected in this section. How can it be included? It seems the same is true for sub-standard housing. What seems to be happening is eviction to improve substandard conditions. But there is nowhere to go that is affordable. How is this to be reflected in the housing element?

In general, I don't see any reference to encouraging outreach for developers to use middle housing (duplexes, cottages/courtyards, 4 plexes) for infill in residential areas that are affordable and fit in better in residential areas. Everything doesn't need to be 3 or 4 story apartments.

Thank you.

Brooke Frost





August 7th, 2024

Michelle Zumwalt
Planning and Development Department, City of Fresno,
2600 Fresno Street, Room 3065, Fresno, CA 93721

On behalf of the California Apartment Association (CAA), I reiterate CAA's support for the Fresno County Multi-Jurisdictional Housing Element Update as currently written and as a follow-on to our letter from August 2023. The Housing Element update's core goals and proposed policies reflect the importance and urgency of developing housing across Fresno County that is affordable and available to families of all income levels. CAA looks forward to working with all jurisdictions in successfully implementing this plan's goals.

CAA appreciates the work Fresno County, the incorporated cities of Fresno County, and the Council of Governments have done on this Housing Element update. CAA looks forward to working with all stakeholders in the passage and implementation of the Multi-Jurisdictional Housing Element in its current iteration.

Sincerely,

Greg Terzakis
Senior Vice President



August 7, 2024

Mayor Jerry Dyer
Fresno City Councilmembers
Michelle Zumwalt, Planning and Development Department
2600 Fresno Street, Room 3065
Fresno, CA 93721

Sent via email: housingelement@fresno.gov

RE: City of Fresno Draft 6th Cycle Housing Element

Dear Mayor Dyer, Councilmembers, and Ms. Zumwalt:

Leadership Counsel for Justice and Accountability (“LCJA”) and Public Interest Law Project (“PILP”) write in collaboration with local community residents and the undersigned organizations to submit this comment letter on the City of Fresno’s second Housing Element Draft 2023-2031. LCJA and the undersigned organizations work alongside the most impacted communities to advocate for sound policy and eradicate injustice to secure equal access to opportunity regardless of wealth, race, income, and place. We advocate for policy and practice changes to meet the housing needs of all residents in the City of Fresno, especially low-income residents and those with special housing needs, and to overcome fair housing disparities that impact low-income communities. Residents with whom we partner experience high rates of cost burden, escalating housing costs, reside in unsafe and unsanitary rental housing units, experience displacement risks, and are impacted by disparities in access to opportunity, including a lack of access to a healthy environment and public and private investment in critical infrastructure, services, and amenities.

Founded in 1996, PILP provides crucial litigation and advocacy support to local legal services and public interest programs throughout California. For more than two decades, PILP has fought for affordable and fair housing, access to public benefits, homelessness prevention,

and civil rights in partnership with low income communities, communities of color and legal services organizations throughout California. In the context of the Housing Element Law, PILP has been instrumental in the passage of legislation to strengthen that law, which has included the review and comment upon thousands of housing elements throughout the state to ensure access to affordable housing opportunities for California's residents who reside in lower-income communities.

The City of Fresno's 6th Cycle Housing Element Update presents a critical opportunity for the City to identify and address long-standing, wide-ranging, and severe housing needs and fair housing disparities that impact residents, disadvantaged unincorporated communities, and racially and ethnically concentrated areas of poverty ("R/ECAPs"), in particular, the Southwest, South Central and Southeast areas. Unfortunately, the Draft has failed to adequately address these disparities; therefore, we are providing the following comments that highlight further steps and actions the City must take to meet State Housing Element Law requirements. (Gov. Code § 65583 *et. seq.*).¹ We recognize the City made improvements in the second Draft, but we believe further revisions are necessary to substantially comply with Housing Element law. In particular, the City needs to continue to and further engage communities that have been historically left out of previous Housing Element Cycles, adopt and implement enforceable policies and programs with discrete timelines to meet the housing needs of all residents, and abide by its duty to affirmatively further fair housing ("AFFH"). (Gov. Code § 8899.50).

I. Failure to Demonstrate A Diligent Effort to Solicit and Incorporate Input from All Economic Segments of the Community and Protected Classes

As stated in our previous letters, and further reinforced by HCD in their February 1, 2024 letter under section E. Public Participation of their findings, the City must make a diligent effort to engage the community during the housing element revision process, including the organizations that represent low-income and special needs households, and describe how it incorporated community feedback into its Draft. Lastly, the City must make information readily available, during the development of the Housing Element. This includes the revision process.

Between February and July 2024, we attempted to communicate with the City to understand how and when it would engage community residents in their Draft revision process. Despite our multiple efforts, the City demonstrated an unwillingness to offer information. This greatly inhibited residents' ability to contribute to the development of the Draft; including two visually-impaired residents who requested large-font hard copies of the revised Draft to review and provide comments within the anticipated 7 day review period. Furthermore, the City did inform LCJA that the revised Draft had been posted to its website and was available for public comment and review until 5:00 pm on August 7, 2024; however, they neglected to include the

¹ Hereafter all Code sections refer to the California Government Code, unless otherwise noted.

deadline on the Housing Element webpage, thereby, failing to disclose limited review period to the public. By neglecting to make information readily available, and their lack of making a diligent effort to engage the community, or explain where it incorporated, or did not incorporate community feedback and public comments into the revised Draft, the City demonstrates that it fails to substantially comply with State law.

II. Failure to Adequately Analyze Housing Constraints

A. Governmental Constraints to Housing Development

While the City did address some of the concerns related to their analysis of governmental constraints, there still remains an incomplete analysis. As a reminder the City is required to have

“[a]n analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, . . . and for persons with disabilities. . . including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, local processing and permit procedures, and any locally adopted ordinances that directly impact the cost and supply of residential development. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need. . . and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters.” (Gov. Code § 65583(A)(5)).

In our previous comment letters, we uplifted the need to identify constraints to the development of housing affordable to households at different income levels, as well as possible constraints to the development and maintenance of a variety of types of housing, unfortunately this recent Draft continues to fail in adequately analyzing these constraints.

1. Development Standards

“The housing element must identify all relevant land-use controls, discuss impacts on the cost and supply of housing, and evaluate the cumulative impacts of standards, including whether development standards impede the ability to achieve maximum allowable densities.”² The City added a Table 1E-4.6 which analyzes multi-family zone requirements for prototype site development and helps identify the ability to achieve maximum densities in the City’s multi-family zones. Unfortunately, this analysis is insufficient and does not address our previous concerns regarding constraints associated with the widespread availability of single family

² HCD, Building Blocks, Land Use Controls, available at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/land-use-controls>.

zoning and the limited availability of high density zoned sites. The city continues to allow by-right single-family units more than multi-family affordable housing developments. Additionally, the City still permits single family uses by-right in many of the zones identified for increased high-density development: RM-1, NMX, CMX, RMX, CMS, CR, DTN, DTG. But multi-family units are not allowed in RS-1, RS-2, or RS-3 areas, despite the large majority of the City being zoned one of these zones, and where many high resource areas have developed. Duplexes are similarly constrained, they are excluded from RS-1, RS-2, RS-3, RS-4, and only allowed through conditional use permit in R-5.

2. Single Room Occupancy (SRO) Units, Emergency Shelters, Supportive Housing

Although we appreciate the City's amendment to the Single Room Occupancy (SRO) section to remove the "current limit of 15 guests in SRO units, as well as changing SRO to permitted use in RM-1, RM-2, RM-3, NMX, CMX, and RMX, and evaluating objective design standards for SROs to ensure that units are maintained and safe for all residents long term;" additional analysis must be done for emergency shelters and supportive housing. The City has a significant homeless population and a serious dearth of housing and shelter options to serve that population; it must analyze the constraints to building additional shelters to ensure that the unhoused population has access to housing. Little is said in response to supportive housing and whether it is allowed in any zone where multi-unit or mixed use development is permitted.

3. Parking

The Draft had previously amended the Development Code to remove parking minimums within a half mile of public transit, consistent with AB 2097. In the revised Draft the City added an action to reduce the parking standard for Residential Care, General. But once again failed to analyze whether its parking requirements act as a constraint on housing development, especially in downtown and along transit corridors. Parking requirements increase the cost of housing.³ The Draft states it "determines the required number of parking spaces based on the type and size of the residential unit and has found the required parking spaces to be necessary to accommodate the number of vehicles typically associated with each residence."⁴ The analysis ignores principles of induced demand and downstream effects of entrenching car-centric land use. The Draft implicitly acknowledges that parking increases costs and may not be critical as it allows waivers for parking requirements in affordable housing developments and other transit-friendly areas.⁵ The ad hoc basis of reduced parking requirements introduces uncertainty which can increase the overall cost and time delays in housing development. Once again, the City failed to

³ Green Trip. *Parking Database*: <http://database.greentrip.org/>.

⁴ Fresno Multi-Jurisdictional Housing Element July 2023, Appendix 1E: City of Fresno, 1E-4-10

⁵ Fresno Multi-Jurisdictional Housing Element July 2023, Appendix 1E: City of Fresno, 1E-4-10

include a program that would identify steps to remove this constraint, particularly in the development of affordable housing.

4. Risk Analysis and Distribution of Affordable Housing

Additionally, we want to reiterate the Draft's analysis of at-risk housing is incomplete and under-analyzes the risks to publicly assisted affordable housing and its distribution. The Draft identified 695 units at risk of conversion to uses other than low-income residential within 10 years from the housing element adoption deadline. Although the City considered the cost of replacing the at-risk units as required under §65583(a)(8), it failed to examine which pathway would be most appropriate for the City and what constraints, if any, would be associated with the pathway chosen.

Once again, we urge the City to analyze the lack of tenant protections, such as source of income discrimination outreach and education, rent stabilization, and just cause protections, and how they may operate as a constraint on the maintenance of housing available to lower income people and facilitate the displacement of lower income renters. The lack of these protections should be analyzed as a constraint on the maintenance of housing under Government Code section 65583(a)(5).

5. Accela

In Table 1E-2.3, the Draft identifies Accela, the City's land management software, as a barrier to the timely completion of multiple projects on which it is relying to accommodate its RHNA.⁶ The Draft should describe how Accela is creating barriers to the completion of new housing development—especially affordable development—analyze these barriers as constraints, and, if appropriate, add program language to reduce or mitigate any constraints caused by the system.

B. Non-Governmental Constraints to Housing Development

In addition to analyzing governmental constraints, the Draft must also analyze the potential and actual non-governmental constraints upon the maintenance, improvement, or development of housing for all income levels. Gov't Code § 65583(a)(6). Unfortunately, the second Draft continues to exclude such an analysis even though public comments have been submitted in response to this specific issue. The Draft failed to consider the effect of market forces, availability of financing, environmental concerns, and NIMBY opposition.

⁶ Fresno Multi-Jurisdictional Housing Element July 2023, Appendix 1E: City of Fresno, 1E-2-10 to 1E-2-11.

1. NIMBY Opposition

The Draft must include an analysis of NIMBY opposition to housing development. As a largely sprawling suburban City, Fresno is prone to local opposition to increased density from existing single-family homeowners that have preconceived ideas of the impacts of increased density on their neighborhoods. Further, the zoning code requires conditional use permits for duplexes and multi-family housing in some areas, making them especially susceptible to opposition and defeat from NIMBY residents.

NIMBY opposition is all too common and a pervasive issue when building multi-family projects in high resourced areas. The latest example: on July 25, 2024, the City Council voted (4-3) to uphold the Planning Commission's vote to reject the development permit application for a market-rate housing complex at the northeast corner of West Herndon and North Prospect Avenues (North of the City of Fresno). Even though this project is market-rate without any subsidy for people who cannot afford rent, comments were made that perpetuate stereotypes that have been mostly disproven— such as decreasing property value, increased crime rates and worsening traffic.⁷ This is just one example of how pervasive NIMBY-ism is in the City of Fresno and thus a significant reason to complete a full analysis of this constraint.

2. Environmental Concerns

Once again, the Draft failed to consider environmental constraints as part of its analysis under Gov't Code § 65583(a)(6). Environmental constraints may include limitations to water supply, nearby pollution, or infrastructure development. Per our previous comment letters, we have noted that the City of Fresno relies heavily on groundwater and surface water. As climate change makes water availability less predictable the City must analyze how an increased population and land use will affect water availability and whether water availability will eventually constrain growth. Additionally, the City must consider the infrastructure requirements of delivering water to a denser population. For example, the City estimates that downtown Fresno, where a large portion of new housing development is projected, currently requires significant water and wastewater infrastructure upgrades.

Again, we must reiterate the fact that the Draft failed to consider industrial and polluting industries' effect on future housing development. The City must also analyze as a constraint the proliferation of warehouses and other industrial uses in and around the City, particularly in South Fresno. These industrial and warehouse projects come with an enormous increase in vehicle traffic and worsen already very poor air quality. They also result in light, sound, and vibration pollution. Many of these projects are being approved next to residential development with no buffer, driving down housing value, and worsening housing conditions. The City must consider

⁷ Parsons, R. (2024, May 19). A Big Housing Project Gets Rejected. *Fresnoland*. <https://fresnoland.org/newsletter/a-big-housing-project-gets-rejected/>

warehouse and industrial use proliferation as a constraint, and identify impacts to residents. The City must then commit to adopting strong programs and policies with enforceable timelines to address the constraint.

Additionally, the City of Fresno has evolved as a car dependent City surrounded by heavy industry and highways. Therefore, future housing development will need to carefully consider placement and mitigation measures to avoid perpetuating environmental inequity.

III. Further Revisions and Analysis are needed to determine if the City’s Draft Includes Adequate Sites

1. Entitled and Permitted Units

The Draft adds information about the entitled and permitted units that the City seeks to credit against its RHNA obligation, but the information provided for multiple projects still remains inadequate to comply with the requirements of Housing Element Law.

Hotel/Motel Conversions—the Draft relies on four hotel/motel conversions to accommodate 211 units of its lower-income RHNA. However, the Draft is missing the requisite information and program language to claim credit for these units.⁸ Government Code 65583.1(c)(2)(D) allows credit for such units, but they must be converted with committed assistance from the City and be made available to people experiencing homelessness, and the Housing Element must include a program for the conversion(s). Table 1E.2-3 should be amended to specify the committed assistance *from the City* for each of these projects and to clarify whether each of them will be made available to people experiencing homelessness. Additionally, the City should add concrete program language to **Program 36 (Homeless Assistance)** to specify the committed assistance and other actions on the part of the City to facilitate hotel conversions and to ensure that the converted units remain safe and habitable over time. Additionally, for project P-23 (San Joaquin Hotel), Table 1E.23 does not describe the status of entitlement review for the 59 units on which the Draft relies; nor does it provide any information about build-out, phasing, or projected rents.

City-Caused Barriers to Completion—The City relies on project P-12, Fresno Rescue Mission RTC 2, to accommodate 49 units of its low-income RHNA. However, the Draft acknowledges that there is no phasing plan for the project and no expected completion date—there is no indication that this project can be completed during the planning period. Additionally, the Draft identifies “having difficulties with affordable housing contracts with the City” as a barrier to completion.⁹ The Draft should describe the “difficulties” and analyze the

⁸ Fresno Multi-Jurisdictional Housing Element July 2023, Appendix 1E: City of Fresno, 1E-2-5, 1E-2-9 to 1E-2-11

⁹ Fresno Multi-Jurisdictional Housing Element July 2023, Appendix 1E: City of Fresno, 1E-2-8.

City's role in creating or ameliorating project delays. Such analysis should inform program language to expedite the funding and development of affordable units.

Unsupported Affordability Assumptions for Moderate-Income Units—the Draft still lacks adequate information and analysis to support its assumptions regarding the affordability of market-rate units. Table 1E-2.2 does not include any information about the unit type, number, or density of rental units in projects it lists as examples. Table 1E-2.3 does not include information about the expected tenure of many of the projects, so it is unclear whether the units will be rental or for-sale; the draft does not provide any indication that new market-rate for-sale units will be sold at prices affordable to moderate-income households. By way of example, Table 1E-2.3 acknowledges that the City is “not sure of rents” for project P-8, a market-rate *gated* duplex community but nonetheless has switched its affordability projection since the prior draft from above-moderate to moderate-income without any justification. The City should provide additional information and analysis to ensure that its assumptions regarding the affordability of market-rate units are supported.

Ambiguous Entries—Several entries in Table 1E-2.3 include ambiguous or conflicting information about project timelines and projected affordability. For example, for project P-1, the Village at West Creek North, the Table identifies funding sources but then indicates that the “challenge is getting funded” and that the affordability levels “will be dictated by funding source.” It’s also unclear if the project is one development or multiple developments. This lack of clarity makes it difficult to assess whether the planned units will be available at the projected affordability levels during the planning period.

The City should provide additional information and analysis regarding recent and pending developments that it seeks to credit against its RHNA. Where there is not adequate information to support projections that a project will develop at a particular affordability level during the planning period, that project should be removed from the list, and the site inventory should be adjusted accordingly.

2. *Unsupported Capacity Projections*

The Draft adds information about sites in zones that allow nonresidential development—including 100% nonresidential development—but it still lacks adequate information and analysis to support its capacity projections, especially with respect to affordable development. For example, while the Draft notes that the City recently removed the absolute prohibition of ground-floor residential development in mixed use zones to facilitate the development of lower-income housing, it notes that “all five [commercial and mixed use] zones have some level of restrictions on ground floor residential uses in order to activate the sidewalk.”¹⁰ All of the pipeline projects listed in Table 1E.2-3 that have ground-floor

¹⁰ Fresno Multi-Jurisdictional Housing Element July 2023, Appendix 1E: City of Fresno, 1E-2-18.

nonresidential uses are market-rate projects. But the Draft does not indicate whether or not the sites identified in commercial or mixed use zones prohibit residential uses on the ground floor, nor does it analyze ground-floor restrictions as a potential constraint to affordable development.

Similarly, the Draft adds information about which commercial and mixed-use zones allow 100 percent non-residential development, but it does not describe whether the sites identified to accommodate the RHNA allow 100 percent non-residential development, nor does it break down past mixed-use development trends by zone. Draft, 1E-2.18 to 1E-2.19. While the summary table of “Project Examples” has been amended to cover 2018-2023 instead of 2018-2020, the Draft does not provide information about the projects themselves. It is therefore impossible to assess whether the capacity projections are supported by past and current development trends.

3. Non-Vacant Sites

The City continues to rely on non-vacant sites with a variety of uses—including residential, agricultural, parking lots, commercial buildings, and at least one “trucking” use—to accommodate its RHNA without the requisite analysis. The Draft adds examples of past development on sites with similar prior uses, but it does not include “an analysis of additional representative sites from the sites inventory” or “analyze recent development trends.”¹¹ It does not include any site-specific information to support its assumptions that existing uses will discontinue or that owners are interested in redevelopment. It also does not analyze any potentially negative impacts of replacing existing uses with new housing, including potential displacement of lower-income households caused by the demolition of existing, unspecified “residential” uses; the health and environmental justice impacts of housing development on sites with current or recent commercial, industrial, or “trucking” uses (e.g., site 823); or the loss of apparently active agricultural uses (e.g., site 2434, agricultural and farm stand).

4. Publicly Owned Sites

The City continues to rely on government-owned sites to accommodate a significant portion of its RHNA. Some of these are owned by the City and its Redevelopment Successor Agency, while others are owned by other government entities. The Draft does not describe any communications with the other government entities to gauge their interest in or ability to redevelop the sites—many of which have existing uses—with housing. It does not “discuss the status, remaining steps to be available for development and any known barriers to development in the planning period including leases for existing uses or relocation of existing uses.”¹² More information and analysis is needed to support the City’s assumptions regarding these sites.

¹¹ HCD 2/1/2024 Findings, p. 5.

¹² HCD 2/1/2024 Findings, p. 5.

With respect to City-owned properties, the City should strengthen **Program 17 (Surplus Public Lands)** to describe, not only how it will comply with the Surplus Land Act, but also proactive steps it will take to solicit and support 100 percent affordable projects on City and Successor Agency sites during the planning period.

5. *Large Sites*

The Draft adds further discussion of large sites but still fails to adequately support its projections for sites over 10 acres.¹³ The Draft provides examples of prior developments on large sites, but it is lacking information critical to understanding whether these examples support the City's assumptions regarding large site development. For example, it does not describe additional uses included in the project, timeline and phasing, or the percentage of the total site area that developed as residential v. commercial. Accordingly, the 60% residential assumption applied to large sites is not supported, nor is the assumption that units could be built within the planning period. Further, just comparing overall residential densities projected for identified large sites to overall residential densities for the large site examples indicates that the City is projecting generally higher densities for the sites than were realized in past projects, without explanation or justification.¹⁴ The City should provide additional information and analysis to support its projections, or it should revise its projections downward. Because the Draft relies so heavily on large sites to accommodate its lower-income RHNA, the City should revise **Program 5 (Large and Small Sites)** to adopt incentives for affordable development on large sites, rather than deferring the consideration of such incentives to a later date.

6. *Environmental Constraints*

Both community groups and HCD commented on the prior Draft's lack of analysis regarding environmental constraints to development of identified sites. The current Draft removes sites within Zones 1-4 of the new Airport Influence Area for Fresno-Chandler Executive Airport and indicates which sites are within the 100-year FEMA floodplain but does not provide any additional site-specific information regarding "shape, access, contamination, property conditions, easements, Williamson Act contracts, conservation easements, overlays and airport and military compatibility."¹⁵ It does not discuss the impact of adjacent freeways, industrial uses, or agriculture on site conditions, even though many identified sites have existing agricultural or commercial uses, and at least one has a highway on/off ramp.¹⁶ The Draft acknowledges the disproportionately severe environmental health conditions in the Southwest Fresno Specific Plan and Downtown areas, where the Draft identifies the bulk of sites for new housing, lower-income housing in particular.¹⁷ However, this recognition did not prompt a reevaluation of sites nor commitments to

¹³ See Gov. Code § 65583.2(c)(2)(B).

¹⁴ See Fresno Multi-Jurisdictional Housing Element July 2023, Appendix 1E: City of Fresno, 1E-2-54 to 1E-2-61.

¹⁵ HCD 2/1/2024 Findings, p. 5.

¹⁶ See Fresno Multi-Jurisdictional Housing Element July 2023, Appendix 1E: City of Fresno, 1E-7-47.

¹⁷ Fresno Multi-Jurisdictional Housing Element July 2023, Appendix 1E: City of Fresno, 1E-3-131.

place-based strategies to mitigate environmental hazard on or near identified sites. The City should review the site inventory, informed by community input, and revise as necessary to address environmental justice concerns with site identification. It should also commit to concrete actions to address environmental hazards in neighborhoods with existing and planned lower-income housing.

7. Site Concentration and AFFH

The housing element must identify sites “throughout the community,” consistent with the duty to affirmatively further fair housing.¹⁸ The Draft does not do so, instead acknowledging: “The distribution of sites across the city displays a concentration of lower-income housing in areas like Downtown and the West Area, while other areas like McLane and Woodward Park have a higher proportion of moderate and above moderate income housing, reflecting an unequal distribution of housing capacity across the city. This has the potential to exacerbate fair housing issues in Fresno by providing more capacity for lower-income housing in disproportionately impacted communities.”¹⁹ In other words, the Draft admits that the City’s selection of sites for new development during the planning period is inconsistent with its duty to affirmatively further fair housing.²⁰ In making this admission, the Draft references, in general terms, policies and actions elsewhere in the document, but it does not identify any specific program that will mitigate the acknowledged segregative impacts of the City’s chosen site distribution.²¹ HCD’s February 1, 2024, findings instructed the City to “add or modify goals and actions, specifically increasing housing mobility options and housing opportunities in high-opportunity areas.”²² However, the Draft’s programs to address these and other fair housing issues remain inadequate, as discussed in greater detail below. We strongly encourage the City to amend the Draft to include programs that will identify different sites, and directly invest in infrastructure in low-income neighborhoods.²³

8. Electronic Sites Inventory

As noted in HCD’s February 1, 2024, findings, the City must utilize HCD’s electronic sites inventory, but the current Draft does not. We encourage the City to create an electronic site inventory as soon as possible for ease of review by both HCD and community members.

IV. The Assessment of Fair Housing Fails to Comply with Section 65583(c)(10)

¹⁸ Gov. Code § 65583.2(a).

¹⁹ Fresno Multi-Jurisdictional Housing Element July 2023, Appendix 1E: City of Fresno, 1E-3-127.

²⁰ See Gov. Code § 8899.50(b)(1) (“A public agency shall administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and take no action that is materially inconsistent with its obligation to affirmatively further fair housing.”)

²¹ Fresno Multi-Jurisdictional Housing Element July 2023, Appendix 1E: City of Fresno, 1E-3-127.

²² HCD 2/1/2024 Findings, p. 3.

²³ <https://www.transformfresno.com/wp-content/uploads/2021/06/transform-fresno-here-to-stay-report-english.pdf>

Government Code section 65583(c)(10)(A) requires that the Housing Element include an analysis of available federal, state, and local data and knowledge to identify integration and segregation patterns and trends; as well as Racially or Ethnically Concentrated Areas of Poverty (R/ECAP) and Racially or Ethnically Concentrated Areas of Affluence (R/ECAA). A complete assessment must identify key issues and prioritize contributing factors to fair housing issues; it must also point to the clearest fair housing issue trends and patterns within the jurisdiction as well as be detailed and comprehensive enough to develop strong actions and programs that will overcome and undo the identified fair housing issues. See AFFH Guidance, pp. 25.

Although we appreciate the City adding data, some historical context, and descriptions of the policies that have contributed to the formation of Racially and Ethnically Concentrated Areas of Poverty (R/ECAPs) and Racially or Ethnically Concentrated Areas of Affluence (RCAAs), the Assessment of Fair Housing (AFH) continues to fall short. It lacks an in depth analysis of and fails to incorporate public input as necessary to address the requirements set forth in Section 65583(c)(10) and does not achieve the requirement to ensure that the City AFFHs through its housing element.

A. Integration and Segregation and R/ECAP and Concentrated Area of Affluence Analyses Lack Required Detail

In our previous comment letters, we outline the gaps that render the AFH analysis incomplete (please see attachment A) such as failure to provide any data or analyze integration and segregation patterns for racial groups other than Hispanic/Latinos; failure to accurately or thoroughly analyze distribution of low- and high-income households across Fresno; the AFH's analysis of R/ECAPs and RCAAs fails to address "public participation, past policies, practices, [and] investments" as required. HCD Guidance, p. 33. Although the current Draft was amended on page 1E-3-27 to include bullet points outlining the policies and historical background that contributed to the creation of R/ECAPs it did not include an evaluation or analysis on why certain ethnicities or races live in certain areas or which past policies or practices led South Fresno to have a higher concentration of low-income households or households that are predominantly Hispanic/Latino and/or African American. Reports have shown that "the cultural evolution of resident identities and land-use purposes in Fresno includes a series of hostile land acquisitions imposed on Indigenous Americans, forced labor exploitation of Black farmers, unjust labor practices toward Brown migrants, and the socio-economic alienation of Hmong residents."²⁴

Similarly, the RCAAs section which is on page 1E-3-31 was only amended to include additional areas that are considered affluent such as North and Northeast Fresno neighborhoods

²⁴ Brown, B., Heer, N., Love, N., Pollard, K., Thomas, D. (2021, June 9). Here To Stay: A Policy-Based Blueprint For Displacement Avoidance in Fresno. *Thrivance Group*.
<https://www.transformfresno.com/wp-content/uploads/2021/06/transform-fresno-here-to-stay-report-english.pdf>

and McLane community area. Once again it fails to include an in-depth analysis of how and why these areas are high-resourced and more affluent, as well as the policies and programs that have led to creating and building opportunities. It goes on to include a list of characteristics and a list of programs that will promote inclusivity, affordability, and diversity in RCAAs. But without an adequate analysis of RCAAs and R/ECAPs, these programs will continue to fall short and therefore fail to comply with Government Code section 65583(c)(10)(A)(ii).

B. Incomplete Analysis of Disproportionate Housing Needs Based on Race, Ethnicity, Familial Status, Disability, and Income

The analysis of disproportionate housing needs must analyze needs relating to cost burden, overcrowding, substandard housing, homelessness and other factors for protected characteristics, including at least race and ethnicity, familial status, persons with disabilities, and income. § 65583(c)(10)(A)(ii); AFFH Guidance, p. 39. The requirement to analyze disproportionate housing needs is fundamental to achieving the purpose of the AFH to ensure that the housing element affirmatively further fair housing by identifying disparities impacting protected classes which have been subject to historic discrimination, describes the factors contributing to those disparities, and adopts meaningful actions that overcome patterns of segregation and address disparities in housing needs and opportunity for protected classes. Unfortunately, this recent Draft failed to satisfy this requirement once again.

In our previous letters (see attachment A), we made recommendations to include any information about the separate occurrence of overcrowding, cost burden, and substandard housing conditions based on race or ethnicity and provide any information at all about how these factors disproportionately impact Fresno residents based on familial status and disability. We also recommended that the Draft include information relating to familial status. We strongly urge the City to include information that reflects “local knowledge” or public input, which would strengthen the analysis with details about specific housing needs within the categories identified above and the scale of those needs in relation to others. Again, the City must supplement its disproportionate needs analysis to include the required demographic information and revise the AFH further to ensure its contributing factors and meaningful actions reflect that information.

The Draft acknowledges that homelessness in Fresno disproportionately impacts people of color—in particular Black residents of the City—and people with disabilities. However, it does not analyze the City’s role in causing the segregation and forced displacement of its unhoused residents. The City is in the process of amending sections 10-1703(a), 10-1707, 10-2101, 10-2204, 10-2205 of the Fresno Municipal Code, Relating to the Prohibition of Encampments in

Public Places, with a second reading of the ordinance scheduled for August 15, 2024.²⁵ The purpose of the ordinance is the increased criminalization of unsheltered homelessness within the City, and it explicitly removes any requirement that the City ensure that shelter is available before citing, arresting, or displacing unsheltered individuals from public space. Such criminalization makes it harder for unhoused people to access housing, shelter, employment, medical care, and other services. The Housing Element must analyze these practices, including the disproportionate impact of these practices on people with disabilities and people of color, and it must include programs to ensure that its law enforcement and policing practices are not creating or perpetuating “disparities in access to opportunity.” HCD AFFH Guidance, 69.

C. Incomplete Analysis of Displacement Risks

Although we appreciate the amendments in the Draft identifying tracts that are assigned the different levels of displacement, on page 1E-3-82, and a note stating that concentrated areas of poverty, lower medium income neighborhoods with greater populations of color and larger proportion of renter households are most sensitive to displacement, the Draft has once again failed to evaluate and analyze the impact displacement has on R/ECAP and protected classes and therefore has failed to incorporate meaningful policies and programs that will protect residents. The AFH’s displacement risk analysis falls short by failing to consider other relevant information relating to existing and potential housing cost pressures confronting low-income residents, residents of color, and other protected classes, as well as significant displacement risks associated with tenant protection limitations, City land use policies and practices, environmental hazards, and climate change. A complete displacement risk analysis must consider these and other relevant factors. See AFFH Guidance, pp. 40-43.

Additionally, we are extremely concerned that the Draft has removed the displacement risk assessment regarding climate disaster.

The risk of climate disaster can also put pressure on lower income communities. South Fresno neighborhoods have been impacted by a series of fires at warehouse, recycling, and other industrial facilities that have occurred during the increasing number of high and extreme-heat days over the past five years. Potentially toxic smoke from these fires has at times densely concentrated in South Fresno neighborhoods, which can make breathing difficult and unsafe for residents even within their homes with windows closed. pg. 1E-3-82.

As mentioned in our previous comment letters (see attachment A), the AFH’s Displacement Risk section should be revised to consider displacement risks associated with environmental hazards,

²⁵ MCC § 10-1703(a). Retrieved from:
<https://fresno.legistar.com/View.ashx?M=F&ID=13187124&GUID=01FAFD3D-FA86-4812-9928-3F4ECF7AECB4>

environmental disasters, and climate change, pursuant to HCD's AFFH Guidance. AFFH Guidance, p. 42. By removing this analysis the Draft fails to adhere to its AFFH duty. We urge the City to reinsert this section and build on this analysis to ensure implementation of strong programs that address the needs of communities impacted the most by climate disaster.

We must reiterate²⁶ that using The Urban Displacement Project's criteria alone is not sufficient to accurately describe displacement risks impacting residents associated with housing cost pressures. Although data for 2019 has been included, this time period does not capture the sharp and sustained escalation in housing costs (both rental and ownership) that occurred during the COVID-19 pandemic between 2019 and 2022.²⁷ Between 2017 and 2021, Fresno experienced the greatest rent increases of all large U.S. cities, with rental prices increasing nearly 39% during that time.²⁸ The City failed to include this vital analysis and therefore the AFH's displacement risk analysis must be supplemented with and revised based on more recent data in order to adequately fulfill this requirement. §65583(c)(10)(A)(ii); AFFH Guidance, pp. 39.

As previously stated, the "Displacement Avoidance Efforts" do not remedy the need for a complete analysis addressing the displacement risk factors above, including relevant City policies and practices, and the adoption of meaningful actions to address those risks. And although it mentions the City's Displacement Avoidance Plan (DAP) and the Here to Stay Report²⁹, we must once again ask that the AFH incorporate and consider relevant information and policy recommendations contained in that report.

1. Tenant Protection, Land Use, Environmental, and Climate-Related Displacement Risks Not Considered in the AFH Displacement Risk Analysis

A complete analysis of displacement risks considers not only displacement risks associated with housing cost pressures, but also other factors which result in housing instability, including factors relating to the adequacy of tenant protections, disinvestment, local land use policies and practices, environmental hazards, and risks associated with natural disasters and climate change. The Draft Housing Element considers none of these risk categories, yet, based on our direct work with tenants and low-income residents and residents of color, they represent real and significant risk factors for Fresno residents.

²⁶ See attachment A, previous comment letters from LCJA.

²⁷ CalMatters, Real estate prices soar during the pandemic, climbing 25% in parts of California, Dec. 5, 2020, available at <https://calmatters.org/california-divide/2020/12/real-estate-climb-pandemic/>

²⁸ Los Angeles Times, The Nation's Hottest Housing Market? Surprise – it's Fresno, Mar. 31, 2021, available at <https://www.latimes.com/homeless-housing/story/2021-03-31/fresno-rent-spike-taps-into-california-covid-housing-trends>

²⁹ Brown, B., Heer, N., Love, N., Pollard, K., Thomas, D. (2021, June 9). Here To Stay: A Policy-Based Blueprint For Displacement Avoidance in Fresno. *Thrivance Group*. <https://www.transformfresno.com/wp-content/uploads/2021/06/transform-fresno-here-to-stay-report-english.pdf>

Once again, we ask that the City incorporate the following analysis and assessment to the Displacement risk section:

- Address the adequacy of policies and resources to protect tenants from displacement as a result of eviction, harassment, and substandard housing and include additional and stronger policies and programs to protect tenants, including in particular more comprehensive and stringent rent control standards than those established by the state, just cause requirements for eviction, and right to return home for displaced residents.
- Analyze the success and effectiveness of the City's code enforcement programs.
- Consider the extent to which public and private disinvestment and unequal investment continues to impact low-income neighborhoods, neighborhoods of color, and neighborhoods with a high proportion of tenants and how disinvestment perpetuates and/or increases displacement risk in these areas.
- Consider the City's land use and permitting decisions which have directed and continue to allow for and promote the concentration of industrial and waste management facilities in and around neighborhoods in Jane Addams, Southwest Fresno, South Central Fresno (referred to by the Draft Housing Element as the "South Industrial Area"), and Southeast Fresno.
- Consider displacement risks associated with environmental hazards, environmental disasters, and climate change, pursuant to HCD's AFFH Guidance. AFFH Guidance, p. 42.

The City must revise the AFH to include a complete and accurate Displacement Risk analysis as described above and modify other sections of the Housing Element, including the AFHs contributing factors and meaningful actions to overcome disparities relating to access to a healthy environment associated with these land use patterns.

V. The AFH Fails to Consider Significant Disparities in Access to Opportunity to Multi-Modal Transportation Options, a Healthy Environment, and Quality Education

As a reminder, the AFH must include an analysis of disparities in access to opportunity. § 65583(c)(10)(A)(ii). Access to opportunity broadly encompasses the place-based characteristics which are linked to critical life outcomes, including "education, employment, economic development, safe and decent housing, low rates of violent crime, transportation, recreation, food, and a healthy environment (air, water, safety from environmental hazards, social services, and cultural institutions). (AFFH Guidance, p. 34).

Although the previous Draft was amended to include some of the barriers to transit, unfortunately, the analysis continues to fail in comparing access to transportation opportunities based on protected characteristics; assess any disproportionate transportation needs for members of protected classes; provide important information about the adequacy of public transportation service in different areas of the City, protected classes, and low-income households; and entirely fails to consider access to other forms of transportation, including walking and bicycling.³⁰ The Draft states that, in order to “address these issues, the Housing Element includes a program to direct investments to address infrastructure and public service deficiencies in high-need areas including areas classified as high segregation and poverty, low resource, and moderate resource.” But without a comprehensive analysis, the City cannot create programs that will address the needs of communities living in R/ECAP.

As discussed in our previous letter, a complete analysis of access to a healthy environment should consider any impacts on access to a healthy environment associated with the zoning, siting and operation of polluting or toxic land uses in disadvantaged communities and with climate change. *Id.* at pp. 16, 73. It must also be informed by public input, which is especially important in Fresno given the high concentration of communities in low-income South Fresno neighborhoods of color that rank among the most burdened by multiple sources of pollution in the state. Once again, the current Draft failed to incorporate this analysis. City policies and practices have intentionally concentrated polluting and noxious industrial and waste management land uses in South Fresno neighborhoods and policies and practices remain in place that all promote the exacerbation of these patterns to the detriment of housing opportunities and quality of life for South Fresno residents. The City must fulfill a robust analysis to inform better policies and programs such as impact fees for a community benefit fund, public health impact reports, and cargo/freight prohibition and revenue tax.

The current Draft failed to include any additional analysis for educational opportunities. Per our previous comment letter, we urge the City to consider how policies, practices, and investments or disinvestments relating to access to green space, tree canopy, and climate resiliency (including adequate cooling and wildfire smoke protection) impact educational opportunities at schools, especially in low-income neighborhoods. The City must revise its analysis of educational opportunities to address these and other issues not addressed in the Draft Element and revise and add to its actions accordingly.

VI. Failure to Adopt Community-Identified Programs That Will Result in A Beneficial Impact During the Planning Period and AFFH

Program 1—Maintain Adequate Sites. HCD’s February 1, 2024, findings instructed the City to include program language to facilitate development of pipeline projects during the planning

³⁰ See our past comment letters, attachment A.

period, to monitor the progress of those projects, and to take alternative actions if the projects are not on track to be available before the end of the Sixth Cycle. The City has amended Program 1 to indicate that the City will “work with applicants of pipeline projects,” to “monitor the progress made on these sites,” and to reevaluate pipeline sites if their entitlements expire. However, this program needs more specific language about the concrete actions the City will take to facilitate the timely development of pipeline projects—especially affordable pipeline projects—and timelines for reevaluating sites when pipeline projects are abandoned or modified, as well as for when entitlements expire.

Additionally, prior comments stressed the importance of community outreach and transparency in site identification, including in future site identification to address changes in pipeline projections and/or no-net-loss issues. The City should add commitments to this program to ensure that it is seeking, receiving, and acting on community input regarding the identification of new sites. Local knowledge and input regarding proposed sites can help ensure that the City is identifying sites in a way that encourages affordable development, avoids environmental harms, and promotes racial and economic integration.

Program 2 – Variety of Housing Opportunities in High Resource Areas. The City must go beyond their revision to “encourage racially and socially inclusive neighborhoods” and provide a detailed explanation on how it will promote the development of affordable units to lower income households. Furthermore, the program still lacks a clear commitment to zone sites for multi-family development in areas of high resource, a commitment to ensure that units are affordable to all income levels, and a commitment to match funding opportunities with the identification of available sites to facilitate their development. Although the Timeframe was revised to increase the number of units for high density-multifamily development in high resource areas from 750 to 1250, specifically by adding 500 additional units by December 2031, the timeline should still be shortened to ensure the City is making a clear effort to promote housing mobility and Affirmatively Furthering Fair Housing.

Program 3 – Encourage and Facilitate Accessory Dwelling Units and Small Homes. The revisions made to program 3 should have outlined the City’s intention to make the development of ADUs affordable to low-income families, specifically as a place-based revitalization strategy in order to AFFH. The City must also provide a definition for “small homes” that clearly explains how they differ from ADU’s. Furthermore, the City should do more than “subsidize” ADU inspection fees and keep the original language to “waive” these fees. Lastly, the revisions made to the objective should not exclude the development of ADUs for extremely-low and lower-income families and maintain its original goal to facilitate the development of 50 ADUs for these households while also keeping the revised goal to make 50 small homes available for lower-income households.

Program 9–Use of Sites in Previous Housing Elements. Government Code section 65583.2(c) requires that non-vacant sites identified in at least one prior housing element and vacant sites identified in at least two prior housing elements must be rezoned “to allow residential use by right for housing developments in which at least 20 percent of the units are affordable to lower income households.” Because the City failed to adopt a housing element that substantially complies with Housing Element Law by April 29, 2024 (120 days from the City’s statutory deadline to adopt), it must complete that rezoning within one year of the City’s statutory deadline to adopt. Gov. Code 65583.2(c). Accordingly, the timeframe for this Program must be amended to ensure that rezoning will be complete by December 31, 2024.

Program 11 – Incentives for Housing Development. Although the program to incentivize housing development was revised to include access to resources “for lower-income residents, and promote racially and socially inclusive neighborhoods,” when working with multifamily and affordable housing project developers it still lacks a clear commitment towards actions taken to complete the program. Furthermore, the City should do more than “consider additional incentives” and provide additional incentives as well as list all available incentives on a publicly accessible database. Lastly, in order to promote housing mobility and AFFH, the city must do more than “Consider incorporating the location of affordable housing in High Resourced Areas” and ensure the placement of affordable housing in these areas.

Program 14 – Partnerships with Affordable Housing Developers. Program 14 should be further revised to state that the City will “identify site opportunities for affordable housing in higher-resourced areas and areas with higher median incomes to reduce concentrations of poverty and improve access to resources.” Furthermore, when convening stakeholders to identify ongoing regulatory and funding barriers to affordable and mixed-income development, the City should include lower income households, special needs households and individuals in protected classes. (HCD AFFH Guidance pg. 20). The program should be amended to include strategies to combat NIMBYism, which has stalled and terminated several affordable housing projects in high resourced areas. The quarterly convenings should also be used to provide stakeholders with a report on the success of the program. Additionally, the time frame should be changed to bi-annual reporting throughout the planning period, bi-annual reporting review and assessment of potential funding opportunities, and quarterly convenings with stakeholders. In order to truly integrate communities this program must be amended. (HCD AFFH Guidance pg. 12).

Program 17–Surplus Public Lands. The City should review and revise Program 17 to ensure that it complies with the Surplus Land Act. HCD’s just-released [Updated Surplus Land Act Guidelines \(Aug. 1, 2024\)](#) can be a helpful resource. For example, the current Draft replaced 15 percent with 10 percent in describing the minimum percentage of affordable units in developments built on surplus land, but the Act requires 15 percent affordable units in projects of 10 or more units. *See* HCD SLA Guidelines, p. 28. Additionally, the reference to evaluating

surplus sites for “other community-serving uses” prior to disposition under the SLA is ambiguous but could be read to indicate that the City plans to attempt to use surplus City-owned sites for commercial or other uses in violation of the SLA.

Additionally, because the City has identified so many City-owned sites in its site inventory, this program should include proactive steps, beyond the base requirements of the SLA, to facilitate affordable housing development on those sites, especially sites in higher-opportunity areas. The list of potential sites, disposition and disposal strategy, and rezoning of city-owned sites are good first steps. *See* Draft 1E-1-23. Since land acquisition is one of the biggest challenges for affordable developers, these sites represent a rare and valuable opportunity for the City to facilitate the development of much-needed affordable housing.

Program 19 – Home Buyer Assistance. This action commits the City to “strive to support a total of 40 low- and moderate-income households with home purchases during the planning period.” These commitments lack specificity and do not ensure a beneficial outcome within the planning period. Without a complete and comprehensive AFH, it is impossible to create a meaningful and impactful Home Buyer Assistance program since they failed to analyze constraints, access to opportunity, past programs etc. We reiterate that this program must include additional commitments to ensure that low-income residents, undocumented residents, residents who speak languages other than English, and residents in racially and /ethnically-concentrated areas of poverty (R/ECAPs) have the opportunity to benefit from these funds. If the City had done their due diligence in engaging the community, they would have heard from residents that during the 5th Cycle planning period, residents without social security numbers or who faced language access barriers were unable to apply for the City’s homebuyer assistance program.

The City must amend this program, possible solutions include: ensuring that low-income residents are knowledgeable about the programs, undocumented residents are able to successfully apply for this program, including closing costs as part of funding packages. In order to ensure that residents living in R/ECAPs are targeted, we recommend the City create annual reports listing how many applicants were assisted, outreach efforts made and whether they live in R/ECAPs. Due to the concerns outlined above, the program as currently implemented and drafted fails to adhere to HCD’s AFFH Guidance that “actions must be specific with timelines, discrete steps and measurable outcomes to have a ‘beneficial impact’ during the planning period.”

Program 20 – Housing Choice Voucher Incentive Program. The revisions made to Program 20, Housing Choice Voucher Incentive program, did not incorporate meaningful actions with specific timelines and measurable outcomes that would result in a “beneficial impact.” The City should take steps to ensure that voucher holders face no discrimination or limitations. The City should do more than conduct HCV outreach to developments in high resourced areas and revise

this program to incorporate targeted community outreach and HCV advertisement in low-resourced to promote Housing Mobility throughout the City. Please refer to our previous letter, **Attachment A** for further recommendations regarding how to limit HCV discrimination.

Program 22 – Housing Rehabilitation. The current program fails to meet its AFFH duty. It does not address the needs of extremely low income residents and vulnerable populations such as undocumented residents. This program fails to address equity concerns, disparities, and neglects the needs of marginalized communities particularly in R/ECAP; and it fails to incorporate strong actions and concrete steps. The Draft states that it will aim to connect at least 80-120 lower-income households with rehabilitation resources during the planning period and complete a third of these in areas of concentrated poverty.” This is not enough. Proper AFH analysis would have shown that the most impacted are extremely low income households and therefore these should be prioritized with at least half or more than half. Additionally, once again we ask that this include rehabilitation in response to the negative effects of climate change such as weatherization, cooling mechanisms, like heat pumps, air conditioning, insulation and other cooling assets to increase resilience to extreme heat as part of the rehabilitation program.

Program 23 – Comprehensive Code Enforcement. Unfortunately, this program as written continues to fail to address critical housing issues since the last housing element cycle. The program should be revised to include actions around legally holding landlords accountable for retaliation, unlawful evictions, and harassment towards tenants who file code enforcement complaints such as a commitment to adopt a tenant anti-harassment ordinance. As stated, we recommend that the City adequately analyze code enforcement’s procedures and incorporate tenant feedback for a comprehensive code enforcement program.

Program 26 – Fair Housing Services. This program is vague. Although it states that the goal is to “mitigate impediments to fair housing opportunities throughout the city, with an emphasis on supporting the needs of populations and neighborhoods most impacted by fair housing issues,” it fails to establish timelines and concrete steps on how the City will achieve this. A full AFH analysis would have helped identify the needs of R/ECAP as well as strong milestones, objectives and timelines. Housing discrimination has been a pervasive issue in the City of Fresno and only those who have been impacted can inform this program, for example additional legal representation, landlord education on fair housing law, enforcement mechanism against bad landlords etc.

Program 27 – Environmental Justice. The City is already required to work on their Environmental Justice Element. In order to transform R/ECAP into areas of opportunity (AFFH Guidance, p.15), this program should focus on place-based strategies in R/ECAP areas such as Southwest, South Central and Southeast Fresno. Such actions must include land use changes to rezone industrial uses away from sensitive receptors, prohibit siting of polluting uses in

communities identified as R/ECAP and adding a moratorium on warehouses in these areas. As written, this current program and its actions fail to affirmatively further fair housing. (AFFH Guidance, p.54).

Program 28 – Equitable Community Investments. This program states that the City has “initiated multiple efforts to incentivize investment in established areas rather than in new growth areas,” they will focus on areas in the General Plan Figure IM-1 which have been identified as areas of priority for incentives and that they closely align with census tracts designated as areas of greatest need (high segregation & poverty, low resource, and moderate resource).” Unfortunately, the map only highlights areas, there is no analysis beyond the map. We strongly recommend that the City amend this program to prioritize South Fresno neighborhoods explicitly. South Fresno is identified as a R/ECAP, residents have continuously called for and advocated for increased investment for decades to support healthy housing, infrastructure, amenities and services. The program must include actionable items and strong commitments in order to comply with its duty to affirmatively further fair housing.

Program 29 – Equitable Engagement. The goal of this program is to “expand outreach and public education strategies to increase engagement amongst historically underrepresented populations and residents with the greatest need.” This action contains non-specific commitment and fails to identify measurable outcomes with respect to equitable engagement. This program is identified as one that will improve the quality of life and access to opportunities in R/ECAPs but fails to identify how exactly it will accomplish this.

Program 30 – Workforce Development. Although we appreciate changes to this program, we strongly encourage the City to include a program that targets the unhoused community. Residents have identified a systemic issue within the unhoused community when they receive keys to their new unit, where once they transition out of the shelter they are sent back out into communities, expected to get a job and maintain it without proper training on how to apply for a job, keep it and budget for their expenses. As written this program fails to integrate R/ECAP and R/ECAA.

Program 33 – Mobile Home Parks. Although we appreciate language that acknowledges the additional need of this specific group, it still falls short in fulfilling AFFH requirements. Once again, we request that the Draft address the need for heat resiliency such as weatherization and insulation especially to older mobile home parks by funding a mobile home park renovation fund for all mobile homes. This fund will help low income families with issues that they need to address due to inspection violations or other habitability concerns. The Draft must also include HCD’s Manufactured Housing Opportunity & Revitalization Program (MORE) as an additional funding source. These funds can be used for the acquisition, conversion to resident organization ownership, rehabilitation, reconstruction and replacement of mobilehome parks, as well the

remediation of health and safety items of both parks and individual mobile homes.³¹

Additionally, this program should include a commitment to penalize and fine mobile home park owners who are not providing adequate and safe conditions for their tenants. The 5th Cycle Housing Element included Program 10A, a similar program, that directed the City to “Conduct and publish an 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.” The City must include an action in this program that finalizes this report, releases it for public input and implements MHP resident needs. The City must amend this program to fulfill their responsibility to AFFH, support quality of life and access to opportunity improvements for all mobilehome parks in Fresno.

Program 34 – Eviction Protection Program. In 2021, the City created their Eviction Protection Program (EPP) in response to communities’ advocacy for a comprehensive Right to Counsel Program. Despite heavy resident support, the City opted to establish a less comprehensive program which failed to address specific community needs. During this year’s budget hearing, the City shared data going back to 2021 showing the total number of tenants the City has supported - a total of 2,199 since the inception of the program; and a majority of them live in District 3, which is primarily a R/ECAP area. The data shows that the program has done the following:

- 364 people by preventing unlawful detainers filed,
- 597 People had their move-out time extended
- 107 people had the money owed to a landlord reduced
- 18 families helped with the Cash for Keys program
- 267 tenants remain in the home
- 293 Settlement with the landlord
- 580 Unlawful Detainers were prevented on the tenant's record
- 25 families had unlawful detainers removed from the record
- 18 Families, stopped lock-outs
- 186 people's unlawful detainers were successfully dismissed

Currently the City has allocated \$2 million to continue the program. Unfortunately, this is an inadequate response to vulnerable communities’ needs. The Draft’s revisions soften the commitment to this program by striking “implement” and replacing it with “seek funding” and notes that funding will end in 2025. We strongly recommend that the City improve the EPP by

³¹ California Department of Housing and Community Development. (2024). Manufactured Housing Opportunity & Revitalization Program (MORE). <https://www.hcd.ca.gov/grants-and-funding/programs-active/manufactured-housing-opportunity-and-revitalization-program>

adopting and implementing a comprehensive Right to Counsel program,³² create a permanent source of funding, and increase the annual funding for this program. The City can also include HUD's Eviction Protection Grant Program (EPGP) as an additional source of funding. This grant will fund nonprofit organizations and government entities to provide no cost legal assistance to low-income tenants at risk of or subject to eviction.³³ This City must improve this program in order to comply with AFFH law.

Program 36 – Homeless Assistance. Although we appreciate the Draft's amendment to establish a pilot program funded by Encampment Resolution Funding (ERF) to resolve the experience of unsheltered homelessness for people residing in encampments, we strongly urge the City to host additional workshops to engage directly with the unhoused community to include much needed programs such as:

- Providing mental health outreach by doing home visits, trainings on how to deal with family members who have severe mental illnesses, as well as offering educational tools such as pamphlets and other services
- Helping newly housed individuals who show symptoms of hoarding issues, continued care is essential for a recently housed individual in order for them to continue living in their unit and not face eviction
- Currently, the City provides stationary showers in locations where few unhoused individuals live. We recommend adding mobile bus showers, along with an outreach team to assist the unhoused community throughout the City
- Mental health services provided longer than 60 days. The City can collaborate with the County to create such a program
- Open detox centers that allow an individual to stay 24 hours a day, 7 days a week without a 10 day limit in order for them to seek assistance anytime of the day or night
- Create an advisory board or an oversight committee with diverse stakeholders that include a majority of individuals that work directly with the unhoused community for accountability and transparency regarding the decision making process for all homelessness funds
- Trainings for City staff that work primarily with the unhoused community that have mental health and substance abuse illnesses
- Create free sober living with job training and housing navigation for a year
- Use of emergency funds to support the outreach and care for unhoused children/youth with a response of 24 hours.

³² The Fresno Right to Counsel Coalition. (2020) Right to Counsel Proposal. Retrieved from: <https://leadershipcounsel.org/wp-content/uploads/2021/01/Fresno-Right-to-Counsel-Coalition-Community-Proposal.pdf>.

³³ Office of Policy Development and Research. (2024). Eviction Protection Grant Program. Retrieved from: <https://www.huduser.gov/portal/eviction-protection-grant.html>

- Development and implementation of shelter standards for all City-supported shelters to provide due process for shelter residents facing “exits” from shelters and to ensure that shelters are providing reasonable accommodations to individuals with disabilities.

Additionally, the Draft element lacks policies and programs that have been uplifted by community residents for decades, also identified in LCJA’s August 2023 comment letter (see attachment A). We strongly urge the City to incorporate community-identified programs listed below into the Draft before submitting to HCD.

- **Reinstate the Emergency Rental Assistance Program and Incorporate a Rent Stabilization and Just Cause Protection Ordinance.** Once again we must reiterate that the data from Figure 1E-3.31: Percent of Renters Overpaying, Fresno, 2014-2019 fails to capture data from the housing crisis that ensued after the pandemic. According to the U.S. Census Bureau’s 2021 American Community Survey data, 52% of all Fresno tenants renting are cost burdened and 92% of the 18,259 households that earn less than \$20,000 annually are rent-burdened.³⁴ The need for an Emergency Rental Assistance was created to respond to the needs of all residents but particularly those living in R/ECAP communities. This program was removed entirely from the July Draft to the November Draft and remains excluded in this revised Draft, even after continuous advocacy from residents. More than 19% of all households are cost burdened and more than 20% of all households are severely cost burdened. Additionally, the increase in rents are only exacerbating the housing crisis. This program would help R/ECAP communities as a placed based strategy.

Additionally, we recommend the inclusion of a Rent Stabilization and Just Cause Protection Ordinance, which will protect existing residents from displacement and preserve housing choice and affordability. (HCD AFFH Guidance pg. 74). We recommend the following:

- The City will implement a Rent Stabilization and Just Cause ordinance by December 2025 to protect tenants from unreasonable rent increases and unjust evictions, and develop a rental registry.
 - The City will establish a community workgroup to develop a rent stabilization and just cause ordinance draft by Winter 2025.
 - The City will conduct at least one community workshop to inform the development of the ordinance by Spring 2025.
 - The City will release a draft ordinance for public review by Summer 2025.
 - The City will adopt the ordinance by December 2025.

³⁴ Montalvo, M. (2024). Fresno Family Spends Over 30% of Its Income on Housing. Would Rent Control Change That? *The Fresno Bee*. Retrieved from: <https://www.fresnobee.com/news/local/article276839841.html>.

- **Inclusionary Zoning Ordinance.** In order to replace segregated living patterns with truly integrated and balanced living patterns and comply with local fair housing laws, the City must add stronger programs to their Draft. (HCD AFFH Guidance pg. 30). We strongly recommend that the City create and implement an Inclusionary Zoning Ordinance. Per our analysis on governmental and non-governmental constraints and AFFH, the City's inadequate assessment does not provide sufficient information to create strong programs. Based on decades of experience, residents understand and want the City to adopt an Inclusionary Zoning program that would help the City reach its VLI and LI household units for this planning period. NIMBYism is a top constraint to build housing in Fresno, for example the *Martinez v. City of Clovis* case highlighted this issue. Advocates were instrumental in winning this case where the court required sites to be rezoned to accommodate the RHNA for lower income housing or for the RHNA carried over from the prior planning period must be made available at minimum densities as well as being available for development by-right...the Court decided that the City's failure to zone for multi-family housing also violated the City's AFFH duty.³⁵
- **Establish a safe maximum indoor air temperature for residential dwellings.** The Draft failed to complete an adequate AFFH, site inventory analysis and a disaster-driven displacement risk analysis that assessed the impact of climate change on vulnerable communities particularly R/ECAP. As climate change exacerbates the intensity and longevity of heat waves, the City must take swift action to ensure the health and safety of all residents, but particularly at-risk populations such as children, senior citizens, people with disabilities, people with section 8, and people with autoimmune diseases. Therefore, we recommend the City include a program to establish a safe maximum indoor air temperature threshold for residential dwellings and a program to help facilitate the provision of cooling systems, such as heat pumps.
- **Urban Greening.** We strongly recommend the Draft include a program that addresses urban greening in order to transform R/ECAP into areas of opportunity. Urban greening should be used to create buffer zones for residential dwellings that are surrounded by polluting land uses to mitigate health impacts.
- **Citing Industrial Uses.** In order for the City to fulfill their AFFH duty, they must incorporate place-based strategies to encourage community conservation and revitalization. (AFFH Guidance, pg. 73). We recommend that the City include a program that limits placing housing projects away from heavy, light industrial uses or phasing out light/heavy industrial zones near R/ECAP. This will address the negative environmental, neighborhood, housing and health impacts associated with siting and operation of land

³⁵ Insert link to case.

uses such as industrial, agricultural, waste storage, freeways, energy production, etc. in disadvantaged communities. (AFFH Guidance, pg. 73).

- **Impact Fees.** We urge the City to include a program that places impact fees into a community benefit fund when polluting land uses and practices are placed near housing. The community benefit fund will create revenue and should be managed by the community directly impacted to dictate where funds will be allocated in order to transform R/ECAP and fulfill the City's AFFH duty.
- **Developing Public Health Impact Reports** for new industrial development in order to understand existing public health disparities and the potential of those conditions worsening as a result of industrial development, particularly in R/ECAP. Public health agencies should be resourced to support this analysis. The findings of these reports should be available publicly and be included in permit approval processes and other key decision-making milestones.
- **Establish a Cargo/Freight Prohibition and Revenue Tax** to directly fund community-based housing and projects in the neighborhoods most negatively impacted by years of environmental toxicity caused by freight.
- **Incorporate Complete Streets principles** into all transportation projects at all phases of development, including planning and land use decisions, scoping, design, implementation, maintenance, and performance monitoring.
- **Establish a Housing Element Implementation Committee** to oversee the timelines and implementation of each program and policy. The committee should be composed primarily by tenants, low-income homeowners, and at-risk populations to ensure implementation meets the needs of most at-risk communities.

Including the program recommendations listed above will ensure the City reaches state law compliance on their Housing Element and ensure programs and policies have clear timelines, metrics and Affirmatively Further Fair Housing. We reemphasize the need for the City to identify funding sources for all programs to ensure they will effectively be implemented in the upcoming years.

VII. Conclusion

The undersigned organizations welcome the opportunity to continue collaborating on the City of Fresno Housing Element Update to ensure the housing needs of all residents in the City are met in the upcoming years. Housing is an essential component of everyday life and tenants

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who live in fear of losing their homes suffer tremendously, not just economically, but mentally and physically as well. California is currently facing a devastating housing crisis and the City of Fresno has a responsibility to ensure residents throughout the City live in safe, equitable and healthy housing.

Respectfully,

/s/

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/s/

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December 12, 2023

Michelle Zumwalt, Architect
Planning and Development Department, City of Fresno
2600 Fresno Street, Room 3065
Fresno, CA 93721

Sent via Email

RE: City of Fresno's Revised Public Review Draft 2023–2031 Housing Element

Dear Ms. Zumwalt:

Leadership Counsel for Justice and Accountability (LCJA) writes this comment letter in collaboration with the Public Interest Law Project (PILP) and residents of South Fresno neighborhoods impacted by the severe lack of decent quality, affordable, and permanent housing options, gaping disparities in access to opportunity in Fresno, and continued refusal of the City of Fresno (the City) to meaningfully engage with residents, especially those in disadvantaged communities, and incorporate their priorities into city planning and policies. This comment letter addresses the November 2023 Revised Draft Appendix 1-E: City of Fresno in the Fresno Multi-Jurisdictional 2023–2031 Housing Element (November Draft).

LCJA works alongside the most impacted communities to advocate for sound policy and eradicate injustice to secure equal access to opportunity regardless of wealth, race, income, and place. Through community organizing, research, communications, legal representation, and policy advocacy, LCJA influences land use and transportation planning, shifts public investment priorities, guides environmental policy, and promotes the provision of basic infrastructure and services. PILP works statewide to support local legal programs that address issues involving housing, land use, public benefits and homelessness. PILP has been providing substantive training, litigation support, and technical assistance in these areas for over twenty-five years.

The following recommendations are based on our experience to push for transformative community-led and identified solutions to elevate and advance their priorities for safe, affordable housing options and fair housing choices. The Housing Element is an important piece of planning our communities and solving our housing crisis together. Further, the State of California has recently strengthened the laws governing the Housing Element. With laws such as A.B. 686 (Santiago, 2018) and A.B. 1397 (Low, 2017), we expect this Housing Element to be robust,

meaningful, and indicative of solving our housing crisis. As always, we are willing to partner and work alongside the City to ensure that these requirements are fulfilled and even exceeded in order to create the change we want to see in the San Joaquin Valley.

Our comments below highlight further steps and actions the City must take to meet state Housing Element Law, Affirmatively Furthering Fair Housing (AFFH) law, and state and federal civil rights law requirements. We have also attached previous comment letters that we have collaboratively written with other community-based organizations (CBOs) regarding the City's 6th Cycle Housing Element (2023–2031) identified as Attachments A,¹ B,² and C.³ While the November Draft does include some revisions that address certain comments in our previous letters, many issues we and community members previously raised remain unaddressed. In short, the November Draft fails to meet Fresno's housing needs and relevant state statutory requirements in several different ways and the City must undertake the following:

- **Meaningful Public Participation**

- Conduct meaningful and varied community engagement, targeted outreach and consideration of the unique communities and populations served, especially communities with protected characteristics, before the final adoption of the Housing Element. *See* Gov't Code § 65583(c)(9); **AFFIRMATIVELY FURTHERING FAIR HOUSING: GUIDANCE FOR ALL PUB. ENTITIES & FOR HOUSING ELEMENTS**, CAL. DEP'T OF HOUSING & CMTY. DEV'T 18 (2021) [hereinafter HCD AFFH Guidance].
- Provide for meaningful ongoing public participation and incorporation of community priorities to facilitate implementation of housing-related policies throughout the 6th Cycle planning period. *See* Gov't Code § 65583(c)(9); HCD AFFH Guidance at 18.

- **Adequate Incorporation of Public Comments**

- Summarize all comments received—this includes information gathered in stakeholder consultations, study sessions, community workshops, the community survey, any public comments and comment letters received during city council meetings and received via email. *See* HCD AFFH Guidance at 22.
- Discuss the process the City used to prioritize the housing issues raised across all comments. *See id.*

¹ Comment Letter from Leadership Couns. for Just. & Accountability et al. to the Fresno Cnty. Bd. of Supervisors, the Cities of Fresno Cnty. City Councils, & Deputy Dir. Kristine Cai of the Fresno Council of Gov'ts (Oct. 3, 2022) (on file with author) [hereinafter Attachment A].

² Comment Letter from Leadership Couns. for Just. & Accountability et al. to Mayor Jerry Dyer, Fresno City Councilmembers, & Michelle Zumwalt (Aug. 16, 2023) (on file with author) [hereinafter Attachment B].

³ Comment Letter from Pub. Int. L. Project & Leadership Couns. for Just. & Accountability to Mayor Jerry Dyer, Fresno City Councilmembers, & Michelle Zumwalt (Aug. 16, 2023) (on file with author) [hereinafter Attachment C].

- Explain how the prioritized housing issues were incorporated into the Housing Element and acknowledge the housing issues raised in public comments that were not incorporated into the Housing Element and why. *See id.*
- **Analyze and Prioritize Constraints and Contributing Factors to Fair Housing Issues**
 - Analyze and prioritize governmental constraints on developing affordable housing. *See Gov't Code § 65583(c)(3); HCD AFFH Guidance at 52.* Ultimately, an analysis should be thought of as a detailed and critical questioning of anything complex in order to understand its nature, determine its features, and assess its progress or fitness. *See discussion on the definition of the word analysis infra note 9.* Specific analyses include, but are not limited to:
 - Impacts of current and planned zoning regulations.
 - Risks to publicly assisted affordable housing and distribution.
 - Impacts of the lack of tenant protections on the maintenance of housing.
 - Impacts of the implementation and enforcement of the building code.
 - Delays or restrictions in development resulting from required onsite/offsite improvement standards.
 - Analyze, *see discussion on the definition of analysis infra note 9*, and prioritize nongovernmental constraints that delay developing affordable housing. *See Gov't Code § 65583(c)(3).* Specific analyses include, but are not limited to:
 - Impacts of NIMBYs.
 - Risks of climate change, extreme weather, pollution, water instability, infrastructure development and other environmental constraints.
 - Effects of market forces and availability of financing.
 - Significance of land and construction costs.
 - Analyze, identify, and prioritize all fair housing issues and contributing factors—considering community input, the Local Assessment of Fair Housing (AFH), and the sites inventory—especially considering the addition of data in the November Draft providing evidence of more housing issues but a failure to identify any new contributing factors. *See HCD AFFH Guidance at 25.*
 - Justify the implementation programs with meeting the needs addressing the contributing factors to fair housing issues—this means linking the contributing factors to policy and meaningful actions. *Gov't Code § 65583(c)(10)(A)(iv); see HCD AFFH Guidance at 12.*
 - Analyze how 5th Cycle Housing Element programs have continued segregation and not adequately facilitated integration, healthy communities, and access to opportunity. *Gov't Code § 65583(c)(10)(A)(iii); see HCD AFFH Guidance at 46.*
- **Adequate Sites and AFFH Compliance**
 - Analyze the viability of non-vacant sites and large sites. *See Gov't Code §§ 65583(c)(1); 65583.2; HCD AFFH Guidance at 12.*
 - Provide evidence of approval during the projection period credited against the Regional Housing Needs Assessment (RHNA). *See Gov't Code § 65583(c)(1).*

- Analyze environmental constraints on the overall availability of inventory sites. *See* Gov't Code § 65583(5).
- **Adequate Implementation Programs**
 - Add needed implementation programs that are reflective of community priorities—this includes priorities from a recent LCJA Community Meeting on December 5, 2023, previous comment letters, and public hearings and workshops. *See* Gov't Code, § 8890.50(a)(1), (b), (d); Gov't Code § 65583(c).
 - Revise implementation programs which are noncompliant with the Housing Element and AFFH laws regarding specific, concrete, enforceable actions with measurable outcomes, milestones, and timelines. *See* Gov't Code, § 8890.50(a)(1), (b), (d); Gov't Code § 65583(c).
 - Strengthen implementation programs to better constitute meaningful actions. *See* Gov't Code, § 8890.50(a)(1), (b), (d); Gov't Code § 65583(c).

I. The City Fails to Facilitate Meaningful Public Participation Infrastructure in Its Housing Element Practices to Promote Sustainable Community Involvement.

The preparation, adoption, and implementation of a housing element requires a diligent effort to include all economic segments of the community. Gov't Code § 65583(c)(9). The element must describe meaningful, frequent, and ongoing community participation, consultation, and coordination that is integrated with the broader stakeholder outreach and community participation process for the overall housing element. Gov't Code § 65583(c)(9)–(10); Gov't Code § 8899.50(a)–(c). The City must proactively reach out to individuals and organizations that represent lower income households, people in protected classes, and households with special needs to develop open and mutual communication. HCD AFFH Guidance at 18. The City's November Draft does not demonstrate compliance with the statutory public participation requirements. A short outline of these issues includes:

- A failure to demonstrate meaningful and varied community engagement and effective meetings.
- A lack of effective targeted outreach and consideration of the unique communities and populations served.
- A lack of regard for ongoing public participation and consideration of residents' housing issue priorities.

As the CBO October 2022 Comment Letter highlighted, the City's public participation efforts should proactively and broadly be conducted through various methods⁴ to ensure access and

⁴ The California Housing and Community Development Department (HCD) provides guidance on approaches to public participation, including the following:

Be proactive in reaching out to the community. Visit neighborhoods and participate in local events.
Establish an ongoing housing-element update and implementation committee Use direct mail,

participation (e.g., holding workshops in disadvantaged communities and conducting effective outreach for them; conducting targeted outreach to special needs populations/protected classes; advertising opportunities to participate in and provide feedback on the housing element update in non-English language print media, radio, and television, including media in Spanish, Hmong, and other languages spoken by Fresno residents). See Attachment A at 2–4. Successful public participation is important because a diverse cross section of the population can be engaged in defining the housing problem and in crafting solutions that work for everyone in the community.⁵

A. The Housing Element is Not Informed by Meaningful or Varied Engagement

The City lacks the ability to “maintain integrity” with the community by failing to “conduct effective meetings and establish rapport early” and by treating public participation requirements as an opportunity to “‘rubber stamp’ a predetermined objective or policy.”⁶ While the City did conduct a series of community workshops⁷ after its release of the July Draft, there is no evidence that this public engagement was meaningful for the community or provided an avenue to translate any of their priorities into concrete actions. The City did collect a lot of information, noting that these workshops provided almost two hundred comments,⁸ but there seems to be no analysis (defined by Merriam-Webster’s Dictionary as “a detailed examination of anything complex in order to understand its nature or to determine its essential features : a thorough study”),⁹ discussion, or even

radio ads, and local print or electronic media (such as neighborhood newsletters) to communicate opportunities to engage in the housing-element process. Always consider the composition of your target audience and use communication tools that are language-appropriate, culturally sensitive, and grade-level readability. Use creative methods to communicate the importance of all stages of the housing-element process. Use attractive direct-mail brochures and surveys to capture information. Consider mobile resources . . . Consider having barbeques or set up information displays at community events to enhance interaction with the public. *Public Participation*, CAL. DEP’T OF HOUSING & CMTY. DEV.: BLDG. BLOCKS: A COMPREHENSIVE HOUSING-ELEMENT GUIDE, <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/public-participation> (last visited on Dec. 7, 2023).

⁵ *Public Participation*, *supra* note 4; see also Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42272, 42293–94 (July 16, 2015) [hereinafter HUD’s AFFH Rule] (describing how all localities “shall ensure that all aspects of community participation are conducted in accordance with fair housing and civil rights laws” and that “community participation processes must consider the populations served, and where they are located, and they must choose public participation approaches that will reach the populations served”).

⁶ *Public Participation*, *supra* note 4.

⁷ The City conducted six community workshops between July 20 and August 9, 2023. See November Draft at 1E-i, 1E-6-2, 1E-6-3.

⁸ *Id.* at 1E-6-14.

⁹ It is important to note that an analysis is not a mere summary or description. It involves questioning a topic in more detail. Ultimately, an analysis should be thought of as a detailed and critical questioning of anything complex in order to understand its nature, determine its features, and assess its progress or fitness. Merriam-Webster’s Dictionary definition of analysis is: “a detailed examination of anything complex in order to understand its nature or to determine its essential features : a thorough study.” *Analysis*, MERRIAM-WEBSTER: MERRIAM-WEBSTER.COM DICTIONARY, <https://www.merriam->

acknowledgment of the importance of this feedback, following up with residents, or any effort to show that the City took the comments seriously and incorporated them into the November Draft.¹⁰ Community participation “means a solicitation of views and recommendations from members of the community and other interested parties, a consideration of the views and recommendations received, and a process for incorporating such views and recommendations into decisions and outcomes.” HCD AFFH Guidance at 64. Not communicating with the community about what happened to their feedback, where you are in the process and what final decisions are made can easily break the trust you are working to build through a robust community engagement process.¹¹

Additionally, the City provided limited direct engagement methods: community workshops and sending out a community survey.¹² The main source of direct engagement with residents was workshops and this does not constitute varied or creative methods to engage the community.¹³ Community members need to be engaged through a variety of forms so that residents who have less capacity to attend traditional meetings or are not as civic-minded have a chance to make their voices heard.¹⁴ We recommend focusing on building rapport and trust in the community, providing other forms of engagement outside of community meetings (e.g., guided tours of housing developments/sites, mobile sources, and attending community events), following up with residents after this engagement, and creating safe and accommodating spaces for community-focused public meetings.

The City should engage in more public engagement before its January 31, 2024 deadline for its adopted 6th Cycle Housing Element in order to be compliant with the statutory mandates under Government Code section 8890.50(a)(1), (b) and (d) and Government Code section 65583(c)(9). This engagement must be varied and meaningful. We recommend focusing on building rapport and trust in the community, providing other forms of engagement outside of community meetings (e.g.,

webster.com/dictionary/analysis (last visited Dec. 10, 2023). For further clarification, the word examine is defined as: “to inspect closely . . . to test by questioning in order to determine progress, fitness, or knowledge.” *Examine*, MERRIAM-WEBSTER: MERRIAM-WEBSTER.COM DICTIONARY, <https://www.merriam-webster.com/dictionary/examine> (last visited Dec. 10, 2023). And finally, the word inspect is defined as: “to view closely in critical appraisal : look over.” *Inspect*, MERRIAM-WEBSTER: MERRIAM-WEBSTER.COM DICTIONARY, <https://www.merriam-webster.com/dictionary/inspect> (last visited Dec. 10, 2023).

¹⁰ See *Public Participation*, *supra* note 4 (describing how localities should “[f]ollow up after each event. After holding a public forum or activity, establish a procedure to follow up with concrete action to address the community’s concerns. Be sure that all information relevant to the process is made available, either at regular meetings or by posting to a website. This will help to establish and maintain the jurisdiction’s credibility”).

¹¹ *Id.* provides helpful links to additional public participation resources; for one helpful resource, see *Pillar 3: Engage*, INST. FOR LOC. GOV’T: HOUSING & PUB. ENGAGEMENT TOOLKIT, <https://housingtoolkit.ca-ilg.org/post/pillar-3-engage> (last visited December 7, 2023).

¹² November Draft at 1E-6-1.

¹³ See *Public Participation*, *supra* note 4 (giving examples of creative engagement methods such as: mobile resources, barbeques, information displays at community events, guided tours of market-rate and affordable developments and sites being considered for housing development, training and education workshops, and computer simulations).

¹⁴ *Pillar 3: Engage*, *supra* note 10.

guided tours of housing developments/sites, mobile sources, and attending community events), following up with residents after this engagement, and creating safe and accommodating spaces for community-focused public meetings. We also recommend maximizing the efficiency of meetings by having the Housing Division promote involvement of all appropriate local departments to ensure interdepartmental issues are addressed in a comprehensive and efficient manner.¹⁵

B. The City Failed to Facilitate Targeted and Inclusive Outreach and Meetings.

Government Code section 65583(c)(9) requires that the local government shall make “a diligent effort . . . to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.” In addition, the Federal Department of Housing and Urban Development’s (HUD) AFFH 2015 Final Rule—which was “essentially preserve[d]” by the passage of California’s A.B. 686, HCD AFFH Guidance at 13—states the importance of localities outreach efforts, saying they should “tailor outreach efforts to ensure effectiveness given the populations in their areas . . . that will provide for meaningful actions . . . [Localities] should employ communications methods that are designed to reach the broadest audience, and that are conducted in accordance with fair housing and civil rights laws, including Title VI of the Civil Rights Act of 1964.” HCD AFFH Guidance at 16; 80 Fed. Reg. at 42295.

The City has failed to demonstrate adequate outreach and meetings inclusive of all sectors of the population. For the July/August community meetings, the City states its only outreach conducted was that city staff sent out four citywide email blasts and four social media posts. November Draft at 1E-6-13. The City provides no information on the adequacy of the outreach to all sectors of the community, providing no explanation regarding the demographics of their followers and subscribers or explanation what languages the information was presented in. This is problematic considering the demographic statistics: 28.3 percent of people, approximately 245,209 individuals, in Fresno County have limited-English speaking proficiency¹⁶ and 15.9 percent of households, approximately 28,000 households, lack access to internet in the City of Fresno,¹⁷ with these realities disproportionately affecting low-income neighborhoods and communities of color.

Furthermore, the City appears to not have offered translation services at the July/August meetings and did not indicate having provided materials at the meetings in multiple languages. November Draft at 1E-6-13 to 1E-6-16. These same issues—lack of adequate outreach, translation services at

¹⁵ *Public Participation*, *supra* note 4 (“For example, the public works department may be able to provide information about infrastructure issues, and the codes department may have information about the condition of the housing stock.”).

¹⁶ FRESNO CNTY. RURAL TRANSIT AGENCY, FRESNO CNTY. RURAL TRANSIT AGENCY’S TITLE VI PROGRAM: UPDATE 2023–2026, at 29 (2023),

<https://www.ruraltransit.org/wp-content/uploads/2023/07/FCRTA-Title-VI-2023-Final.pdf>.

¹⁷ Annalisa Perea, *Fresno Councilmember Seeks to Close the Digital Divide With More Internet Access* / *Opinion*, FRESNO BEE (July 25, 2023, 11:02 AM), <https://www.fresnobee.com/article277638528.html#storylink=cpy>.

meetings, and multilingual presentation materials—seemed absent at the City’s Events #2-10: Community and Stakeholder Meetings (October/November 2022) and Events #11-15: Community Workshops (February/March 2023) as well: The City provided no information or discussion on the availability of these facets in relation to these meetings. *See* November Draft at 1E-6-8 to 1E-6-13. This all stands in stark contrast to the detailed information regarding outreach and language accessibility related to Event #1: Community Workshop (August 31, 2022),¹⁸ in which outreach was described as varied, targeted, and multilingual, the meeting provided translation services and multilingual materials, and the meeting had refreshments and activities for kids. *See* November Draft at 1E-6-3. Thus, the Housing Element indicates that the City engaged in targeted, varied, multilingual outreach for Event #1 and nothing else for the remaining fourteen events. Such meaningful outreach efforts must be continuous throughout the Housing Element process: One meeting reflective of appropriate community engagement standards at the outset of the Housing Element’s development is inadequate and constitutes noncompliance with state law.

The City should engage in more public engagement before its January 31, 2024 deadline for its adopted 6th Cycle Housing Element in order to be compliant with the statutory mandates under Government Code section 8890.50(a)(1), (b) and (d) and Government Code section 65583(c)(9). The engagement must reflect that the City was diligent in its efforts to conduct outreach.¹⁹ We recommend utilizing more methods that will reach disadvantaged communities such as direct mail, radio ads, and local print or electronic media (such as neighborhood newsletters) to communicate opportunities to engage in the housing-element process.²⁰ Another strategy is to specifically target disadvantaged and special needs groups,²¹ many of which are identified in our previous comments. *See* Attachment A at 2–3. The City must always consider the composition of its target audience and

¹⁸ The City notified the community of this meeting with flyers distributed in English, Spanish, Hmong and Punjabi through the Fresno Council of Governments (FCOG) listserv of regional stakeholders and community-based organizations (CBOs), and through the Fresno Housing Authority. November Draft at 1E-6-3. Linguistic interpreters were available for Spanish, Hmong, and Punjabi monolingual speakers. *Id.* Materials in Spanish, Hmong and Punjabi were available in-person at the workshop and online at the project website, accessible via QR code. *Id.* An Eventbrite registration page and Facebook event was created advertising that Spanish, Hmong, and Punjabi language interpretation would be provided, along with refreshments, and activities for kids. *Id.* Flyers were sent out through the Fresno Housing Authority to affordable housing residents. *Id.* City staff distributed the event to the email lists that they maintain for General Plan updates and the Anti-Displacement Task Force. *Id.* Fresno City Community Affairs Representatives distributed the event to Hmong and Punjabi speaking communities. *Id.*

¹⁹ *See* HCD AFFH Guidance at 22 (“Outreach activities intended to reach a broad audience, such as utilizing a variety of methods, broad and proactive marketing, including targeted areas and needs, promoting language access and accessibility for persons with disabilities (which can include effective communication, reasonable accommodations, and remote participation opportunities), and consulting with relevant organizations.”).

²⁰ *Public Participation*, *supra* note 4.

²¹ *Id.* (listing the following as special needs and disadvantaged groups: “tenants in units at risk of conversion to market-rate, health- and human-service providers, homeless-shelter and mental-health service providers, places of worship, seniors, farmworkers, and non- and for-profit affordable housing developers”).

use communication tools that are language-appropriate, culturally sensitive, and grade-level readability.²²

The City must also revise the outreach section of its November Draft to “clearly describe efforts to engage the community throughout the housing element process (e.g., types of outreach, meetings)” related to its outreach methods and adequacy of translation and multilingual services for Community Meetings #2–15.²³ The November Draft must describe who was invited to participate, how they were invited to participate, which groups actually participated, and how the engagement provided an inclusive and accommodating environment for all sectors of the community to participate.²⁴ Finally, the City should anticipate all logistical concerns and address them, including: language barriers, transportation, meeting times, and child care.²⁵

Additionally, the City must revise the November Draft to include an explanation of why there was a lack of participation, particularly from disadvantaged groups, in its public participation process. The HCD AFFH Guidance states: “The element must describe . . . [a] [s]ummary of issues that contributed to lack of participation in the housing element process by all economic segments, particularly people with protected characteristics, if that proves to be the case.” HCD AFFH Guidance at 22. We recommend the City acknowledge its lack of inclusive, varied, and targeted outreach and engagement for its Community Meetings #2–15 to be in compliance with the guidance. Because the Housing Element “was developed without the required community participation or the required consultation,” HCD must find the City of Fresno’s Housing Element is “substantially incomplete.” *See* 80 Fed. Reg. at 42358.

II. The City Fails to Summarize Public Comments Received and How Those Comments Were Considered and Incorporated Into the Housing Element.

The Housing Element must “describe and incorporate meaningful engagement that represents all segments of the community into the development of the housing element, including goals and actions.” HCD AFFH Guidance at 21, 62. The City’s obligations to diligently engage all economic segments of the community and to AFFH through the housing element require more than just seeking input about the contents of the housing element. Gov’t Code § 65583(c)(9); Gov’t Code § 8899.50(a)(1), (b), (d). As discussed in our previous comment letters, inviting residents to provide input but failing to incorporate that input into the housing element undermines the purpose of resident participation in the housing element update, fosters distrust, and fails to constitute “engagement” as required by Government Code section 65583(c)(9) of the Housing Element Law. Attachment A at 4, 6; Attachment B at 1; Attachment C at 2–3, 13. In short, the City must:

²² *Id.*

²³ *Public Participation*, *supra* note 4.

²⁴ *Id.*

²⁵ *Id.*

- Summarize all comments received—this includes information gathered in stakeholder consultations and focus groups, study sessions with planning commissions, city councils, and the County Board of Supervisors, community workshops, the community survey, any public comments received during city council meetings related to the Housing Element, and all comments and comment letters received via email.
- Discuss the process the City used to prioritize the housing issues raised across all comments.
- Explain how the prioritized housing issues were incorporated into the Housing Element.
- Acknowledge the housing issues raised in public comments that were not incorporated into the Housing Element and why.

The HCD AFFH Guidance explains how housing elements must describe “a summary of [public] comments and how the comments are considered and incorporated (including comments that were not incorporated), particularly with changes to the housing element.” HCD AFFH Guidance at 22; *see* 80 Fed. Reg. at 42315, 42356, 42361–62, 42364. The November Draft fails to comply with the statutory and regulatory requirements regarding the summary of comments and reasons they were or were not incorporated. As happened with the July Draft, the November Draft provides some description of public input provided, its summary of public comments generally lacks sufficient detail for the reader to understand the nature of the issue raised or the solution proposed. *See* Attachment C at 2–3. The City fails to explain how it prioritized the housing issues raised in comments during the workshops, public comments received via email, and comment letters submitted by CBOs, including LCJA and PILP’s multiple comment letters. In addition, the November Draft, like the July Draft, fails to demonstrate the City’s incorporation of input provided and to identify input the City chose not to incorporate as required. *See* Attachment C at 2–3.

Thus, the City’s summary of comments—including comments from workshops, the survey, focus groups, comment letters, and comments received via email—explanation for prioritization of housing issues, explanation of how the comments were incorporated into the November Draft,²⁶ and “summary of any comments, views, or recommendations not accepted by the [City] and the reasons for nonacceptance” is grossly inadequate and must be revised. HCD AFFH Guidance at 22; *see* 80 Fed. Reg. at 42356. We recommend the City adhere to the statutory and regulatory requirements regarding the full summary of all comments received and explanation of incorporation (and lack of incorporation) of those comments.

²⁶ The City is expected to “[d]escribe the dates that the housing element and subsequent revisions were made available for public comment and how those comments were incorporated.” *Public Participation*, *supra* note 4.

III. The City Fails to Analyze and Prioritize Constraints and Contributing Factors—including Ways the City’s 5th Cycle Housing Element’s Implementation Programs Fell Short—that Limit or Deny Fair Housing Choice/Access to Opportunity and Negatively Impact Civil Rights.

A. The City Fails to Analyze Governmental and Nongovernmental Constraints

Housing Element law requires an analysis of potential and actual governmental and nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels including land-use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures.” Gov’t Code § 65583(a)(5)–(6); *see* HCD AFFH Guidance at 55; 80 Fed. Reg. at 42275, 42279. While the City did address our previous comment letter’s concerns regarding the parking requirements constraint analysis, Attachment C at 6–7, the November Draft fails to address the remaining constraints analysis issues from our comment letter and remains substantially out of compliance with the statutory and regulatory requirements regarding constraints analysis, justification, and creation of a program to remove those constraints. Gov’t Code § 65583(a), (a)(5)–(6), (c)(3); HCD AFFH Guidance at 52; *see also* discussion on the requirement for a program to remove constraints *infra* Section V.

The November Draft only made nine changes to the entirety of the constraints analysis. While the constraints section does adequately list laws, ordinances, and conditions, it lacks sufficient analysis (*see* discussion on the definition of the word analysis *supra* note 9) how these components could delay, prevent, or negatively affect the maintenance, improvement, or development of housing for all income levels. Any analysis given concludes that the constraints are limited or nonexistent. Listing constraints without analysis, however, will not result in meaningful action. The following references our previous comments that went unaddressed by the City in the November Draft:

- The Housing Element under analyzes the impacts of current and planned zoning regulations²⁷ on housing development. Attachment C at 4–5; *see* *Martinez v. City of Clovis*, 90 Cal.App.5th 193, 271 (2023); HCD AFFH Guidance at 55; 80 Fed. Reg. at 42310.

²⁷ It should be noted that courts have found civil rights violations regarding zoning ordinances with discriminatory effects. *Martinez v. City of Clovis*, 90 Cal.App.5th 193, 271 (2023) (holding a City defendant’s zoning ordinance violated the FEHA and the FHA by having a discriminatory effect—which includes a disparate impact and a segregative effect on protected classes—when housing opportunities were made unavailable for protected classes); *see* 80 Fed. Reg. at 42310 (“Zoning and land use laws that are barriers to fair housing choice and access to opportunity can be quite varied and often depend on the factual circumstances in specific cases, including zoning and land use laws that were intended to limit affordable housing in certain areas in order to restrict access by low-income minorities or persons with disabilities.”).

- The constraint analysis must examine what constraints exist to the development of: supportive housing, transitional housing, single-room occupancy units, and emergency shelters. Attachment C at 5–6; *see* Gov’t Code § 65583(c)(1).
- The Draft’s analysis of at-risk housing is incomplete and under-analyzes the risks to publicly assisted affordable housing and its distribution. Attachment C at 7.
- The City’s lack of tenant protections should be analyzed as a constraint on the maintenance of housing under Government Code section 65583(a)(5). Attachment C at 7.
- The City lacks analysis on nongovernmental constraints:
 - The Draft must include an analysis of Not-In-My-Backyard (NIMBY)²⁸ and other local opposition to affordable housing and housing development. Attachment C at 8; *see* HCD AFFH Guidance at 55.
 - The Draft did not consider environmental constraints as part of its analysis under Government Code section 65583(a)(6). Environmental constraints may include limitations to water supply, nearby pollution, or infrastructure development. Attachment C at 8–9.
 - The Draft failed to include an explanation of the effects of market forces and availability of financing.²⁹ Attachment C at 9.

Upon further review, we find additional places in the constraints analysis that are missing the requisite and required components as put forth by HCD:

- Describe how the building code is implemented and whether the process optimizes predictability for developers.³⁰
- Identify and analyze any local amendments to the state housing law or building code.³¹
- Discuss the type and degree of building code enforcement.³²
- Describe any efforts to link code enforcement activities to housing rehabilitation programs.³³

²⁸ Just this month, in December 2023, “[e]ven at the threatened loss of future state money, the Fresno City Council . . . sided with neighbors who said a hotel conversion near Fresno and Bullard avenues is the wrong place for affordable housing. Edward Smith, *Fresno Council Votes Down Affordable Housing Project in North Fresno*, GV WIRE (Dec. 8, 2023), <https://gvwire.com/2023/12/08/fresno-council-votes-down-affordable-housing-project-in-north-fresno/>. “Opposing councilmembers cited cost concerns and the view that affordable housing would bring blight to the area Advocates for the project, however, accused the detractors of NIMBYism (not-in-my-backyard).” *Id.*

²⁹ *See* HCD AFFH Guidance at 53; 80 Fed. Reg. at 42346 (“A basic tenet of planning and performance management is recognition of ‘external factors’ and other barriers to achieving goals, and which are beyond an organization to control Included in such considerations is the identification of funding dependencies and contingencies.”).

³⁰ *Codes and Enforcement of Onsite/Offsite Improvement Standards*, CAL. DEP’T OF HOUSING & CMTY. DEV.: BLDG. BLOCKS: A COMPREHENSIVE HOUSING-ELEMENT GUIDE, <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/codes-and-enforcement-and-onsite-offsite-improvement-standards> (last visited Dec. 10, 2023) [hereinafter *Improvement Standards*].

³¹ *Id.*

³² *Id.*

³³ *Id.*

- Identify and analyze improvements to street widths, curbs, gutters, sidewalks, water and sewer connections, landscaping, circulation improvement, and any other onsite/offsite improvement required by the jurisdiction that could potentially be a constraint to development of housing. In addition, the housing element must describe any generally applicable level of service standards or mitigation thresholds.³⁴
- Discuss the following nongovernmental constraints:³⁵
 - Land costs — Estimate the average cost or the range of costs per acre for single-family and multifamily-zoned developable parcels.
 - Construction costs — Generally estimate typical total construction costs, including materials and labor.
 - Availability of financing — Consider whether housing financing, including private financing and government assistance programs, is generally available in the community. This analysis could indicate whether mortgage deficient areas or underserved groups exist in the community. The financing analysis may also identify the availability of financing from private foundations (including bank foundations) corporate sponsors, community foundations, community banks, insurance companies, pension funds, and/or local housing trust funds.

Thus, the City is still under-analyzing or omitting required governmental and nongovernmental constraints analyses under Government Code section 65583(a)(5)–(6). Therefore, we recommend the City revise all subsections of its governmental constraints analysis in the November Draft as well as add the entirely missing nongovernmental constraints subsections of analysis.

B. The Housing Element Lacks Adequate Analysis, Prioritization, and Justification of Its Identified Contributing Factors and Evidence of Correlation to the Implementation Programs.

A.B. 686 both creates a broad duty to AFFH in policies and practices, Gov't Code § 8899.50(a)(1), (b), as well as advances a Housing Element framework of AFFH which requires linking fair housing issues analysis with policy and action formulation. Gov't Code § 65583(c)(10)(a)(iii). As we mentioned in our previous comment letter, the City is required to identify and prioritize contributing factors to fair housing issues based on all the previously required analysis (outreach, fair housing assessment, site inventory). Attachment A at 6; Gov't Code § 65583(c)(10)(a)(iii); *see* HCD AFFH Guidance at 12; 80 Fed. Reg. at 42279–80. This identification and prioritization must give highest priority to factors that limit or deny fair housing choice or access to opportunity or negatively impact fair housing or civil rights. HCD AFFH Guidance at 12. The November Draft is not in compliance with Government Code sections 8899.50(a)(1), (b) and 65583(c)(10)(a)(iii)

³⁴ *Improvement Standards*, *supra* note 30.

³⁵ *Non-Governmental Constraints*, CAL. DEP'T OF HOUSING & CMTY. DEV.: BLDG. BLOCKS: A COMPREHENSIVE HOUSING-ELEMENT GUIDE, <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/non-governmental-constraints> (last visited Dec. 10, 2023).

related to AFFH as its contributing factors are under-analyzed, not prioritized according to community priorities and local knowledge,³⁶ and not described in any way to show justification for linking the contributing factors to the implementation programs.³⁷

HCD has made clear the requirements regarding identification, prioritization, and justification of contributing factors as they relate to implementation programs:

Contributing factors should be based on all the prior efforts and analyses: outreach, assessment of fair housing, and site inventory. Contributing factors must also be prioritized in terms of needed impact on fair housing choice and strongly connect to goals and actions. The identification and evaluation of contributing factors must: Identify fair housing issues and significant contributing factors; [p]rioritize contributing factors, including any local information and knowledge, giving highest priority to those factors that most limit or deny fair housing choice or access to opportunity or negatively impact fair housing or civil rights compliance; and [d]iscuss strategic approaches to inform and strongly connect to goals and actions. HCD AFFH Guidance at 49.

While the City's November Draft has myriad revisions regarding data, statistics, maps, tables, and diagrams within its AFH,³⁸ it has failed to comply with its required statutory and regulatory requirements involving contributing factors. The following shows the components of the AFH and

³⁶ The Housing Element is informed by communities and residents of these communities will have the opportunity to weigh in on whether jurisdictions have accurately identified contributing factors and have established programs appropriate for identified contributing factors and related fair housing issues. *See* HCD AFFH Guidance at 49; 80 Fed. Reg. at 42288.

³⁷ The Housing Element must create programs for overcoming the effect of contributing factors as prioritized. *See* HCD AFFH Guidance at 49; 80 Fed. Reg. at 42288. For each program, the City must identify one or more contributing factors that the program is designed to address, describe how the program relates to overcoming the identified contributing factor(s) and related fair housing issue(s), and identify metrics and milestones for determining what fair housing results will be achieved. *See* HCD AFFH Guidance at 49; 80 Fed. Reg. at 42288.

³⁸ We acknowledge, specifically, that the City responded to our previous comment letters and added the following to its November Draft: (1) a short description related to development trends across income levels in its contributing factors to segregation section, November Draft at 1E-3-30; *see* Attachment C at 9; (2) data related to integration and segregation patterns for racial groups other than Hispanic/Latinos, November Draft at 1E-3-9 to 1E-3-13; *see* Attachment C at 13; (3) description regarding the distribution of low- and high-income households across Fresno, November Draft at 1E-3-14 to 1E-3-18; *see* Attachment C at 13; (4) information about the separate occurrence of overcrowding and cost burden based on race or ethnicity and information about how these factors disproportionately impact Fresno residents based on familial status, November Draft at 1E-3-62, 1E-3-63; *see* Attachment C at 14-15; (5) information relating to familial status of unhoused residents, November Draft at 1E-3-70; *see* Attachment C at 15; (6) consideration of the extent to which public and private disinvestment and unequal investment continue to impact low-income neighborhoods, neighborhoods of color, and neighborhoods with a high proportion of tenants and how disinvestment perpetuates or increases displacement risk in these areas, November Draft at 1E-3-85, 1E-3-86; *see* Attachment C at 18-19.

its determination and analysis of contributing factors—some identified in our previous comment letters and incorporated by reference herein—that need to be revised in the November Draft:

- **Integration and Segregation**

- The AFH's analysis of R/ECAPs and RCAAs fails to address "public participation, past policies, practices, [and] investments" as required. HCD AFFH Guidance at 31; *see* Attachment C at 14.

- **Disproportionate Housing Needs**

- The AFH does not include any analysis, or even acknowledgement of, housing needs of undocumented immigrants. *See* Attachment C at 3.
- The November Draft, while noting a difference between communities of color and predominantly white communities as it relates to overcrowding and cost burden, fails to identify the separate occurrence based on individual race or ethnicity. *See* Attachment C at 14–15.
- The November Draft includes no information about the occurrence of substandard housing conditions based on race or ethnicity. *See* Attachment C at 14–15.
- The November Draft fails to provide sufficient information about how overcrowding, overpayment, and substandard housing conditions disproportionately impact Fresno residents based on familial status³⁹ and disability. *See* Attachment C at 14–15.
- The analysis does not adequately reflect local knowledge or public input. *See* Attachment A at 6.

- **Displacement Risk**

- The AFH's displacement risk analysis must be supplemented with and revised based on more recent data—the data used is from 2012–2017; the City should use data at least from 2019 and later, with preference for more recent data. *See* Attachment C at 16.
- Must identify and evaluate the expiration of affordability covenants attached to Low-Income Housing Tax Credit financed properties during the Planning Period. *See* Attachment C at 16.
- Must identify and evaluate the major federal, state, and local investments in public works infrastructure projects in South Fresno neighborhoods. *See* Attachment C at 17.
- Consider the impact of speculation associated with High Speed Rail on housing availability, prices, and displacement risk. *See* Attachment C at 17.
- Analyze the conversion of housing units to short-term rentals and their impact on housing cost pressures and displacement risk. *See* Attachment C at 17.

³⁹ There was one sentence added regarding familial status as it relates to overcrowding: "In addition, there is a greater presence of single-parent households and low levels of labor market engagement." November Draft at 1E-3-62.

- Given the significant stakeholder engagement conducted for the development of the *Here to Stay Report*⁴⁰ the AFH should incorporate and consider relevant information and policy recommendations contained in that report. *See* Attachment C at 18.
- Address the adequacy of policies and resources to protect tenants from displacement as a result of eviction, harassment, and substandard housing. *See* Attachment A at 7; Attachment C at 17.
- **Disparities in Access to Opportunity**
 - Analyze inadequate or absent infrastructure to facilitate safe and efficient active transportation.⁴¹ *See* Attachment A at 5, 9–10; Attachment C at 8, 17, 24, 26, 28.
 - Analyze inadequate or absent protection from extreme weather, including climate-related weather events that impact walking, biking, and public transportation use. *See* Attachment A at 8; Attachment C at 24, 26, 35.
 - Analyze the presence of high volumes of traffic, including heavy-duty truck traffic, on roadways used by pedestrians or bicyclists, including in and near areas zoned for industrial land uses and along designated truck routes. *See* Attachment C at 23, 26–28.
 - Analyze and describe policies, practices, and investments that impact access to a healthy environment for protected groups. While the November Draft adds some data related to this, it lacks sufficient analysis (*see* discussion on the definition of the word analysis *supra* note 9). *See* Attachment C at 24–28.
 - Secondly, the November Draft mentions that an Environmental Justice (EJ) Element will be completed by the City. This statement, however, is not sufficient to find compliance with this requirement; the City would need to have the EJ Element already completed and be able to use specific citations to the compliant EJ Element to show the City has adequately considered EJ and access to a healthy environment for disadvantaged communities. *See* HCD AFFH Guidance at 11.
 - Consider impacts on access to a healthy environment regarding zoning, siting and operation of noxious land uses in disadvantaged communities, and climate change. *See* Attachment A at 8–9; Attachment C at 26–27.
 - Analyze the basis for pollution disparities impacting the City of Fresno itself, including West Fresno, Jane Addams, and South East Fresno. *See* Attachment C at 27.
 - Consider how policies, practices, and investments or disinvestments relating to access to green space, tree canopy, and climate resiliency (including adequate cooling

⁴⁰ THRIVANCE GROUP, *HERE TO STAY: A POLICY-BASED BLUEPRINT FOR DISPLACEMENT AVOIDANCE IN FRESNO* (2021), <https://www.transformfresno.com/wp-content/uploads/2021/06/transform-fresno-here-to-stay-report-english.pdf>.

⁴¹ The November Draft does mention this as a concern for students traveling to school but does not analyze this for the public as a whole. November Draft at 1E-3-33.

and wildfire smoke protection) impact educational opportunities at schools, especially in low-income neighborhoods. *See* Attachment C at 27.

- **Other Relevant Factors and Local Knowledge**

- Consider current, planned and past developments, investments, policies, practices, demographic trends, public comments, and other factors to inform the Local Knowledge section—the November Draft added a couple statements related to this, but they are not sufficient. *See* HCD AFFH Guidance at 45.
- Consider any other factors impacting socio-economic patterns and segregation relating to accommodating the RHNA—this can include pending or approved plans, other elements of the general plan, relevant portions of the housing element and site inventory analysis (e.g., effectiveness of past programs, suitability of sites, existing uses and impacts of additional development potential, including potential for displacement of residents, businesses and other community amenities and infrastructure capacity). HCD AFFH Guidance at 46.

- **Site Compliance with AFFH Duty**

- Consider the impacts of integration and segregation on the distribution of Hispanic/Latino households more thoroughly; and consider the impact on relative integration and segregation of other races—as the November Draft does not consider other racial/ethnic communities. November Draft at 1E-3-101 to 1E-3-104; *see* Attachment C at 28.
- Acknowledge how the lack of lower-income sites identified in high-resource areas, will perpetuate patterns of RCAs and R/ECAPs. *See* Attachment C at 28.
- Analyze the impact of site locations on access to specific forms of access to opportunity. *See* Attachment C at 28.
- Analyze the impacts on access to a healthy environment of siting housing in low-income neighborhoods with poor environmental health indicators, industrial zoning near homes, heavy traffic, and major highways. *See* Attachment C at 28.
- Analyze how absent or incomplete infrastructure, services, and amenities impact access to opportunity on sites included in the inventory. *See* Attachment C at 28.
- Include discussion of local knowledge and community input, pending development, development potential and other relevant factors. *See* Attachment C at 29.

The AFH is designed to analyze inequities related to fair housing, identify contributing factors to these inequities, prioritize those factors based on public comment and highest need, and create programs that are justified by those prioritized factors. The City is grossly out of compliance with the legal requirements of the AFH due to the following:

- A failure in both the July Draft and the November Draft to adequately complete the analyses of fair housing issues in the City of Fresno.

- A failure in identifying all contributing factors⁴² to the fair housing issues in the City of Fresno—in fact, the City continues to egregiously fail in this regard with the addition of data and information in the November Draft that provides evidence of more housing issues but a failure to identify any new contributing factors.
- A failure to prioritize, and explain its prioritization process, contributing factors based on community input, the AFH, and the sites inventory.
- A failure to adequately justify—linking the contributing factors to policy and meaningful actions—the implementation programs with meeting the needs addressing the contributing factors to fair housing issues.

We recommend substantial revisions to the AFH if the City wishes HCD to find its Housing Element compliant with state law. HCD will not accept an AFH if it finds that the AFH or a portion of the AFH is inconsistent with fair housing or civil rights requirements or is substantially incomplete. For example, an AFH will be found inconsistent with fair housing and civil rights requirements if it does not identify policies or practices as fair housing contributing factors,⁴³ even though they result in the exclusion of a protected class from areas of opportunity. Compliance with Housing Element law is listing contributing factors *with* robust analysis so jurisdictions can create programs with meaningful actions. HCD AFFH Guidance at 51.

Thus, the November Draft's noncompliance with the above-mentioned components of the AFH results in the City being in violation of the Housing Element Law, Gov't Code § 65583 et seq., the Duty to AFFH statute, Gov't Code § 8899.50, California's nondiscrimination statute, Gov't Code § 11135, the Fair Employment and Housing Act, Gov't Code § 12940 et seq., the Federal Housing Act, 42 U.S.C. § 3601 et seq., and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000(d) et seq. Therefore, we recommend the City properly analyze all fair housing issues, identify and prioritize contributing factors to those fair housing issues, and justify the programs as addressing the contributing factors and adequately overcoming patterns and practices of segregation and creating areas of opportunity for R/ECAPs.

⁴² See e.g., HCD AFFH Guidance at 68–70 (listing Contributing Factors examples).

⁴³ Contributing factors are not limited to public actions. *Id.* at 51. Private actions can also contribute to patterns of segregation, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs. *Id.* at 51. While public agencies do not directly control private actions or contributing factors beyond a locality's boundaries, the actions of public agencies can influence private action and have impacts beyond local boundaries. *Id.* at 51. As a result, regardless of whether contributing factors are public or private or local, region, state or federal, the housing element must recognize a broader social and legal obligation to affirmatively further fair housing and still identify and prioritize those contributing factors to commit to commensurate goals and actions. *Id.* at 51.

C. The Housing Element's Analysis of Past Accomplishments and Programs Is Inadequate.

The Housing Element requires a review of the previous housing element for progress in implementation, effectiveness of programs in meeting goals, and appropriateness of modifying programs for the current planning period. Localities should make a specific effort to gather input from all segments of the community on the effectiveness of these programs and how to make adjustments moving forward. HCD AFFH Guidance at 22; *see* 80 Fed. Reg. at 42356.

The City fails to properly look at its past actions and programs both in the Housing Element Past Accomplishments section as a whole as well as specific analyses in the AFH that require addressing past programs; those specific analyses include failing to address “public participation, past policies, practices, [and] investments” as required in its R/ECAPs and RCAAs AFH analysis. HCD AFFH Guidance at 33; *see* Attachment C at 14. It also fails to inspect the “effectiveness of past programs in achieving the goals of the housing element” as a factor influencing the impacts of the identification of sites to accommodate the RHNA on socioeconomic patterns and segregation. HCD AFFH Guidance at 33; *see* Attachment C at 14. We recommend the City adequately analyze why its past programs have continued segregation and not adequately facilitated integration, healthy communities, and access to opportunity.

IV. The City Fails to Demonstrate Site Capacity to Accommodate Its RHNA and Show Its Sites Inventory is Consistent With the Duty to AFFH.

While the AFH is robust and the revised draft adds a lot of good information, data, and analysis, it applies very little of it to actions. Programs fail to address the need, sites are inadequate, and constraints aren't properly removed.

Government Code section 65583(a)(3) requires an assessment of the available land that is suitable and available to accommodate the RHNA. Additional information is required for the City's Revised Draft Element to comply with the statute. In brief, the following is still required:

- Analysis demonstrating the viability of non-vacant sites.
- Evidence of approval during the projection period credited against the RHNA.
- The viability of large sites, especially in light of the concentration of these sites in one area of the City.
- The impact of environmental constraints on inventory sites (and proximity to incompatible uses) on the overall availability of inventory sites.

Several of these issues were raised in our comment letter regarding the publicly available draft circulated in July 2023 and the November Draft fails to provide the additional necessary analysis highlighted in our comment letter.

For instance, the City's projection period began on June 30, 2023, but numerous projects that we highlighted on page 10 of our August 2023 that have not received approvals since the beginning of the project period and yet are still included in Table 1E-2.3. *See e.g.*, San Joaquin Hotel—submitted entitlement review in December 2022, review not completed; Los Pueblos Apartments—project submission deemed incomplete in 2022, waiting for resubmittal; *see also* Attachment C at 10. None of the projects we highlighted were removed from Table 1E-2.3 despite the fact that they have not received approvals during the projection period. *See* HCD's Housing Element Sites Inventory Guidebook, available at https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sites_inventory_memo_final06102020.pdf.

Because many of the zoning designations do not have a minimum density the City provides an alternate method to estimate capacity on sites by looking at projects during a very limited time frame—2018 to 2020. An alternate calculation is permitted but it should evaluate the average capacity for each zone based on a more expansive time period to make sure the calculation accurately reflects the development patterns that a two -year time frame cannot do. *See* Attachment C at 10.

Also noted in our August 2023 letter remains the City's incomplete analysis of non-vacant sites, which relies primarily on describing the existing use and does not consider the other required factors included in Government Code section 65583.2(g). *See* Attachment C at 11.

The City also relies on several large sites that are in close proximity to each other to accommodate its RHNA for lower income households. Not only are there obstacle to obtaining the highly competitive funding for affordable housing to build projects of more than two hundred units, as a large site would necessitate, but including so many large sites in close proximity triggers another constraint to receiving funding and certainly creates an impediment to further fair housing if so many units intended to accommodate the lower income housing need are in one concentrated area. *See* Attachment C at 12.

Although the City did revise its original draft element to include one example of development on a large site Fancher Creek Town Center. But this does not address the comment we previously raised regarding the concentration of large sites in one area of the City and the resulting concentration of sites to accommodate the lower income RHNA in one section of the City and the inconsistency with the City's duty to affirmatively further fair housing.

The November Draft describes one half of one large parcel as being occupied by two existing retail establishments, yet the Draft then goes on to determine that 60 percent of the site is available for infill housing even though existing uses occupy 50 percent of the site. November Draft at 1E-2-21.

The November Draft includes information about sites in close proximity to the airports and the accompanying restrictions on residential density in these zones. The Draft indicates sites will need to be removed from the inventory of available sites based on the Airport Land Use Compatibility Plan (ALUCP) but does not indicate how many sites and the capacity of those sites and whether it will result in a shortfall for any income category. This information is necessary before a final determination about the adequacy of the site inventory can be made.

HCD advises that the impact from a wide variety of environmental factors be considered when evaluating the suitability of sites in the land inventory. The November Draft considers sites in the floodplain, near airports, and infrastructure availability but HCD's Sites Inventory Guidebook requires more: "Other characteristics to consider when evaluating the appropriateness of sites include physical features (e.g., size and shape of the site, improvements currently on the site, slope, instability or erosion, or environmental and pollution considerations), location" HCD's Housing Element Sites Inventory Guidebook at 3. According to Figure 1E-2.2 Sites Inventory, Fresno 2023, there are many higher density and mobile home sites that are proximate to existing heavy industrial uses in South Fresno. To comply with the City's duty to affirmatively further fair housing sites for lower income households should not be identified close to known pollution sources since lower income families and individuals in South Fresno already face higher exposures to air pollution.⁴⁴

V. The City Fails to Include Programs—With Definitive Timelines—That Remove Identified Constraints on Affordable Housing Production.

Existing federal law requires departments and agencies to administer programs relating to housing in a way that affirmatively furthers fair housing.⁴⁵ These obligations extend to state and local governments that receive funds or contract with the federal government. A.B. 686 extends the obligation to affirmatively further fair housing to all public agencies in the State of California. This affirmative duty is not limited to those agencies with relationships with the federal government and is to be broadly applied throughout agencies at the state and local level. Gov't Code § 8899.50(a)(2). Now, all public agencies must both (1) administer programs and activities relating to housing and community development in a manner that affirmatively furthers fair housing, and (2) take no action inconsistent with this obligation. Affirmatively furthering fair housing means "taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities." Gov't Code § 8899.50(a)(1). These new statutory obligations charge all public agencies with broadly examining their existing and future policies, plans, programs, rules, practices, and related activities and make proactive changes to promote more inclusive communities. Gov't Code § 8899.50(a)(1)–(2), (b), (c), (d); *see* HCD AFFH Guidance at 9.

⁴⁴ *CalEnviroScreen 4.0*, CAL. OFF. OF ENV'T HEALTH HAZARD ASSESSMENT (May 1, 2023), <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>.

⁴⁵ See Executive Order 12892 – Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing. January 17, 1994.

In addition, the A.B. 686 updated the Housing Element law to specifically require the creation of programs to promote fair housing. Specifically, Government Code section 65583(c) states that:

The [Housing] Element shall contain A program that sets forth a schedule of actions during the planning period, each with a timeline for implementation, that may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element

Goals and policies must be created with the intention to have a significant impact, well beyond a continuation of past actions, and to provide direction and guidance for meaningful action. HCD AFFH Guidance at 52. The Housing Element's implementation program must AFFH in accordance with Government Code section 8899.50 and include a diligent effort to achieve public participation of all economic segments of the community in the development of the Housing Element. Gov't Code § 65583(c)(9), (10)(A). Programs must address various statutorily mandated areas, such as identification of adequate sites, zoning for a variety of types, assisting development for lower and moderate income households, addressing governmental and non-governmental constraints, conserving the existing housing stock, preserving at-risk units, and promoting housing opportunities for all people. HCD AFFH Guidance at 10. Finally, the Housing Element requires identification of metrics or quantified objectives and milestones for determining what fair housing results will be achieved through these programs. HCD AFFH Guidance at 13.

Despite previous comment letters and specific identification by the public of prioritized fair housing issues, the November Draft remains noncompliant regarding its adequacy of meaningful actions and adherence to the requirements in creating the implementation programs. We have separated our recommendations into two subsections: (1) Programs that need to be added based on revision of the AFH and adequate identification of fair housing issues, *see* discussion *supra* Section III, identified and prioritized contributing factors to the fair housing issues, and direct justification of programs from the identified contributing factors; and (2) Programs included in the November Draft that can be improved.

A. The City Must Add Needed Implementation Programs to Adequately Address Prioritized Contributing Factors Informed by the Public.

The Housing Element requires an identification of priorities and goals based on identified contributing factors that limit or deny fair housing choice or access to opportunity, or that negatively impact fair housing or civil rights compliance. HCD AFFH Guidance at 12. The November Draft, like the July Draft, is grossly inadequate in fulfilling the requirements under

Government Code sections 8899.50 and 65583. The following includes the programs best suited to address contributing factors and prioritized community fair housing issues:

- **Most Up-To-Date Priorities Identified by City of Fresno Residents at LCJA's December 5, 2023 Community Meeting:**
 - Holistic Tenant Protections
 - Adopt a local rent stabilization ordinance, including a rent stabilization board to hear and approve rental increases submitted by landlords.
 - Adoption of just cause eviction
 - A right to counsel guaranteeing access to affordable legal counsel for low-income tenants in housing matters.
 - Establish a permanent emergency rental assistance program.
 - Know-Your-Rights education and enforcement for discrimination against pet ownership in rental properties. Currently, California law says: "Landlords are not allowed to outright refuse to rent to tenants based solely on their ownership of pets. However, landlords may impose reasonable restrictions and conditions for pet ownership, such as size or breed restrictions allowing pets, with some exceptions for service animals or emotional support animals."⁴⁶
 - More enforcement against landlords and property management companies who discriminate against or harass tenants; including a focus on harassing surveillance of tenants and privacy issues.
 - Add back in July Draft's Program 30: Emergency Rental Assistance Program.
 - Homelessness
 - Providing housing to unhoused veterans
 - Build Tiny Home Villages.
 - Housing Stock
 - Increase the supply of rental properties that allow pets.
 - Consider creating tax incentive programs or reward/relief programs for landlords and management companies who allow pets.
 - Build the housing stock with the majority age demographic, 25 to 44 years (November Draft at 1E-0-1), in mind; build less single-family homes and build more duplexes and triplexes.
- **Community Priorities as Referenced in Previous Comment Letters**
 - Reducing barriers for undocumented immigrants to rent. *See* Attachment C at 3.
 - Pursue an Inclusionary Zoning ordinance. *See* Attachment A at 8.
 - Extreme heat and weatherization programs to address climate change. *See* Attachment A at 8; Attachment C at 24, 26, 35.

⁴⁶ *See e.g.*, HCD AFFH Guidance at 72–74 (listing Housing Action Examples).

- Establish an acquisition and rehabilitation fund to purchase older, blighted, or abandoned homes/buildings. *See* Attachment A at 8.
- Grants for residents who want to develop affordable accessory dwelling units on their land. *See* Attachment A at 8.
- Urban Greening as buffer zones for residences zoned near polluting land uses. *See* Attachment A at 8.
- Prohibit siting industrial uses next to Housing Element sites used to accommodate the RHNA. *See* Attachment A at 8.
- Suitable Vacant Land should be prioritized for affordable housing in order to bring Very Low Income and Low Income RHNA allocations into compliance. *See* Attachment A at 9.
- Impact fees should be placed into a community benefit fund when polluting land uses and practices are placed near housing. *See* Attachment A at 9.
- Developing Public Health Impact Reports for new development. *See* Attachment A at 9.
- Establish a Cargo/Freight Prohibition and Revenue Tax. *See* Attachment A at 9.
- Incorporate Complete Streets principles into all transportation projects at all phases of development. *See* Attachment A at 9.
- Establish a Housing Element Implementation Committee to oversee⁴⁷ the timelines and implementation of each program and policy. The committee should be comprised primarily by tenants, low-income homeowners, and at-risk populations to ensure implementation meets the needs of most at-risk communities. *See* Attachment A at 9.

B. The November Draft Must Revise Implementation Programs Which Are Noncompliant and Should Strengthen Programs Which Could Better AFFH.

The November Draft, like the July Draft, is noncompliant under Government Code sections 8899.50 and 65583 regarding some of its implementation programs. We also wanted to identify programs that could be strengthened to better accomplish residents' priorities and better move toward overcoming segregation and creating areas of opportunity for R/ECAPs. We do not have any new recommendations for the November Draft's Programs 2, 17, 19, 22, 23, 27, 29, and 32 beyond the recommendations in our previous comment letters; please reference Attachment B and Attachment C for those comments as well as additional comments on the Programs we do address below. The following includes the programs with the recommended changes to policy, goals, and

⁴⁷ The plan must describe the standards and procedures that the jurisdiction will use to monitor activities carried out in furtherance of the plan, including strategies and actions that address the fair housing issues and goals identified in the AFH, and that the jurisdiction will use to ensure long-term compliance with requirements of the programs involved, including civil rights related program requirements, minority business outreach, and the comprehensive planning requirements. *See* 80 Fed. Reg. at 42365.

concrete steps best suited to address compliance, contributing factors, and prioritized community fair housing issues:

- **Missing Required Programs**

- **Addressing Governmental and Nongovernmental Constraints**

- As the AFH did not fully identify and analyze governmental and nongovernmental constraints and concluded that the few identified constraints were either not significant or were being addressed, the Action Plan did not include a program(s) to remove them. The November Draft does not adequately meet the requirements of Government Code section 65583(c)(3) to address and remove constraints.
 - Program 25 provides some limited development code amendments to remove barriers to housing development, but these are a far cry from addressing and removing the myriad constraints to affordable housing development.
 - Consider adding a program(s) relating to the identified governmental and nongovernmental constraints identified in Section III.A. *supra*.

- **Emergency Rental Assistance Program**

- This program was removed entirely from the July Draft to the November Draft. This program should be included in the next Housing Element draft as tenant protections is an identified community priority.

- **Program 1 – Maintain Adequate Sites**

- Create a strategy to work with unwilling developers when rezoning.
 - Create a strategy for responding to YIMBY's when conducting comprehensive outreach.
 - Define who the City is reaching out to during comprehensive outreach.
 - Define what the City is seeking input on during the outreach.
 - Develop a robust outreach strategy to ensure varied and inclusive outreach as required by law, ensuring a diligent effort is made by the City to seek input from communities with protected characteristics and fulfilling its duty to AFFH. Gov't Code § 65583(c)(9)–(10).

- **Program 3 – Encourage and Facilitate Accessory Dwelling Units**

- Specify targeted areas to promote public outreach for the educational program around the opportunity for ADUs; this is a reasonable and measurable outcome, while promoting to all parts of the city is vague and hard to enforce.
 - Match funds with Housing Choice Vouchers for ADU units in high resource areas for landlords that make ADUs deed restricted affordable for low- or very-low-income households, in addition to waiving inspection fees.
 - Advance the City's free ADU standard plans for farmworker dwelling units and cottage communities by adding a section describing these structures, showing

pictures, and including the plans on the City's ADU Programs website (i.e., making this a more concrete commitment than simply "encourag[ing]" the use of the plans).

- Define what a farmworker dwelling unit is.
- Create additional incentives for landlords who accept Housing Choice Vouchers to make it more feasible for low-income households.
- Institute an advertising plan so all communities, especially R/ECAPs, are aware of the ADU resources on the City's website, ADU hotline, and ADU email to answer questions.
- Waive inspection fees for landlords of low-income properties immediately upon adoption of the Housing Element (i.e., removing the unnecessary waiting of the timeline to start waiving fees in July 2024).
- Provide financial support to farmworkers in poverty status who want to build ADUs—who otherwise would not have the downpayment to build ADUs.
- **Program 5 – Large and Small Lot Development**
 - Revise objective (of 600 units) to build 800–1,000 lower-income units.
 - Create enforceable outcomes in the timeframe section—e.g., create a permanent fund for assisting nonprofit developers by January 1, 2025; build 200 units by December 31, 2025; build 400 units by December 31, 2027, etc.
- **Program 8 – List of Local Labor Unions and Apprenticeship Programs**
 - Host in-person and virtual webinars highlighting the benefits of hiring local labor and best practices for establishing these programs and working with labor unions (i.e., making this a more concrete commitment than simply "encourag[ing]" the hiring of local labor).
 - Define what "hire local labor" means (e.g., state whether there is a connection to labor unions and apprenticeship programs).
- **Program 9 – Use of Sites in Previous Housing Elements**
 - Edit the second paragraph to be compliant with Government Code section 65583.2(c). It should read (important components bolded for emphasis):
 - The City will implement a zoning amendment to **permit developments by right** where 20 percent or more of the units are affordable to lower-income households on any **vacant sites** identified in the lower-income inventory of the **4th and 5th RHNA cycles** and **non-vacant sites** identified in the lower-income inventory of the **5th RHNA cycle** as part of the Housing Element.
- **Program 10 – Annual Reporting Program**
 - Develop a robust outreach strategy to ensure varied and inclusive outreach as required by law, ensuring a diligent effort is made by the City to seek input from communities with protected characteristics and fulfilling its duty to AFFH. Gov't Code § 65583(c)(9)–(10); HCD AFFH Guidance at 18.
 - Evaluate, modify, and revise Housing Element implementation programs based on input received from the public. HCD AFFH Guidance at 51.

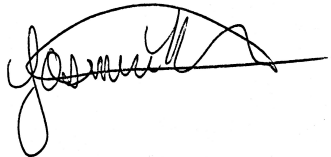
- The Housing Element Does Not Currently Provide for Adequate Public Participation Regarding the Implementation Programs from 2023–2031.
- **Program 11 – Incentives for Housing Development**
 - Host in-person and virtual webinars highlighting the incentives for housing development and best practices for utilizing these and where to access additional resources on the City’s website (i.e., making this a more concrete commitment than simply “post[ing] and maintain[ing]” a list).
- **Program 12 – Local Housing Trust Fund**
 - Revise objective (of 320 units total) to build 300–400 extremely low-, 400–500 very low-, and 400–500 low-income housing units.
- **Program 14 – Partnerships with Affordable Housing Developers**
 - Revise objective (of 1750 units) to build 1900–2000 very low-income units.
- **Program 20 – Housing Choice Voucher Incentive Program**
 - Revise objective section: It should be clear that the City, itself, will enforce source of income laws and the City will work with the Fresno Housing Authority on outreach and educational opportunities regarding HCVs.
- **Program 24 – Special Needs Housing**
 - The November Draft’s insertions are vague, unenforceable, and have unclear outcomes. Words needing more specificity, defining, or measurable outcomes are bolded.
 - The City will **support** and **work actively** to identify the housing needs of farmworkers in Fresno and will **cooperate** with public and private agencies to seek funding to **identify and implement strategies** leading to the provision of housing for farmworkers.
 - The Mayor’s Office of Community Affairs **will assist in engaging** all residents of the community including youth, Black, Indigenous, People of Color (BIPOC), Latino, Asian/Pacific Islander, Indian, and LGBTQ on their housing needs.
- **Program 30 – Mobile Home Parks**
 - Define specific aspects of the rehabilitation resources and repair program—e.g., heat resiliency, weatherization, insulation, repairs for inspection violations or other habitability concerns.
 - Establish a Mobile Home Park Improvement Program focused on community resources such as green space, parks, transit access, infrastructure and other resource improvements.
- **Program 33 – Homeless Assistance**
 - Establish a safe parking program (i.e., provides an enforceable and measurable outcome as opposed to merely “explor[ing] the feasibility” of a program.
 - Define what services would be provided during the safe parking program to help individuals find permanent housing.

- Provide a timeline for conducting and completing the assessment for youth at risk of homelessness.

* * * * *

Thank you for your consideration of our comments. We look forward to discussing them with you and continuing to work with the state and the City to ensure that the City adopts a Housing Element that fully complies with the law and addresses the serious housing needs and disparities that impact the City of Fresno's residents.

Sincerely,



Jasmine Robinson
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Leadership Counsel for Justice & Accountability



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Public Interest Law Project

City of Fresno Community Residents

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Attachment A

Comment Letter from Leadership Couns. for Just. & Accountability et al. to the Fresno Cnty. Bd. of Supervisors, the Cities of Fresno Cnty. City Councils, & Deputy Dir. Kristine Cai of the Fresno Council of Gov'ts (Oct. 3, 2022) (on file with author).



October 3rd, 2022

Board of Supervisors, Fresno County
City Councils, Cities of Fresno County
Deputy Director Kristine Cai, Fresno Council of Governments

Re: Fresno COG Multi-Jurisdictional Housing Element Update 2023-2031

Dear Supervisors, Councilmembers, and Kristine Cai:

The undersigned organizations write to you to advocate for a Housing Element process and update that is equitable, inclusive, and responsive to disadvantaged communities' needs. We are a group of community-based organizations working hand-in-hand with community partners and leaders throughout the City and County of Fresno. The following recommendations are based on our experience to push for transformative community-led and identified solutions to elevate and advance their priorities for safe, affordable housing options and fair housing choices. We thank you for taking the time to read the following memo and welcome the opportunity to discuss our letter in further detail. As the Housing Element process begins, it is important and necessary to start the process correctly and with strong community engagement. The Housing Element is an important piece of planning our communities and solving our housing crisis together. Further, the State of California has recently strengthened the laws governing the Housing Element. The Fresno Council of Governments (FCOG), jurisdictions participating in this multi-jurisdictional housing element, and city leaders must apply these laws conscientiously and diligently. With laws such as AB 686 and AB 1397, we expect this Housing Element to be robust, meaningful, and indicative of solving our housing crisis. As always, we are willing to partner and work alongside you all to ensure that these requirements are fulfilled and even exceeded in order to create the change we want to see in the Valley.



We look forward to working alongside the Fresno COG, city leaders, and staff in the multijurisdiction Housing Element update (collectively referred to herein as “Fresno jurisdictions” or “jurisdictions”) and solving our housing crisis together.

I. Jurisdictions Must Meaningfully Engage the Public in their Housing Element Updates Practices, Including Lower-Income Residents and Protected Classes

As Fresno jurisdiction begins the 6th Cycle Multi-Jurisdictional Housing Element Update, the jurisdictions must meaningfully engage the public, including in particular lower-income residents, members of protected classes under civil rights statutes, residents of disadvantaged communities, and racially and ethnically concentrated areas of poverty (“R/ECAPs”), and community-based organizations that work closely with these groups over the course of the housing element update. Gov. Code Sec. 65583(c)(9); HCD Affirmatively Furthering Fair Housing Guidance (“AFFH Guidance”), p.21.

The jurisdictions must engage the public throughout the housing element update process, and engagement must support “meaningful, frequent, and ongoing community participation, consultation, and coordination.”¹ HCD, Building Blocks, Public Participation. Pursuant to HCD’s AFFH Guidance, public participation efforts should be proactively and broadly conducted through various methods to ensure access and participation. Key stakeholders that jurisdictions seek to engage directly must include community-based organizations and advocacy groups which work directly with lower-income households and protected classes; lower-income and extremely-low income households; persons and households with special housing needs, including but not limited to farmworkers, seniors, single-parent households, and persons with disabilities; tenants, including residents of publicly-subsidized housing; members of protected classes, residents of disadvantaged communities and R/ECAPs; and fair housing agencies.² Outreach plans should include “in-person meetings in various locations to ensure residents from

¹ HCD AFFH Guidance, p. 10; Gov. Code §8899.50(a),(b),(c); see also AFFH Final Rule and Commentary (AFFH Rule), 80 Fed. Reg. 42271, 4253-42360 (July 16, 2015)

² HCD AFFH Guidance, p. 21



across the jurisdiction have the opportunity to participate.”³ As the process begins, we ask that jurisdictions plan in-person workshops in all parts of the jurisdictions, especially in rural areas where internet access is scarce, and virtual options are impractical.

To satisfy Government Code § 65583(c)(9) and its duties to Affirmatively Further Fair Housing, some specific public outreach efforts that we recommend that jurisdictions undertake to achieve the above-referenced objectives include but are not limited to the following:

- holding interactive housing element workshops in at least three disadvantaged unincorporated communities (DUCs) in areas across the jurisdictions, including fringe and island communities located adjacent to or near participating cities and legacy communities as defined by Government Code § 65302.10. Residents living in DUCs, as well as other lower-income communities and neighborhoods, are most likely to attend workshops held in their own communities because many low-income residents in these communities lack personal vehicles and many DUCs are not served by efficient or reliable public transportation. The jurisdictions should partner with community residents and/or community-based organizations with ties to the community to plan and perform effective outreach for the workshops;
- conducting targeted outreach to and stakeholder interviews with members of special needs populations and protected classes, including but not limited to farm workers, the elderly, members of large families and single-headed households, people of color, and non-English speakers;
- soliciting completion of the community survey performed by the jurisdictions by low income and special needs residents, including by the jurisdictions’ housing division and other city and County staff during their interaction with residents in the course of performance of their duties.
- advertising opportunities to participate in and provide feedback on the housing element update in non-English language print media, radio, and television, including media in Spanish, Hmong, and other languages spoken by Fresno County residents. Examples of non-English media outlets include Univision, Radio Bilingue, Hmong TV, and the Vida en el Valle publication among others. Many of these media outlets offer free advertising

³ HCD AFFH Guidance, p. 10



space for public service announcements. The housing element should document these additional efforts to achieve public participation by all economic segments of the community and explain how input received through those efforts is incorporated therein.

Leadership Counsel is willing to support the jurisdictions in planning these additional public outreach efforts.

In addition, and importantly, the Draft Amendments must meaningfully **incorporate** public input provided on the housing element update, prioritizing input provided by lower-income residents, residents with special housing needs, protected classes, and residents of lower-income and disadvantaged communities. The housing needs analysis sites inventory analysis, assessment of fair housing, including discussion of fair housing issues in R/ECAPs and impacting protected classes, displacement risks, disparities in access to opportunity impacting protected classes, meaningful actions, and programs must all incorporate, reflect, and respond to resident input and priorities. The Multi-Jurisdictional Housing Element must incorporate input from residents from all participating jurisdictions to tailor the analysis, sites inventories, actions, and programs applicable to specific jurisdictions accordingly.⁴

The jurisdictions, cities, and the Fresno COG can start to gain public trust if steps to proactively engage the public, including on an ongoing basis, in the multi-jurisdictional housing element update and incorporate and significantly reflect public input provided. Jurisdictions must ensure that strong public engagement efforts are maintained following jurisdictions' adoption of the element, including, for example, through the incorporation into the housing element of actions committing to the establishment and facilitation of a housing element oversight advisory committee to assist the jurisdictions in obtaining community feedback on housing element implementation from lower-income residents and protected classes.

II. The Multi-Jurisdictional Housing Element Update Must Comply with Cities' and the County's duties under AB 686

⁴ HCD AFFH Guidance, p. 21



To avoid the continuation of past and current discriminatory practices and to overcome their legacy, the State of California enacted AB 686 (2018). AB 686 requires the state, cities, counties, and other public agencies to affirmatively further fair housing (“AFFH”) in all programs and activities relating to housing and community development. AFFH means taking meaningful actions, in addition to combating discrimination, that overcomes patterns of segregation and fosters inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. It means taking meaningful actions that, taken together, addresses significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. AB 686 also amended the Housing Element Law to require that housing elements include an assessment of fair housing (“AFH”) and identify sites *throughout* the jurisdiction to satisfy its regional housing needs allocation. We recommend that jurisdictions and FCOG carefully review HCD’s AFFH Guidance which contains a detailed discussion of AB 686’s requirements, including the requirements for a complete AFH. The AFH Some of these requirements include:

- **Summary of Fair Housing Issues.**⁵ The Housing Element must analyze and address patterns of integration and segregation; racially or ethnically concentrated areas of poverty; racially concentrated areas of affluence, disparities in access to opportunity for lower-income residents and protected classes; and disproportionate housing needs impacting lower-income residents and protected classes, including displacement risk. The analysis of disparities in access to opportunity must include disparities in access to educational, employment, transportation, and environmental opportunity and cover the specific topics identified in HCD’s AFFH guidance for each opportunity category. HCD’s AFFH Guidance, pp. 35-36. The disproportionate housing needs analysis must consider disparities in housing cost burdens, overcrowding, substandard housing, homelessness, and other issues and must evaluate displacement risks holistically, considering the impacts of rising rents, infrastructure and service deficiencies,

⁵ https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf, pg.11



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climate change, and other displacement risks that may disproportionately impact lower-income households and protected classes. The analysis must incorporate local data and knowledge, including the input of lower-income households and protected classes, and discuss the fair housing issues specific to distinct jurisdictions, R/ECAPs, and lower-income communities.

- **Identification and Prioritization of Contributing Factors.** The AFH must analyze and prioritize factors that contribute to identified fair housing issues and prioritize factors that limit or deny fair housing choice or access to opportunity or negatively impact fair housing or civil rights.
- **Sites Inventory AFFH Analysis.**⁶ The housing element must not only demonstrate site capacity to accommodate each jurisdiction's RHNA, but also that the identified sites are consistent with the duty to AFFH, serving the purpose of replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity.⁷ This evaluation must include the specific components described in the AFFH Guidance, including how sites better integrate the community considering historical patterns and trends; the extent to which sites may exacerbate existing patterns of segregation; whether the RHNA by income group is concentrated in areas of the community; and local data, knowledge, and community input. Based on the outcome of the analysis, the site inventory must be modified, and/or actions must be included to overcome patterns of segregation and barriers to opportunity in relation to the sites contained in the inventory.
- **Meaningful Goals and Actions.** Existing Housing Element Law requires programs with a schedule of actions with timelines and specific commitment to have a "beneficial impact" within the planning period to achieve the goals and objectives of the housing element. As stated in the AFH guidelines "actions implement goals and consist of *concrete steps, timelines, and measurable outcomes.*"

⁶ https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf, pg. 12

⁷ 24 Gov. Code, § 8890.50. subd. (b).



As the draft Housing Element is produced, we will be looking for these components and compliance with jurisdictions' duties under AB 686 to ensure that drafts reflect residents' input and priorities. Further, suppose barriers are identified that impede the application and implementation of programs, policies, and production of housing. In that case, the City should analyze also analyze these barriers to make a good-faith effort to find alternative solutions.

III. The Housing Element Must Analyze and Incorporate Programs and Policies That Adequately Respond to our Housing Crisis

As discussed above, the housing element must include programs and actions prioritized by lower-income residents, protected classes, and residents of lower-income communities and R/ECAPs during the housing element update to solve our housing crisis. Below are community-identified programs and policies which residents from South Fresno neighborhoods and disadvantaged unincorporated communities across the jurisdictions have repeatedly identified as priorities to solve our housing crisis and AFFH which we ask jurisdictions consider:

- a. County of Fresno
 - Create or support expansion of **local funding opportunities for farmworker housing**. Farmworker housing should be accessible for migrant farmworkers and affordable.
- b. City of Fresno and County of Fresno:
 - Adopt a **local rent stabilization ordinance**, to protect tenants from continuously rising rents, including a rent stabilization board to hear and approve rental increases submitted by landlords. This would apply to the City of Fresno and Fresno County.
 - Adoption of **tenant protections to reduce displacement risks**, including just cause eviction that address gaps in protections afforded under the 2019 Tenant Protection Act and a right to counsel guaranteeing access to affordable legal counsel for low-income tenants in housing matters;
 - Establish a **permanent emergency rental assistance program** to assist residents at risk of homelessness due to rent increases and changed circumstances and ability to pay. Identification of a permanent local source of funding will ensure



continuous funding and that the program can be used to prevent displacement. *The City of Fresno can leverage the Local Housing Trust Fund dollars and the State is continuing to grant monies for rental assistance programs*

- Establish a **permanent first-time homeownership assistance program** to help tenants become first-time homeowners. Closing costs and downpayment assistance for low-income, first-time homebuyers can help close the housing gap. Residents with ITIN numbers should be eligible for this program.
- Investments in **improvements to mobile home parks** to address the needs, including needs from the mobile park assessment study. Further, it should address weatherization and climate resiliency needs, to improve indoor and outdoor air quality, and to expand access to green space.
- Pursue an **Inclusionary Zoning ordinance** in the County of Fresno and the City of Fresno once a General Plan Update has occurred.
- **Extreme heat and weatherization programs** to address climate change. This includes funding for weatherization upgrades to homes and rental units, specifically in census tracts that rank the highest on CalEnviroScreen for pollution and poor health outcomes and are most vulnerable to climate change.
- **Establish an acquisition and rehabilitation fund** to purchase older, blighted, and/or abandoned homes/buildings. The County and the City of Fresno can establish a revolving fund to insure that rehabilitated homes are sold back to the community at a low cost.
- Grants for residents who want to develop **affordable accessory dwelling units** on their land in both the City and County of Fresno. Some residents are willing to sell parcels of land to the County to develop affordable housing and increase housing supply.
- **Urban Greening is used** as buffer zones when residential is placed or already placed near existing polluting land uses to mitigate health impacts.
- **Citing industrial uses** cannot be sited next to Housing Element sites and compliance with placing housing sites away from heavy, light industrial uses or phasing out light/heavy industrial zones



- **Suitable Vacant Land** should be prioritized for affordable housing in order to bring Very Low Income and Low Income RHNA allocations into compliance
 - **Impact fees should be placed into a community benefit fund** when polluting land uses and practices are placed near housing. The community benefit fund will be managed by the community directly impacted to dictate to who these funds should be allocated.
- c. All Jurisdictions:
- **Establish local hire provisions** requiring that a certain percentage of workers reside within 10 miles or less of a Project Site. This can reduce the length of trips, reduce greenhouse gas emissions and provide localized economic benefits
 - **Developing Public Health Impact Reports** for new development in order to understand existing public health disparities and the potential of those conditions worsening as a result of development. Public health agencies should be resourced to support this analysis. The findings of these reports should be available publicly and be included in permit approval processes and other key decision-making milestones.
 - **Establish a Cargo/Freight Prohibition and Revenue Tax** to directly fund community-based housing and projects in the neighborhoods most negatively impacted by years of environmental toxicity caused by freight.
 - **Incorporate Complete Streets principles** into all transportation projects at all phases of development, including planning and land use decisions, scoping, design, implementation, maintenance, and performance monitoring.
 - **Establish a Housing Element Implementation Committee** to oversee the timelines and implementation of each program and policy. The committee should be comprised primarily by tenants, low-income homeowners, and at-risk populations to ensure implementation meets the needs of most at-risk communities.

IV. The Sites Inventory Must Comply with New Housing Element Law Requirements, Including Requirements for Access to Infrastructure and Services Under AB 1397



As aforementioned, the State of California has added further requirements and specificity to the obligation of the Housing Element to identify adequate sites for further development of affordable housing.

Under AB 1397, for all sites in the inventory, the jurisdiction must determine the number of units “that can be realistically accommodated.”⁸ These requirements do not include “current or planned availability and accessibility of sufficient water, sewer and dry utilities.”⁹ In other words, sites that are served by water, sewer, and other dry utilities available and accessible within three years of the beginning of the planning period will be considered suitable for residential development. In addition, jurisdictions may not reuse on-vacant sites identified in a prior housing element or vacant sites identified in the last two housing element updates to meet lower-income RHNA requirements.

Finally, we recommend FCOG and the jurisdictions ensure that sites chosen conform to HCD’s site inventory guidance. Following HCD’s guidance would increase planning efficiency for local agencies, while ensuring compliance with housing element requirements. We look forward to seeing local compliance.

* * * * *

Thank you for taking our comments into consideration. We look forward to continuing to work with the Fresno jurisdictions on developing a compliant Housing Element that responds to the needs of participating Fresno Jurisdiction Residents and ensures access to safe and affordable housing for all.

⁸ Cal Gov Code 65583.2(c)

⁹ Cal Gov Code 65583.2(c)(2)



Sincerely,
Karla Martinez, Policy Advocate
Leadership Counsel for Justice and Accountability

Alexandra Alvarado, Community Organizer
Faith in the Valley

Marisa Moraza, Senior Campaign Strategist
PowerCA Action

Shar Thompson, CV Regional Coordinator
Tenants Together

Josefa Vega, Central Valley Regional Organizer
ACLU Northern California

Ruben Espinoza, Policy Advocate
Fresno Barrios Unidos

Guadalupe Ramos, Project Specialist
Fresno Building Healthy Communities

Attachment B

Comment Letter from Leadership Couns. for Just. & Accountability et al. to Mayor Jerry Dyer, Fresno City Councilmembers, & Michelle Zumwalt (Aug. 16, 2023) (on file with author).



August 16, 2023

Mayor Jerry Dyer
Fresno City Councilmembers
Michelle Zumwalt, Planning and Development Department
2600 Fresno Street, Room Fresno, CA 93721

RE: City of Fresno Draft 6th Cycle Housing Element

Dear Councilmembers, Mayor Dyer, and Ms. Zumwalt,

The undersigned organizations write to you to advocate for a Housing Element that is equitable, inclusive, and responsive to disadvantaged communities' needs. We are a group of community-based organizations working alongside community partners and leaders throughout the City of Fresno. Housing Element Law requires that cities and counties make a diligent effort to meaningfully incorporate public input provided on the housing element update, prioritizing input provided by lower-income residents, residents with special housing needs, protected classes, and residents of lower-income and disadvantaged communities.

Goals, policies and actions must be aggressively set to overcome those contributing factors to meet the "meaningful impact" requirement in statute and to avoid actions that are materially inconsistent with the obligation to affirmatively further fair housing. Goals and policies must be created with the intention to have a significant impact, well beyond a continuation of past actions, and to provide direction and guidance for meaningful action. AFFH Guidance, p. 52. The draft element's Housing Action Plan contains numerous actions that lack concrete steps and measurable outcomes and will not necessarily result in a beneficial impact during the planning period in violation of the Housing Element Law's standards. The following programs are inadequate and include our recommendations to improve them.

- **Program 1 - Maintain Adequate Sites.** Program 1 states that the City shall continue to maintain a current inventory of Housing Element sites to ensure that it can adequately accommodate the 2023-2031 RHNA. Given the impact of rezoning to the availability of and location of sites suitable for housing, the City should take additional steps to ensure transparency in decision-making related to proposed rezones and take diligent steps to provide notice of the proposed rezone along with an assessment of the potential impacts of the rezone on housing opportunity prior to a decision on the proposal. This includes but is not limited to public hearings and door to door canvassing to facilitate effective



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notice. Further, the city must conduct a racial equity analysis which would include the benefits and disadvantages of the proposed rezone and whether it would result in displacement of protected racial/ethnic groups, reduce housing opportunities for protected groups, and how it would impact patterns of segregation. Finally, the program should explicitly prohibit the rezoning of sites suitable for lower income households to industrial land use classifications which would bring industrial uses next to or near neighborhoods that include or are planned for housing affordable to lower income residents. This is critical to ensure that the City is compliant with its duty to affirmatively further fair housing.

- **Program 2- Variety of Housing Opportunities in High Resource Areas (*identified in the AFH as a Meaningful Action*).**

The program states that the City “will identify and pursue opportunities” with affordable housing developers to promote the development of affordable units in high resource areas. Unfortunately, it does not provide any details on how they will in fact promote the development of affordable units for lower income households in high opportunity areas. There is no clear commitment to zone sites for multi-family development in areas of high opportunity or a commitment to ensure that such units are affordable to all income levels. Further, there is no commitment to match funding opportunities with the identification of available sites to facilitate their development. Notably, the City will not conform with its duty to AFFH if it does not ensure adequate sites for affordable housing for lower income residents in high resource areas. Without clear and enforceable commitments and timelines, this program will not provide a beneficial impact or further fair housing. Furthermore, in order to expeditiously address the lack of housing opportunities accessible to lower-income residents in high resource areas, the timeline of this program should be shortened.

Accordingly, a specific objectives of this program should be changed to (a) assess the number of sites that must be rezoned in high resource areas (as identified in TCAC/ HCD’s Opportunity Maps) to effectively AFFH , and (b) rezone the adequate number of sites pursuant to that analysis by December of 2025.

- **Program 3 - Encourage and Facilitate Accessory Dwelling Units (ADUs) (*identified in the AFH as a Meaningful Action*).** While we support and encourage the development of ADUs, the program does not outline clear commitments that will yield identifiable beneficial outcomes. The program states “a primary objective of this program is to increase the supply of affordable units throughout the city” but fails to identify any



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specific commitments to take any action on how this objective will be reached.

Additionally, building ADUs is generally not an accessible housing option to low income households who cannot afford predevelopment costs associated with ADUs. We recommend additional measures in this program to make ADUs accessible to lower income households such as targeted outreach to low-income homeowners, incentives for landlords to make ADUs affordable, no interest loans for ADU development and waivers for inspection fees. Additionally, a dedicated liaison in the Office of Community Affairs should be available for all questions regarding ADUs.

- **Program 8 - Use of Sites in Previous Housing Elements..** Program 8 should be updated to clarify that streamlined approval will be available to both vacant and non-vacant sites through a zoning amendment. As written it appears that the zoning amendment will only apply to vacant sites included in the 4th and 5th cycle housing elements.
- **Program 9 - Annual Reporting Program.** While we appreciate the sentiment that the City will “engage all members of the Fresno community,” and the specific commitment to use multilingual notices and media, the City should revise this program and avoid using vague language with no commitments. To make the public engagement associated with this program meaningful, we recommend that the program include a commitment and associated timeframe for the City to implement input received through its various outreach efforts such as workshops and surveys in addition to the annual public hearing. The annual report should include specific actions the City will take to overcome identified constraints and barriers to complying with Housing Element programs.
- **Program 10 - Incentives for Housing Development (*identified in the AFH as a Meaningful Action*).** This program does not present a commitment to address housing production for low-income units or actions that will be taken to complete the program. To facilitate and promote the use of available incentives, the city should make a list of incentives, including density bonus incentives and impact fee waivers, available to the public through an accessible database.

Additionally, the program’s current language that it will “identify site opportunities in higher resource areas and ...improve access to resources” suffers from the same issues that program 2 does insofar as it fails to identify clear and enforceable commitments and steps that it will take to ensure the availability of sites for lower income households in high opportunity areas. It is critical for this program’s success and the City’s role in AFFH that the housing element includes clear, timebound, and enforceable actions to



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ensure availability of sites for lower income households in high resource areas, as outlined above.

Finally, the City should include enforceable commitments to avoid displacement and gentrification in the Downtown Planning Area, and assess the role that priority processing in the area has on the City's duty to AFFH.

- **Program 11 - Local Housing Trust Fund (*identified in the AFH as a Meaningful Action*).** The Local Housing Trust Fund is a great tool to alleviate the housing crisis and we are glad to see the City's commitment to leverage State matching funds. We recommend adding the creation of a Community Advisory Board as an action to ensure that projects are driven by a community process and benefit the most impacted residents. Housing advocates have met previously with City staff to develop an equitable Community Advisory Board made up of a diverse group of residents most impacted by housing barriers, legal experts, and small landlords.
- **Program 16 - Surplus Public Lands.** The commitment to release surplus sites appears to simply be a commitment to comply with its existing duties under the Surplus Lands Act. The language is ambiguous, non-committal and must be revised. In addition, the program states the City will "consider depositing a portion of up to 100 percent [of sale proceeds] to the LHTF" We recommend instead that the City commit to depositing 100 percent of sale proceeds into the LHTF.
- **Program 18 – Home Buyer Assistance (*identified in the AFH as a Meaningful Action*).** While a critical program for many Fresnoans, this Program should include additional commitments to ensure that low-income residents, undocumented residents, residents who speak languages other than English, and residents in racially and /ethnically-concentrated areas of poverty (R/ECAPs) have the opportunity to benefit from these funds. During the 5th Cycle planning period, many residents without social security numbers or who faced language access barriers were unable to apply for the City's homebuyer assistance program. While the City was able to assist nine families with this program, this program must incorporate mechanisms that will allow more families to apply during the next 8-year cycle by addressing barriers and pursuing state funds every year. This program has other deficiencies that must be addressed such as lack of public outreach and lack of interpretation for applicants applying by phone. Solutions include: ensuring that low-income residents are knowledgeable about the programs, undocumented residents are able to successfully apply for this program, including closing



costs as part of funding packages. In order to ensure that residents living in R/ECAPs are targeted, we recommend the City create annual reports listing how many applicants were assisted, outreach efforts made and whether they live in R/ECAPs. Due to the concerns outlined above, the program as currently implemented and drafted fails to adhere to HCD's AFFH Guidance that "actions must be specific with timelines, discrete steps and measurable outcomes to have a 'beneficial impact' during the planning period."

- **Program 19 – Housing Choice Voucher Incentive Program (HCV) (*identified in the AFH as a Meaningful Action*).** This action fails to include meaningful actions with specific timelines, and measurable outcomes to have a "beneficial impact" during the planning period. The program should develop and implement a proactive enforcement program housed within that legal department to ensure HCV. The City should revise this program action to include a timeline of one workshop a month (twelve workshops throughout the year) to ensure residents and landlords are able to access housing quickly and better assist residents/landlords going through any issues that prevent them from using/accepting HCV. Additionally, collaborating with and funding CBOs and fair housing organizations to provide information to voucher holders and landlords on California's source of income discrimination prohibitions. The program should also commit the City of Fresno to finance billboard ads about protections against HCV discrimination and send informational materials to all landlords in Fresno registered in the rental registry regarding HCV. Finally, the program should be revised to include a commitment to actively pursue enforcement against discrimination against voucher-holders and supplementing vouchers with additional subsidies to support voucher use in higher-cost markets in high resource areas. Northeast Fresno has very limited HCV use, with only four census tracts north of Herndon Avenue containing any HCVs, and of those four tracts, no tract exceeds 5 percent HCV use. By revising the program to include the above recommendations would help address fair housing needs in Fresno.
- **Program 21 – Housing Rehabilitation (*identified in the AFH as a Meaningful Action*).** Government Code section 8899.50 requires "meaningful actions" well beyond combating discrimination to overcome patterns of segregation and foster inclusive communities. These actions, as a whole, must address significant disparities in housing needs and in access to opportunity." The current program has failed to address the needs of extremely low income residents and vulnerable populations such as undocumented residents. As we continue to see the negative effects of Climate Change across the world, it is imperative that the City include weatherization such as cooling mechanisms, like



heat pumps, air conditioning, insulation and other cooling assets to increase resilience to extreme heat as part of the rehabilitation program. It is a critical and urgent need given that extreme heat kills thousands per year and impacts disadvantaged communities the most. Additionally, the City must establish an acquisition and rehabilitation fund to purchase older, blighted, and/or abandoned homes/buildings. The City of Fresno can establish a revolving fund to insure that rehabilitated homes are sold back to the community at a low cost. Finally, for the program to have a beneficial impact the timeframe section should include 15 rehabilitation grants annually, and 5 distressed property grants using PLHA and CDBG funding for extremely low and low income residents.

- **Program 22 – Comprehensive Code Enforcement.** While we appreciate Code Enforcement’s response and the City’s diligence to keep increasing staff, there are still additional actions that should be taken to create a comprehensive code enforcement. HCD’s AFFH Guidance recommends that “to overcome contributing factors to fair housing and affirmatively further fair housing, actions must consider a wide range of actions across all action areas. The number and scale of actions will depend on the severity of the needs but regardless of need, a cohesive and effective program will consider multiple action areas.” This program as written continues to fail to address critical housing issues since the last housing element cycle. The program should be revised to include actions around legally holding landlords accountable for retaliation, unlawful evictions, and harassment towards tenants who file code enforcement complaints such as a commitment to adopt a tenant anti-harassment ordinance. As stated, we recommend that the City adequately analyze code enforcement’s procedures and incorporate tenant feedback for a comprehensive code enforcement program.
- **Program 23 - Special Needs Housing (*identified in the AFH as a Meaningful Action*).** Much of the language in this program is vague, noncommittal, and does not provide adequate actions in order to provide a beneficial outcome. This program states the City “shall advocate for provision of special needs,” “partner with and encourage local and state non profits,” and “provide/encourage.” These actions are not concrete or specific and provide no assurance of a beneficial impact on persons’ with disabilities access to housing. This should be revised to include review and enforcement of compliance with legal requirements for accessibility of multi-family and affordable housing, including in permitting processes, not just “encourage[ing]” accessibility features. Additionally, we recommend that the program add specific actions to remove barriers to housing by special needs groups such as allowing undocumented residents to apply for and receive



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housing assistance, vouchers and other subsidies unless otherwise required by federal law.

- **Program 26 - Equitable Community Investments (*identified in the AFH as a Meaningful Action*)**. Program 26 states it will “seek funding,” “continue to actively seek resources,” and “continue implementing the written policies.” These commitments are vague and non-committal. There are no actions on how these will be completed and is ambiguous and as a result provides no indication that a beneficial outcome will result from the program and further fair housing. The programs continue not to commit the City to take a lead role in planning, funding, and/or constructing projects or indeed any role beyond identifying issues and needs and seeking funding on an annual basis. Additionally, it should not rely on the General Plan’s identification of Priority Areas for Development Incentives in Chapter 12 and should instead use the Urban Displacement Project data to guide investments.
- **Program 28 – Opportunity To Purchase Act (OPA) (*identified in the AFH as a Meaningful Action*)**. Although we appreciate the City’s action to initiate research on a local Opportunity to Purchase Act, we strongly recommend that the City implements robust outreach and engagement, in partnership with CBOs that work closely with low-income communities in racially/ethnically-concentrated. Additionally, the program states it “shall research” and “consider establishing an OPA.” These are not commitments and fail to implement any specific, firm, or enforceable commitment such that no beneficial outcome of the action is indicated.
- **Program 29 – Mobile Home Parks (*identified in the AFH as a Meaningful Action*)**. Program 29 contains no commitments, actions, or enforceable language that will ensure a beneficial impact throughout the planning period. Additionally, this program repeats verbatim language included in Program 10A of the 2015-2023 without explaining how or why reliance on the same program action will have better results during the next planning period. With residents like Three Palms and Trails End Mobile Home Park experiencing the negative impacts of slumlords, it is crucial that the City make significant improvements to the program actions. Furthermore, the program must address the need for heat resiliency such as weatherization and insulation especially to older mobile home parks by funding a mobile home park renovation fund for all mobile homes. This fund will help low income families with issues that they need to address due to inspection violations or other habitability concerns. Additionally, this program should include a commitment to penalize and fine mobile home park owners who are not providing



adequate and safe conditions for their tenants. For example, Three Palms Mobile Home Park had not had safe drinking water for quite some time and the owner was never made responsible for this clear human rights violation. Finally, consistent with the City's responsibility to AFFH, the program should support quality of life and access to opportunity improvements for all mobilehome parks in Fresno by taking meaningful actions to increase green space, transit, and resources near mobile home parks.

- **Program 30 – Emergency Rental Assistance Program (*identified in the AFH as a Meaningful Action*).** Although we appreciate the City adding this program, it states that the City will “seek additional funding” and fails to commit ongoing funding that can come from the Local Housing Trust Fund, the General Fund, or its own permanent funding source to ensure a beneficial impact during the planning period. Identification and commitment of a permanent local source of funding by 2024 will highlight a commitment to prevent displacement and protect tenants.
- **Program 31 - Eviction Protection Program (EPP) (*identified in the AFH as a Meaningful Action*).** The Eviction Protection Program is a critical anti-displacement and anti-homeless tool. However, the program's current language to “seek additional funding to support the “EPP” is not a strong commitment and does not provide indication that a beneficial outcome will occur if funding is not replenished. We strongly recommend that the City commit to staffing 5 full-time staff for screening so tenants are able to receive help as soon as possible. We also recommend program expansion to include:
 - Wide-reaching outreach and education campaigns
 - Direct legal representation and assistance for low-income tenants encountering legal issues. This includes but is not limited to being served with a notice from their landlord (e.g. 3-day notice, notice of rent increase, etc.)
 - Evaluation of the Eviction Protection Program to ensure it is effective and address issues to improve the program.
- **Program 33 – Homeless Assistance (*identified in the AFH as a Meaningful Action*).** Program 33 does not commit the City to any concrete action. The program states it will “identify partnership opportunities,” “leverage the homeless assistance response team” and “support the Voucher Incentive Program” none of which commit to any enforceable and actionable items. The city must commit to completing an adequate analysis of needs of unhoused City residents. This should include the completion of an AFH analysis of disproportionate needs.



- **Program 34 - At-Risk Housing.** Program 34 includes actions without a clear commitment to take steps that will lessen the severity or impact of the issue in any timeframe. Again, the language is non-committal, vague, and ambiguous in how the program will reach its objective. Additionally, stronger tenant protections should be included as an objective and completed no later than June 2024 for residents facing displacement and an affordable housing resource map for tenants so they have the option to relocate.

Additionally, the draft element lacks policies and programs identified in Leadership Counsel's February 2023 letter, attached hereto. We incorporate the policies and programs recommended in that letter here by reference. In addition to the policies and programs highlighted in Leadership Counsel's February 2023 letter, the draft element should also be revised to include the following programs:

- A. Rent Control and Just Cause Protection Ordinance. The Housing Element draft mentions tenant protection "strategies" but in no way does the draft commit to tangible solutions. City of Fresno tenants, along with advocates, have been demanding rent control and just cause ordinance since 2021. The Here To Stay Report lists this as the communities' top priorities. Tenants have attended City Council meetings for the past two years asking for this; they have met with every city council member; and have lifted this as a priority in the City's Housing Element workshops. Yet, the City refuses to acknowledge residents' need. We strongly recommend that the City incorporate this into the Housing Element.
- B. Inclusionary Zoning Ordinance. The City should adopt a program to develop and adopt an inclusionary zoning ordinance by a date certain that is no more than three years into the planning period in order to allow the ordinance to result in the production of lower-income units during the planning period. To ensure that the ordinance AFFH and maximizes the production of affordable units, the ordinance should apply to single-family and multi-family housing and require a minimum share of affordable units (approx. 25-30%) and affordability levels of those units, including affordability for very-low and extremely-low income households. The City should develop this ordinance in partnership with lower-income residents and CBOs.
- C. Urban Greening is used as buffer zones when residential is placed or already placed near existing polluting land uses to mitigate health impacts.
- D. Citing industrial uses. Programs should explicitly prohibit the rezoning of sites suitable for lower income households to industrial land use classifications which would bring industrial uses next to or near neighborhoods that include or are



planned for housing affordable to lower income residents. This is critical to ensure that the City is compliant with its duty to affirmatively further fair housing.

- E. Impact fees should be placed into a community benefit fund when polluting land uses and practices are placed near housing. The community benefit fund will be managed by the community directly impacted to dictate to who these funds should be allocated.
- F. Establish local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of a Project Site. This can reduce the length of trips, reduce greenhouse gas emissions and provide localized economic benefits
- G. Developing Public Health Impact Reports for new development in order to understand existing public health disparities and the potential of those conditions worsening as a result of development. Public health agencies should be resourced to support this analysis. The findings of these reports should be available publicly and be included in permit approval processes and other key decision-making milestones.
- H. Establish a Cargo/Freight Prohibition and Revenue Tax to directly fund community-based housing and projects in the neighborhoods most negatively impacted by years of environmental toxicity caused by freight.
- I. Incorporate Complete Streets principles into all transportation projects at all phases of development, including planning and land use decisions, scoping, design, implementation, maintenance, and performance monitoring.
- J. Establish a Housing Element Implementation Committee to oversee the timelines and implementation of each program and policy. The committee should be composed primarily by tenants, low-income homeowners, and at-risk populations to ensure implementation meets the needs of most at-risk communities.

As discussed previously, each program must contain clear action steps, deadlines, and measurable outcomes that will be achieved within the planning period and address housing and fair housing needs prioritized during the public process.

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Thank you for your consideration of our comments. Please contact us if you would like to find a time to discuss them. We look forward to working together to advance access to safe, affordable housing for all City of Fresno residents.



Sincerely,
Karla Martinez, Policy Advocate
Leadership Counsel for Justice and Accountability

Edith Rico, Project Director
Building Healthy Communities

Shar Thompson, Central Valley Regional Coordinator
Tenants Together

Marisa Moraza, Campaign Director
Power California

Attachment C

Comment Letter from Pub. Int. L. Project & Leadership Couns. for Just. & Accountability to Mayor Jerry Dyer, Fresno City Councilmembers, & Michelle Zumwalt (Aug. 16, 2023) (on file with author).



August 16, 2023

Mayor Jerry Dyer
Fresno City Councilmembers
Michelle Zumwalt, Planning and Development Department
2600 Fresno Street, Room Fresno, CA 93721

RE: City of Fresno Draft 6th Cycle Housing Element

Dear Mayor Dyer, Councilmember, and Ms. Zumwalt:

Leadership Counsel for Justice and Accountability write in collaboration with the Public Interest Law Project (“PILP”) and residents of South Fresno neighborhoods impacted by the severe lack of decent quality, affordable, and permanent housing options and gaping disparities in access to opportunity in Fresno to provide comments on the July 2023 Draft Appendix 1-E: City of Fresno of the Fresno Multi-Jurisdictional 2023-2031 Housing Element (“City of Fresno Draft Housing Element” or “Draft Element”).

Leadership Counsel works alongside the most impacted communities to advocate for sound policy and eradicate injustice to secure equal access to opportunity regardless of wealth, race, income, and place. Leadership Counsel advocates for policy and practice changes to meet the housing needs of all residents in Fresno, especially low-income and residents with special housing needs, and to overcome fair housing disparities that impact low-income communities of color. Residents with whom we partner experience high rates of cost burden and escalating housing costs, reside in unsafe and unsanitary rental housing conditions, and ever-present and magnifying displacement risks and are simultaneously impacted by striking disparities in access to opportunity compared to more affluent Fresno neighborhoods, including a lack of access to a healthy environment and public and private investment in critical infrastructure, services, and amenities.

The Public Interest Law Project (PILP) works statewide to support local legal programs that address issues involving housing, land use, public benefits and homelessness. PILP has been providing substantive training, litigation support, and technical assistance in these areas for over 25 years.

The City of Fresno’s 6th cycle housing element update presents a critical opportunity for the City to identify and address long-standing, wide-ranging, and severe housing needs and fair housing disparities that impact the City’s residents, disadvantaged communities, and racially and

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ethnically concentrated areas of poverty (“R/ECAPs”), in particular, the Southwest, South Central and Southeast areas. The City must ensure that it does not miss this opportunity to develop and adopt a housing element that complies with the State Housing Element Law and civil rights laws and that meaningfully incorporates the input of lower-income residents and protected classes and the community-based organizations that work alongside them.

Our comments below highlight further steps and actions the City must take to meet State Housing Element Law requirements. In short, the Draft Element must be revised in order to meet Fresno’s housing needs and relevant statutory requirements in several different ways, including:

- Incorporate input regarding key housing issues and disparities and actions needed to address those issues provided to the City by community members as required by HCD’s AFFH Guidance;
- Revise the constraint analysis to address non-governmental constraints, as well as constraints on supportive housing and the maintenance of the housing stock.
- Revise the AFH analysis to consider all of the required displacement factors, barriers in access to opportunity, and fair housing issues associated with the Draft Sites Inventory;
- Revise programs to include specific actions and deadlines and add programs that will result in a beneficial impact on Fresno housing needs and disparities during the planning period and overcome patterns of segregation and foster inclusive communities, including but not limited programs 14, 15, 19, 23, 29, and 33;
- Revise the site inventory analysis to exclude projects that have not been approved during the projection period, include a realistic capacity calculation based on development throughout the 5th cycle, and determine the adequacy of the non-vacant site

I. The City Has Not Diligently Engaged the Public As Required, Because the Draft Element Fails to Adequately Reflect Public Input

The City’s obligations to diligently engage all economic segments of the community and to affirmatively further fair housing through the housing element require more than just seeking input about the contents of the housing element. Government Code sections 65583(c)(8), 65583(10)(a) & 8899.50. Inviting residents to provide input but failing to incorporate that input into the housing element undermines the purpose of resident participation in the housing element update, fosters distrust, and fails to constitute “engagement” as required by section 65583(c)(8) of the Housing Element Law. HCD’s Affirmatively Furthering Fair Housing (“AFFH”) Guidance

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states that housing elements must describe “a summary of [public] comments and how the comments are considered and incorporated (including comments that were not incorporated), particularly with changes to the housing element. HCD, Affirmatively Furthering Fair Housing: Guidance for all Public Entities and for Housing Element (“AFFH Guidance”), 2021, p. 22.¹ While the Draft Element provides some description of public input provided, its summary of public comments generally lacks sufficient detail for the reader to understand the nature of the issue raised or the solution proposed. In addition, the Draft Element fails to demonstrate the City’s incorporation of input provided and to identify input the City chose not to incorporate as required. For example, at the March 1, 2023 community workshop on the housing element update held at Helm Home, residents identified the establishment of rent control, tenant assistance and protections, and reducing barriers to undocumented residents as among their top suggestions and solutions. The Draft Element fails to demonstrate how this solution will be incorporated into the final draft and to even to study the housing needs of undocumented residents.

The Draft Element also fails to acknowledge, discuss, or incorporate recommendations contained in the letter submitted to the City by Leadership Counsel and several other community-based organizations in February 2023 relating to the development of this Draft. *Attachment 1, Leadership Counsel February 2023 Letter*. The letter identifies policies and programs which the signatory organizations believe should be prioritized in the housing element update, based on our direct and daily work with low-income residents of color, farmworkers, residents of disadvantaged unincorporated communities, and other residents with special housing needs and members of protected classes. The City must revise the draft element to acknowledge this letter, summarize its contents, and revise goals, policies, and programs to incorporate its recommendations, in addition to other input it receives. The City must also revise the element to indicate what public input it chose not to incorporate, which the element currently fails to do.

II. The Housing Element Fails to Adequately Analyze and Remove Governmental Constraints to Housing Development

To fully comply with Housing Element law, the City of Fresno must identify constraints to the development of housing affordable to households at different income levels, as well as possible constraints to the development and maintenance of a variety of types of housing, including supportive housing, single room occupancy units, emergency shelters, and transitional housing. *See Gov’t Code* §65583(a)(5) and (c)(1). This analysis includes potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all

¹ All references to code sections hereafter refer to the Government Code unless stated otherwise.

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income levels. Gov't Code § 65583(a)(5). Following a close analysis, the City must include a description of efforts to remove constraints and a program to remove those constraints. Gov't Code §65583(c)(3).

A. Land Use Controls Are Under-Analyzed as a Constraint

The Housing Element under analyzes the impacts of current and planned zoning regulations on housing development. A jurisdiction must include an analysis of potential and actual governmental constraints, including land use controls that directly impact the cost and supply of residential development. Gov't Code § 65583(a)(5). The constraints analysis fails to demonstrate the direct connection between its currently proposed zoning on cost and supply of housing.

The City has not adequately analyzed the effects of constraints associated with wide-spread availability of single family zoning and the limited availability of high density zoned sites. For example, the HE acknowledges “growth in the City of Fresno over the past few decades has traditionally been low density suburban development, which has resulted in conditions of sprawl in various areas of the city.”² Despite the acknowledgement, the City continues to allow by right single-family units in. Despite the historical preference for single family development, the abundance of available single family homes in Fresno, and the underproduction of affordable housing, the City still permits single family uses by-right in many of the zones identified for increased high-density development: RM-1, NMX, CMX, RMX, CMS, CR, DTN, DTG.

Further, although single family development is allowed in almost every zone that permits residential development, higher-density units are not allowed in certain areas in the City. For example, multi-family units are not allowed in RS-1, RS-2, or RS-3 areas, despite the large majority of the City being zoned one of these zones, and where many high resource areas have developed.³ Duplexes are similarly constrained, they are excluded from RS-1, RS-2, RS-3, RS-4, and only allowed through conditional use permit in R-5.

Because both single-family and multi-family development is permitted in most residential zones, it puts multi-family developers in competition with single family developers for the same sites.

Single family units also benefit from reduced permitting timelines. For single--family developments it typically takes up to 30 days for developers to pull building permits after its

² Fresno Multi-Jurisdictional Housing Element July 2023, Appendix 1E: City of Fresno, 1E-4-1.

³ City of Fresno, 2023. Data downloaded from HCD AFFH Data and Mapping Tool in 2021, based on ACS data.
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entitlements are approved.⁴ In contrast, based on recent projects, it can take three months to a year for multifamily developers to receive building permits after entitlements.⁵ Although the Draft concluded that higher permit processing schedules for multi-family units compared to single family units are not a constraint, the increased complexity and expected timeline does appear to act as a constraint on multi-family development based on the very low production number of multi-family housing in the 5th cycle. ⁶

B. Land Use Controls' Effect on Types of Housing

A complete constraint analysis does not only focus on housing by income levels but must also consider constraints to the different types of housing.. As noted above, the Draft constraint analysis must examine what constraints exist to the development of : supportive housing, transitional housing, single room occupancy units, and emergency shelters. Gov't Code 65583(c)(1)

1. Single Room Occupancy (SRO) Units

The City's constraint analysis regarding SRO's should examine more than the limit on the number of units but also where SRO's are permitted to develop. SRO's are a crucial source of affordable housing for many people and can augment the deed restricted affordable housing available to lower income people. The City should commit not only to removing the limit on the number of units that can be contained in an SRO but also add it as a permitted use in the following zones:

RM-MH, RM-2, and downtown while removing conditional use permit requirements from RM-2, RM-3, NMX, CMX, and RMX.

2. Emergency Shelters

The Draft must consider whether its development standards act as a constraint on the development of emergency shelters. Although the City seems to determine that its requirements do not act as a constraint to the development of shelters it also states it may consider making further amendments to the development code to remove any possible constraints. If further amendments are necessary, especially any needed to comply with Government Code section 65583(a)(4)(A), the City should commit to making those changes immediately. For instance, the City's current requirement for the number of toilets per person in a shelter (Muni Code section

⁴ Fresno Multi-Jurisdictional Housing Element July 2023, Appendix 1E: City of Fresno, 1E-4-35

⁵ Fresno Multi-Jurisdictional Housing Element July 2023, Appendix 1E: City of Fresno, 1E-4-35

⁶ Fresno Multi-Jurisdictional Housing Element July 2023, Appendix 1E: City of Fresno, 1E-4-38

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15-2729), if it exceeds the building code requirement is a likely constraint on the development of shelters because of the additional cost it adds to this type of development.

3. Supportive Housing

The Draft is silent as to whether the development oecd complies with Government Code section 65583(c)(3) that allows supportive housing in any zone where multi-unit or mixed use development is permitted. If the City’s code does not reflect this requirement that is a constraint on housing for people with disabilities and a program to revise the development code to comply with the statute is required.

4. The HE Under-Analyzes Parking Requirement Effects on Housing Construction

The Draft fails to fully analyze whether its parking requirements act as a constraint on housing development, especially in the downtown and along transit corridors. Parking requirements increase the cost of housing.⁷ The Draft states it “determines the required number of parking spaces based on the type and size of the residential unit and has found the required parking spaces to be necessary to accommodate the number of vehicles typically associated with each residence.”⁸ The analysis ignores principles of induced demand and downstream effects of entrenching car-centric land use. The Draft implicitly acknowledges that parking increases costs and may not be critical as it allows waivers for parking requirements in affordable housing developments and other transit-friendly areas.⁹ The ad hoc basis of reduced parking requirements introduces uncertainty which can increase the overall cost and time delays in housing development.

Recently, the City has made clear how much of an impediment parking really is. In negotiations with the state to receive a large grant to support increased housing in downtown Fresno, the City earmarked about \$70 million of a possible \$250 million grant for two new parking structures in the downtown area. Mayor Jerry Dyer stated [the cost of parking structures] “is always a big challenge for us when we try to bring in developers to build housing... Taking that off the table allows for these projects not only to occur faster, but it allows the developers to be more incentivized to build in our downtown area.”¹⁰

⁷ <http://database.greentrip.org/>

⁸ Fresno Multi-Jurisdictional Housing Element July 2023, Appendix 1E: City of Fresno, 1E-4-10

⁹ Fresno Multi-Jurisdictional Housing Element July 2023, Appendix 1E: City of Fresno, 1E-4-10

¹⁰ <https://www.fresnobee.com/news/local/article275363746.html>

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Although parking has been identified as a constraint to increased housing development, the City has not put forward a program to identify steps to remove the constraint. The City asserts “[p]arking standards are one area where many communities are seeking to decrease housing costs.”¹¹ Yet, minimum parking requirements are squarely within the control of the jurisdiction and could be reduced if the City so decided. The direct link on parking’s costs in relation to housing development in Fresno must be further analyzed, and a reduction in parking requirements is likely required.

C. Risk Analysis and Distribution of Affordable Housing

The Draft’s analysis of at-risk housing is incomplete. under-analyzes the risks to publicly assisted affordable housing and its distribution. There are more than 8,500 publicly assisted affordable housing units in the City of Fresno.¹² The Draft identified 695 units at risk of conversion to uses other than low-income residential within 10 years from the housing element adoption deadline.¹³ Although the City of Fresno considered the cost of replacing the at-risk units as required under §65583(a)(8), it failed to examine which pathway would be most appropriate for the City and what constraints, if any, would be associated with the pathway chosen.

The City’s lack of tenant protections, such as source of income discrimination outreach and education, rent control, just cause protections may operate as a constraint on the maintenance of housing available to lower income people and facilitate the displacement of lower income renters. The lack of these protections should be analyzed as a constraint on the maintenance of housing under Government Code section 65583(a)(5).

III. The Housing Element Fails to Adequately Analyze and Remove Non-Governmental Constraints to Housing Development

In addition to analyzing governmental constraints, the HE must also analyze the potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels. Gov’t Code § 65583(a)(6). To that end, the Draft failed to consider the effect of market forces, availability of financing, environmental concerns, and NIMBY opposition.

¹¹ Fresno Multi-Jurisdictional Housing Element July 2023, Appendix 1E: City of Fresno, 1E-4-14

¹² Fresno Multi-Jurisdictional Housing Element July 2023, Appendix 1E: City of Fresno, 1E-4-55

¹³ Fresno Multi-Jurisdictional Housing Element July 2023, Appendix 1E: City of Fresno, 1E-4-55

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A. NIMBY Opposition

The Draft must include an analysis of NIMBY opposition to housing development. As a largely sprawling suburban City, Fresno is prone to local opposition to increased density from existing single-family homeowners that have preconceived ideas of the impacts of increased density on their neighborhoods. Further, the zoning code requires conditional use permits for duplexes and multi-family housing in some areas, making them especially susceptible to opposition and defeat from NIMBY residents.

The chilling effect of NIMBY opposition to housing development is not a foreign concept to jurisdictions in Fresno County. For example, in the adjacent City of Clovis, the Clovis City Council recently voted to shut down a proposed 40-unit development near Old Town Clovis because neighbors expressed concerns about traffic congestion, overflow parking and the “monolithic” height of the planned apartment building.¹⁴ NIMBY opposition to housing development is a widespread phenomenon across California but is especially prevalent in areas that have historically been primarily low-density developments. The Draft’s failure to analyze NIMBY opposition as a constraint must be addressed in the City’s next Housing Element draft, and the City should include a program to reduce this type of opposition by ensuring that more than single family developments are permitted by-right and reducing the discretionary review of multi-family housing.

B. Environmental Concerns

The Draft did not consider environmental constraints as part of its analysis under 65583(a)(6). Environmental constraints may include limitations to water supply, nearby pollution, or infrastructure development.

The City of Fresno relies heavily on groundwater and surface water. As climate change makes water availability less predictable the City must analyze how an increased population and land use will affect water availability and whether water availability will eventually constrain growth.

Further, separate from water availability, the City must consider the infrastructure requirements of delivering water to a denser population. For example, the City estimates that downtown Fresno, where a large portion of new housing development is projected, currently requires significant water and wastewater infrastructure upgrades. Broke Broche, the City’s director of public utilities, estimated that downtown Fresno would require between \$160-\$180

¹⁴ <https://www.fresnobee.com/fresnoland/article255749376.html>

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million in water and wastewater upgrades to support planned housing development.¹⁵ The Draft should analyze the cost of these needed improvements as a possible constraint on development.

Finally, the Draft failed to consider industrial and polluting industries' effect on future housing development. The City of Fresno has evolved as a car dependent City surrounded by heavy industry and highways. Therefore, future housing development will need to carefully consider placement and mitigation measures to avoid perpetuating environmental inequity.

C. Market Forces and Availability of Financing

The Draft failed to include an explanation of current housing development trends and applications across all income levels. Market forces are relevant to the types of housing that are likely to develop in the future. Once this analysis is done it might make it clear what actions the City must take, such as further financing for programs.. Using the example mentioned above, requiring private investment to implement required infrastructure in downtown Fresno would likely make housing development in the area infeasible. Similarly, lower margins or a lack of developer interest in serving lower income portions of the market may require the City to provide incentives to spur greater housing development in the segment. Without a proper analysis such a conclusion is impossible and falls short of the requirements listed in Government Code § 65583(a)(6).

For example, Fresno had some of the highest rental price increases in the country, with a 28% increase in one-bedroom rent prices between January 2021 and January 2022.¹⁶ The spike in rent prices disproportionately affects low-income individuals who are often on fixed incomes or receive low wages that have not kept up with the rapid rise in rents. Further, existing conditions in many rental units in Fresno have failed to keep up with required maintenance and would fail habitability requirements.¹⁷ The combination of unmaintained housing in Fresno alongside rising rents was not analyzed as a constraint. As a result, the condition of housing stock available to low-income populations must be analyzed and the City must take steps to redress those constraints identified.

¹⁵ <https://www.fresnobee.com/news/local/article275363746.html>

¹⁶ <https://www.fresnobee.com/fresnoland/article258073823.html>

¹⁷ <https://www.fresnobee.com/fresnoland/article251600613.html>

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IV. Further Revisions and Analysis are needed to determine if the City's Draft Includes Adequate Sites

A. Regional Housing Need Allocation (RHNA)

The City's calculation of the RHNA it must accommodate must be revised to exclude units that have not been approved during the projection period. State law permits cities to reduce the number of units they must accommodate in their inventory of adequate sites, by income level, by the number of units approved or permitted since the beginning of the planning period:

Projects that have been approved, permitted, or received a certificate of occupancy since the beginning of the RHNA projected period may be credited toward meeting the RHNA allocation based on the affordability and unit count of the development. For these projects, affordability is based on the actual or projected sale prices, rent levels, or other mechanisms establishing affordability in the planning period of the units within the project. See HCD's Housing Element Sites Inventory Guidebook, p. 5, available at https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sites_inventory_memo_final06102020.pdf

The City's Draft Element appears to take credit for units that are still under review and have not yet been approved or permitted. The Draft Element cannot claim credit, meaning reduce the RHNA, with the following projects because project approvals have not been obtained for these units: Villa Baraca Apartments (P-1); DADA Lofts (p-13)(indicates the application is still being reviewed); Lincoln Park Apartments (P-16); Starling Townhomes (P-17); Latitudes at Armstrong (P-18); Helm Tower Office and Lofts (P-19); Elm Avenue Living (P-21); Majestic Palm Apartments (P-22); and, Los Pueblos Apartments (P-23).

The Number of sites needed to accommodate the RHNA should reflect the removal of the above-described projects.

B. Capacity calculation

If a site does not have a required minimum density then the City must analyze the development capacity based on the patterns of typical development patterns in the same zone. The City uses a very narrow time frame to assess the development capacity of projects in the City – 2018-2020, it is unclear why the City has chosen such a narrow time frame but in order to assess if the Draft's capacity calculations truly reflect realistic development patterns the City should use a broader time frame to establish the types of developments and capacity typically achieved.

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Also, the Draft should explain why the capacity calculation for the RM-1 zone was rounded down from 85 percent to 80 percent, while the same calculation was rounded up from 77 percent to 80 percent in the RM-3 zone.

The City has chosen not to rely on the minimum density to calculate capacity on some mixed-use zone site (NMX, CMX, RMX) and because there are no maximum densities imposed, the City instead creates a formula that determines what is likely “reasonable density” density that could develop on these sites and then divides that “reasonable density” in half to determine the Capacity for the site. This formula is flawed because it relies on very few submitted projects (that may not be approved) to determine what reasonable density might be during this planning period. It is crucial that the capacity calculation accurately reflects patterns of development especially where the City intends to accommodate a significant portion of the lower income RHNA (72 percent) on mixed-use sites. Two examples are not sufficient to establish a pattern of development.

Although the City relies less on the Downtown sites to accommodate the lower income RHNA, a correct calculation of capacity is still crucial in the DTC, DTG, and DTN zones and the DTN-AH overlay. And again, the City relies on very few projects during a very limited time period (2018-2020) to support its calculation for realistic capacity on downtown sites.

C. Non-vacant Sites

Non-vacant sites must demonstrate through the City’s methodology that they are feasible for residential development during the planning period. Government Code section 65583.2(g)(1). The methodology is required to consider certain factors. *Id.* The July Draft Element includes a description of the current use of the sites but the analysis must be revised to apply the required factors¹⁸ in order to assess the availability and feasibility of these sites for residential development during the planning period beginning in December 2023, including the City’s past experience converting existing uses to higher density residential development.

¹⁸ The methodology shall consider factors including the extent to which existing uses may constitute an impediment to additional residential development, the city’s or county’s past experience with converting existing uses to higher density residential development, the current market demand for the existing use, an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites. Gov. Code section 65583.2(g)(1).

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D. Large Sites and Concentrated Sites

The July Draft requires revisions to provide examples of whether “sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower income housing units as projected for the site...” Gov. Code section 65583.2(c)(2)(B). The Draft must also be revised to specifically identify what portions of the large parcels will accommodate the lower income housing needs in the City. The City is correct to assume that 100 percent of large sites, a site that is over 10 acres, will not likely develop for affordable housing. This is due, in part, to the limitation of available funding mechanisms for projects of over 200 units. But, identifying so many large parcels to accommodate housing for the lower income RHNA in close proximity to each other also acts as a constraint on development as affordable housing due to the same funding limitations. To be clear, identifying a large percentage of the sites to accommodate the lower income RHNA in close proximity to each other is a constraint on obtaining funding for affordable housing, funding which is critical to developing affordable housing, and it will create an obstacle to the development of these sites as affordable housing.

In addition, many of these sites are also concentrated in one area of the City and that also prevents the City from meeting its duties to remove patterns of segregation and comply with its duty to affirmatively further fair housing. [As mentioned in the AFFH section above, the over concentration of sites intended to accommodate the lower income housing need in specific areas of the City is inconsistent with the City’s duty to Affirmatively Further Fair Housing.]

As noted above the City’s inventory of available sites will need revisions and further analysis in order to determine whether the City has identified adequate sites to accommodate its RHNA for this planning period.

V. The Assessment of Fair Housing Fails to Comply with Section 65583(c)(10)

For generations, local mayors and council members have described Fresno as a “tail of two cities”, an illusion to Charles Dickens’ tragic 1859 novel of pre-revolution France, in acknowledgement of the outstanding disparities in quality of life and access to opportunity that exists between neighborhoods in the Northern and Southern portions of the City and the striking racial and economic differences that underlie them. Studies and data have repeatedly confirmed not only that South Fresno neighborhoods and people of color in Fresno are impacted by a severe lack of access to housing choice and access to opportunity across many indicators compared to North Fresno neighborhoods and White residents, but that the disparities impacting South Fresno, people of color and other protected classes stand out as among the most significant in the state and the country. The City’s duty to AFFH through the Housing Element and to complete an

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Assessment of Fair Housing in order to do so presents the City with a crucial new opportunity to address the intergenerational disparities and barriers to opportunity that persist in Fresno. Unfortunately, as discussed further below, the AFH lacks information and analysis and fails to incorporate public input as necessary to address the requirements set forth in Section 65583(c)(10) and does not achieve the requirement to ensure that the City AFFHs through its housing element.

A. Integration and Segregation and R/ECAP and Concentrated Area of Affluence Analyses Lack Required Detail

The AFH's analyses of patterns of integration and segregation and R/ECAPs and Racially Concentrated Areas of Affluence ("RCAAs") fail to address important factors which must be considered as part of a complete analysis pursuant to section 65583(c)(10)(A)(ii) and HCD's AFFH Guidelines. *See* AFFH Guidelines, pp. 30-34. These gaps render the AFH analysis incomplete and include but are not limited to the following:

- Failure to provide any data or analyze integration and segregation patterns for racial groups other than Hispanic/Latinos. Table 1E-3.1, "Population by Race and Hispanic Origin, Fresno, 2000-2020," provides data about the share of the population of different racial groups in Fresno in 2000, 2010, and 2020, but no data is included that addresses the spatial composition and segregation or integration status of Black, AAPI, Native American, and other racial and ethnic groups. Similarly, the analysis fails to identify groups experiencing the highest levels of segregation as required. AFFH Guidelines, p. 31.
- Failure to accurately or thoroughly analyze distribution of low- and high-income households across Fresno. The Figure 1E-3.4, Median Household Income, Fresno, 2019 indicates median income levels across the City and depicts median incomes of \$100,000 or over in some areas West of State Route 99, Northwest Fresno, Northeast Fresno, and in the Sunnyside neighborhood of South Fresno. Yet the AFH's analysis of the data depicted by the map fails to acknowledge these high-income neighborhoods throughout the City, stating only that "Northwest neighborhoods of the city...have the highest median incomes. Otherwise, most of the remaining census block groups in the city have household incomes that fall below the statewide median indicating high poverty levels." This analysis washes out important information about relative income levels across Fresno, including concentrations of high-income households and low-income households in specific neighborhoods, which should be used to inform and geographically-target programs and the location of sites included in the inventory to AFFH. *See* HCD

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Guidelines, p. 32. For neighborhoods like West Fresno, which experience particularly acute barriers to opportunity linked to policies and practices that created and enforced segregation, an accurate and complete analysis and programs that respond to that analysis are essential.

- The AFH’s analysis of R/ECAPs and RCAAs fails to address “public participation, past policies, practices, [and] investments” as required. HCD Guidance, p. 33. The R/ECAP analysis provides only the generic statement that “R/ECAPs generally have less private investment from financial institutions, grocery stores, and other retail outlets,” but does not provide any analysis specific to Fresno City or regional policies, practices, and investments that contributed to the creation and/or perpetuation of R/ECAPs. The RCAA analysis only identifies that 18 RCAAs exist in Fresno, with no analysis at all of the factors giving rise to those RCAAs or their persistence or variation over time nor does it consider any public input on this topic.

As a result of these and other deficiencies, the AFH’s analysis of integration and segregation and R/ECAPs and RCAAs is incomplete. The analysis and the Draft Element’s contributing factors, goals and actions must be revised accordingly.

B. Incomplete Analysis of Disproportionate Housing Needs Based on Race, Ethnicity, Familial Status, Disability, and Income

The analysis of disproportionate housing needs must analyze needs relating to cost burden, overcrowding, substandard housing, homelessness and other factors for protected characteristics, including at least race and ethnicity, familial status, persons with disabilities, and income. § 65583(c)(10)(A)(ii); AFFH Guidance, p. 39. Disproportionate housing needs “generally refers to a condition in which there are significant disparities in the proportion of members of a protected class experiencing a category of housing need” compared to the proportion of members of other relevant groups or the total population HCD’s guidance emphasizes that local data and knowledge are particularly important to this analysis. *Id.* The requirement to analyze disproportionate housing needs is fundamental to achieving the purpose of the AFH to ensure that the housing element affirmatively further fair housing by identifying disparities impacting protected classes which have been subject to historic discrimination, describes the factors contributing to those disparities, and adopts meaningful actions that overcome patterns of segregation and address disparities in housing needs and opportunity for protected classes. Yet, the AFH fails to satisfy this requirement. While it provides the percentage of households experiencing any one of four specified housing problems - lack of complete kitchen facilities, lack of complete plumbing facilities, overcrowding, cost burden – by race and ethnicity, the analysis of overcrowding, cost burden, and substandard conditions only addresses

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the prevalence of those housing issues based on housing tenure (renter or owner) and census tract. The analysis fails to include any information about the separate occurrence of overcrowding, cost burden, and substandard housing conditions based on race or ethnicity and fails to provide any information at all about how these factors disproportionately impact Fresno residents based on familial status and disability. While the AFH includes some data relating to the race, gender, and mental disability of unhoused residents, it fails to include information relating to familial status. Further, the analysis includes no information that reflects “local knowledge” or public input, depriving the analysis of details about specific housing needs within the categories identified above and the scale of those needs in relation to others.

The City must supplement its disproportionate needs analysis to include the required demographic information and revise the AFH further to ensure its contributing factors and meaningful actions reflect that information.

C. Displacement Risk Analysis Fails to Consider Relevant Housing Cost, Tenant Protection, Land Use, and Environmental Risks

The AFH evaluation of displacement risk consists of the identification of census tracts which qualify as “sensitive communities” that may be vulnerable to displacement as a result of rising housing costs and market-based displacement pressures based on demographic, tenure, rent burden, and rent change criteria developed by The Urban Displacement Project of UC Berkeley and the University of Toronto. Figure 1E-3.31, Communities Sensitive to Displacement in Fresno, provides useful information indicating that large swaths of the City, including most South Fresno and Central Fresno neighborhoods, as well as the Blackstone Avenue Corridor are vulnerable to displacement, the AFH’s displacement risk analysis falls short by failing to consider other relevant information relating to existing and potential housing cost pressures confronting low-income residents, residents of color, and other protected classes, as well as significant displacement risks associated with tenant protection limitations, City land use policies and practices, environmental hazards, and climate change. A complete displacement risk analysis must consider these and other relevant factors. *See AFFH Guidance*, pp. 40-43.

1. Displacements Risks Associated with Housing Cost Pressures

As mentioned above, the AFH’s identification of sensitive communities using The Urban Displacement Project’s criteria provides a helpful high-level view of the displacement pressures impacting most of the City of Fresno, and almost all South Fresno and Central Fresno neighborhoods. That mapping alone however is not sufficient to accurately describe displacement risks impacting residents associated with housing cost pressures.

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First, the criteria used in the analysis rely on data from 2017 and earlier, including data relating to the change in rent between 2012 and 2017. This time period does not capture the sharp and sustained escalation in housing costs (both rental and ownership) that occurred during the COVID-19 pandemic between 2019 and 2022.¹⁹ Between 2017 and 2021, Fresno experienced the greatest rent increases of all large U.S. cities, with rental prices increasing nearly 39% during that time.²⁰ Pandemic-era and ongoing housing price increases disproportionately impact the housing stability of renters, people of color, and other populations that have less disposable income and assets on average and are impacted by discrimination and sustained nature of the housing cost increases which have occurred in Fresno since 2017, the AFH's displacement risk analysis must be supplemented with and revised based on more recent data.

Second, while the AFH's displacement risk section provides a snapshot of neighborhoods vulnerable to increased housing costs that occurred between 2012 and 2017, the section does not actually discuss housing cost trends over time or analyze the factors driving increased housing costs across the City and certain neighborhoods. The use of census tract level data alone to determine whether an area qualifies as a "sensitive community" or not, without further discussion, also washes out unique vulnerabilities experienced by particular neighborhoods which comprise only a portion of a census tract. The City must supplement the displacement risk section to include this additional information and analysis, using available data and local knowledge, in order to meaningfully identify displacement risks associated with housing cost pressures and on particular neighborhoods and protected classes.

Several factors are likely or definitely associated with rising housing costs in Fresno which the AFH does not but must identify and evaluate for their impact on displacement risk. These include but are not limited to the following:

- The expiration of affordability covenants attached to Low-Income Housing Tax Credit financed properties during the Planning Period. According to the Draft Housing Element's At Risk Analysis, three properties consisting of 115 affordable units in the next four to eight years. The expiration of the affordability covenants on these properties creates a direct displacement risk to residents who are unable to pay market-rate rents.

¹⁹ CalMatters, Real estate prices soar during the pandemic, climbing 25% in parts of California, Dec. 5, 2020, available at <https://calmatters.org/california-divide/2020/12/real-estate-climb-pandemic/>

²⁰ Los Angeles Times, The Nation's Hottest Housing Market? Surprise – it's Fresno, Mar. 31, 2021, available at <https://www.latimes.com/homeless-housing/story/2021-03-31/fresno-rent-spike-taps-into-california-covid-housing-trends>

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- Major federal, state, and local investments in public works infrastructure projects in South Fresno neighborhoods, including a \$250 million phased budget commitment for downtown revitalization in the 2023/2024 California State Budget²¹; the June 2023 Federal Railroad Administration and State High Speed Rail Authority \$20 million award for the Fresno High-Speed Rail Station Historic Depot Renovation and Plaza Activation Project; and an \$80 million July 2023 award from the State's Transit and Intercity Rail Program²² for grade separation and intersection improvements in Central Fresno at McKinley Avenue and Blackstone Avenue. None of these historic awards have requirements attached to them to reduce the risk of displacement as a result of rising rents associated with neighborhood improvements.
- The development of the California High Speed Rail project, with a depot in Fresno, which the draft Housing Element recognizes is expected to increase housing demand in Fresno by enabling commuting between Fresno, Coastal California, and/or Sacramento. Draft Housing Element, p. 3-79. The analysis should also consider the impact of speculation associated with HSR on housing availability, prices, and displacement risk.
- The conversion of housing units to short-term rentals and their impact on housing cost pressures and displacement risk. The Draft Housing Element indicates that 7% of vacant units in the city are seasonal, short-term rentals, or "other" housing accommodations, but does not state what percentage of total units are seasonal housing or short-term rentals. The Draft states that stakeholders with Llaves De Tu Casa (an initiative involving real estate professionals, banks, the City of Fresno, and affordable housing developers) expressed concern about investors displacing community members to establish short-term rentals. Draft Housing Element, p. 1E-6-15. According to a recent news story, 811 homes were available as short-term rentals in Fresno and Clovis in June 2023, which represents a 27% increase in available rentals since 2020 and almost twice the number of homes listed for sale at that time.²³

²¹ YourCentralValley, City of Fresno announced \$250 million for downtown, June 28, 2023, available at <https://www.yourcentralvalley.com/news/local-news/city-of-fresno-announces-250-million-for-downtown/>

²² See Fresno Bee, State will help Fresno rebuild a major railroad crossing. Where is it, and what will it cost?, Jul. 6, 2023, available at <https://www.fresnobee.com/news/local/article277074553.html>

²³ GVWire, Is an Airbnb Crisis Looming in Fresno as Demand Plummets?, June 29, 2023, available at <https://gvwire.com/2023/06/29/is-an-airbnb-crisis-looming-in-fresno-as-demand-plummets/>

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The AFH’s discussion of City “Displacement Avoidance Efforts” does not remedy the need for a complete analysis addressing the displacement risk factors above, including relevant City policies and practices, and the adoption of meaningful actions to address those risks. That section describes certain planning efforts the City undertook to evaluate displacement risks from rising housing prices and consider, but it does not actually provide any information about the findings of that policy recommendations and the policies that the City did or did not adopt. Given the significant stakeholder engagement conducted for the development of the “Here to Stay Report,” the AFH should incorporate and consider relevant information and policy recommendations contained in that report.

2. Tenant Protection, Land Use, Environmental, and Climate-Related Displacement Risks Not Considered in the AFH Displacement Risk Analysis

A complete analysis of displacement risks considers not only displacement risks associated with housing cost pressures, but also other factors which result in housing instability, including factors relating to the adequacy of tenant protections, disinvestment, local land use policies and practices, environmental hazards, and risks associated with natural disasters and climate change. The Draft Housing Element considers none of these risk categories, yet based on our direct work with tenants and low-income residents and residents of color, they represent real and significant risk factors for Fresno residents.

First, the Displacement Risk section does not address the adequacy of policies and resources to protect tenants from displacement as a result of eviction, harassment, and substandard housing. A coalition of residents and community-based organizations have called to the City’s attention the need for and have repeatedly asked the City to adopt additional and stronger policies and programs to protect tenants, including in particular more comprehensive and stringent rent control standards than those established by the state, just cause requirements for eviction, and right to return home for displaced residents. And while the AFH mentions the City’s code enforcement programs, it does not analyze how successful these programs have been in preventing tenant displacement and ensuring residents have a habitable space in which to live. Draft Housing Element, p. 3-79.

Second, while the Draft Housing Element recognizes the occurrence of historic disinvestment and describes recent initiatives to increase investment in South Fresno neighborhoods, the AFH does not but should consider the extent to which public and private disinvestment and unequal investment continues to impact low-income neighborhoods, neighborhoods of color, and neighborhoods with a high proportion of tenants and how

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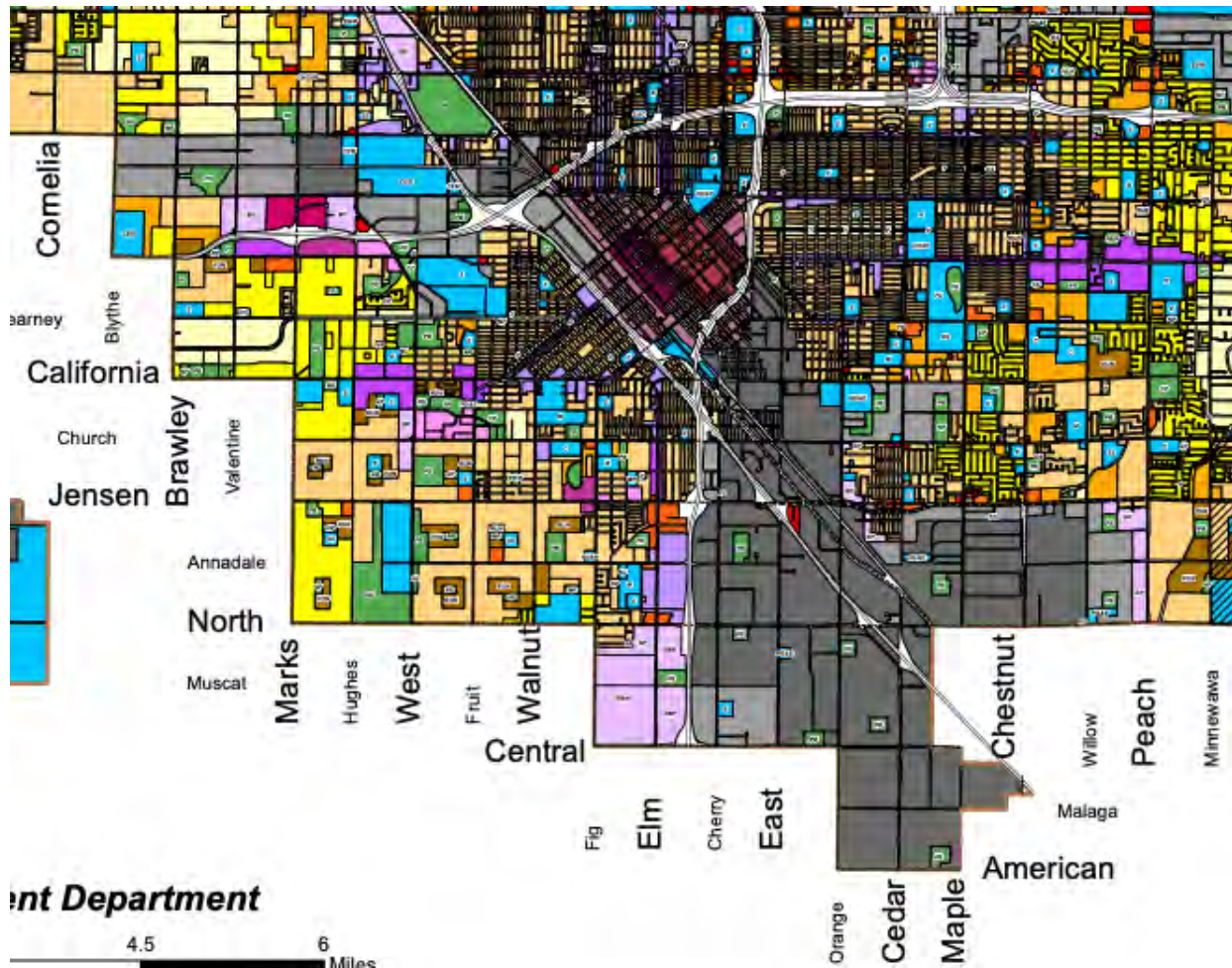
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disinvestment perpetuates and/or increases displacement risk in these areas. *See* AFFH Guidance, p. 40. Yet even today, many South Fresno neighborhoods lack sidewalks, streetlights, park space, grocery stores and other public and private investments that contribute to neighborhood and housing-stability.

Third, the Draft Housing Element fails to consider the displacement risks associated with the City's land use and permitting decisions which have directed and continue to allow for and promote the concentration of industrial and waste management facilities in and around neighborhoods in Jane Addams, Southwest Fresno, South Central Fresno (referred to by the Draft Housing Element as the "South Industrial Area"), and Southeast Fresno. The City's General Plan land use map designates thousands of acres of land in these neighborhoods for industrial and business park uses, which encompass warehouse distribution facilities, agricultural processing operations (e.g., slaughterhouses, meat rendering facilities), chemical storage, landfills, waste transfer stations, biomass facilities, and more. Draft Housing Element, p. 1E-3-77. These designations are applied to land adjacent to land designated for and/or developed with residential neighborhoods as well land currently developed with housing. Several General Plan policies direct the City to expedite development on sites designated for industrial land uses by streamlining permitting and making sites "shovel ready" for new development through the installation of infrastructure and connection to services. City of Fresno General Plan, ED-1-d, ED-1-e, ED-1-j. ***The General Plan therefore envisions and plans for the conversion of existing housing and neighborhoods to industry*** and the continued proliferation of industrial land uses surrounding housing and other sensitive uses, both within existing City limits and within the City's Sphere of Influence.

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City of Fresno Official General Plan Land Use and Circulation Map (Excerpt)²⁴

²⁴Portion of City of Fresno Official General Plan Land Use and Circulation Map, available at
https://www.fresno.gov/wp-content/uploads/2023/03/Official-General-Plan-Land-Use_20220411-1.pdf
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Google Earth Image Depicting S Rose Ave. & E. Kaviland Ave Neighborhood, Zoned Industrial on General Plan Land Use Map, and Adjacent West Fresno

(captured 08/16/2023)

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Google Earth Image of Unincorporated Daleville Neighborhood, Zoned Industrial on the General Plan Land Use Map, & Orange Center Elementary School

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San Joaquin Estates Mobile Home Park (“MHP”), Villa Fresno MHP, and Fresno MHP,

Adjacent to and/or Surrounded by Industrial Zoning on the General Plan Land Use Map

(captured 08/16/2023)

These new warehouse facilities, in combination with existing industrial facilities clustered in South Fresno neighborhoods, have severe negative and destabilizing impacts on nearby housing. Warehouse distribution facilities, such as the Amazon and Ulta Beauty warehouses in South Central Fresno, attract thousands of truck trips that travel on roads shared with homes, schools, and parks every day. This truck traffic creates toxic diesel air emissions, dust, vibration, noise, and light glare which negatively impacts residents in their homes, including their health and well-being, the longevity and potential future occupancy of their housing. The construction and operation of facilities themselves often creates excessive dust, noise, light glare, heat, odors, and other effects which have similar impacts on residents and housing quality and stability. We have attached to this comment letter a declaration from a South Central Fresno resident describing impacts she has experienced due to the proliferation of

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industrial facilities in her neighborhood. Attachment A, Declaration of Katie Taylor.²⁵ The City must revise the AFH's Displacement Risk analysis to include a full evaluation of the impacts of its policies and practices relating to industrial development on displacement risks, including based on protected class status and income and reflecting the local knowledge of residents impacted by this issue, and incorporate meaningful actions to address those risks.

Fourth, the AFH's Displacement Risk section does not and should be revised to consider displacement risks associated with environmental hazards, environmental disasters, and climate change, pursuant to HCD's AFFH Guidance. AFFH Guidance, p. 42. For instance, South Fresno neighborhoods have been impacted by a series of fires at warehouse, recycling, and other industrial facilities that have occurred during the increasing number of high and extreme-heat days over the past five years.²⁶ Potentially toxic smoke from these fires has at times densely concentrated in South Fresno neighborhoods, which can make breathing difficult and unsafe for residents even within their homes with windows closed. In addition, residents who live in neighborhoods with incomplete sidewalks, stormwater drainage and other infrastructure and in housing without adequate cooling are at greater risk of displacement than other residents from climate-related weather events, including extreme heat and flooding. In Fresno, which recorded temperatures of 100 degrees Fahrenheit or higher on 23 days and a high temperature of 109 degrees in July 2023, extreme heat poses a serious threat of displacement for residents who lack adequate cooling in and/or cannot afford the cost of cooling their homes.

The City must revise the AFH to include a complete and accurate Displacement Risk analysis as described above and modify other sections of the Housing Element, including the AFHs contributing factors and meaningful actions to overcome disparities relating to access to a healthy environment associated with these land use patterns.

VI. The AFH Fails to Consider Significant Disparities in Access to Opportunity to Multi-Modal Transportation Options, a Healthy Environment, and Quality Education

²⁵ While the resident, Ms. Katie Taylor lives immediately outside of City of Fresno city limits, she resides within the City's Sphere of Influence and her experiences of the impacts of industrial development mirror those of many South Fresno residents who reside within the City of Fresno.

²⁶ See for example, ABC30, Crews Battling Large Fire at Southwest Fresno Recycling Center, June 18, 2021, available at <https://abc30.com/fresno-fire-recycling-center-recycling-timely/10807838/>; KSEE24, Massive fire burns industrial building in Fresno. What made the battle difficult for firefighters, June 26, 2021, available at <https://www.yourcentralvalley.com/news/local-news/massive-fire-breaks-out-at-warehouse-near-downtown-fresno/>; ABC30, Flames break out at warehouse in Southeast Fresno with homes and businesses nearby," Apr. 3, 2023, available at <https://abc30.com/warehouse-fire-southeast-fresno-east-and-florence-homeless-activity/13077246/>

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The AFH must include an analysis of disparities in access to opportunity. § 65583(c)(10)(A)(ii). Access to opportunity broadly encompasses the place-based characteristics which are linked to critical life outcomes, including “education, employment, economic development, safe and decent housing, low rates of violent crime, transportation, recreation, food, and a healthy environment (air, water, safety from environmental hazards, social services, and cultural institutions). AFFH Guidance, p. 34. The AFH fails to consider disparities relating to several key components of access to opportunity, including in particular disparities in access to multi-modal transportation opportunities, a healthy environment, and neighborhood investments – issues which residents and CBOs have long raised with the City.

A. Disparities in Access to Multi-Modal Transportation Opportunities

An analysis of access to transportation opportunities must, at minimum, compare concentrations of protected groups with access to transportation options; assess any disproportionate transportation needs for members of protected classes; and analyze combined housing and transportation cost impacts on protected groups. *Id.* at p. 35. Transportation options include personal vehicles and public transportation, as well as options for pedestrians and bicyclists and other forms of group or shared transportation. *See Id.* at 48, 69, 73.

The AFH’s Transit Mobility analysis, as indicated by its title, focuses exclusively on the availability of public transit, including the FAX bus system and Handy Ride, through a brief discussion of available routes and programs and policies in place to reduce fares for certain populations. This analysis fails to compare access to transportation opportunities based on protected characteristics; assess any disproportionate transportation needs for members of protected classes; provide important information about the adequacy of public transportation service in different areas of the City, protected classes, and low-income households; and entirely fails to consider access to other forms of transportation, including walking and bicycling.

The City must revise the Draft Housing Element to include and analyze this missing information. In addition to the categories identified in the paragraph above, specific issues which must be considered include but are not limited to:

- Barriers to access to public transportation based on route limitations, especially for neighborhoods located on the fringes of the City. This includes both disadvantaged neighborhoods which are more strongly reliant on public transportation, such as Jane Addams and areas of West Fresno and South Central Fresno, and high resource neighborhoods in Northeast and Northwest Fresno, which Figure 1E-3.18, Fresno Area Express (FAX) indicates have significant less route access than South Fresno. The housing element must consider how route

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limitations in these areas impact mobility of residents of disadvantaged communities and their access to various forms of opportunity as well mobility and housing opportunities for low-income residents in North Fresno, considering affordable housing subsidy scoring criteria which often prioritizes public transit accessibility.

- Barriers to mobility resulting from lengthy travel times for residents' using public transportation due to bus wait times, lack of direct routes, and route limitations requiring residents to use other forms of transportation to reach their first and last stop, especially for residents in fringe neighborhoods.
- Inadequate and/or absent infrastructure to facilitate safe and efficient active transportation, including but not limited to sidewalks, curbs, stormwater drainage, streetlights, crosswalks, and protected bike lanes.
- Inadequate and/or absent protection from extreme weather, including climate-related weather events, such as extreme heat and flooding, that impact walking, biking, and public transportation use. This includes but is not limited to the availability of shade (e.g., trees, structures), shelter, sidewalks, and stormwater drainage.
- The presence of high volumes of traffic, including heavy-duty truck traffic, on roadways used by pedestrians or bicyclists, including in and near areas zoned for industrial land uses and along designated truck routes.

B. Disparities in Access to a Healthy Environment

An analysis of access to a healthy environment must describe any disparities in access to environmentally healthy neighborhoods by protected groups, consider available statewide data such as CalEnviroScreen, evaluate consistency with the environmental justice element (if relevant), and discuss policies, practices, and investments that impact access to environmentally healthy neighborhoods. AFFH Guidance, p. 35. A complete analysis should consider any impacts on access to a healthy environment associated with the zoning, siting and operation of polluting or toxic land uses in disadvantaged communities and with climate change. *Id.* at pp. 16, 73. A robust analysis of disparities in access to a healthy environment, informed by public input, is especially important in Fresno given the high concentration of communities in low-income South Fresno neighborhoods of color that rank among the most burdened by multiple sources of pollution in the state and the relatively low-pollution burdens on many indicators born by comparatively affluent and Whiter North Fresno neighborhoods and RCAAs.

The AFH's Healthy Environment analysis includes data demonstrating cumulative pollution burdens impacting Fresno neighborhoods by census tract and provides some

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information about industrial and waste processing facilities in South Fresno. However, it fails to include *any* discussion of City policies and practices underlying the stark environmental health disparities between South Fresno and North Fresno neighborhoods reflected in the data or any information or analysis about what policies, practices, and investment underlie those disparities. The analysis points to agricultural industry practices as a basis for high pollution indicator scores in Western Fresno County but does not discuss the bases for pollution disparities impacting the City of Fresno itself, including West Fresno, Jane Addams, South East Fresno neighborhoods with high cumulative pollution scores.

As discussed above, City policies and practices have intentionally concentrated polluting and noxious industrial and waste management land uses in South Fresno neighborhoods and policies and practices remain in place that all promote the exacerbation of these patterns to the detriment of housing opportunities and quality of life for South Fresno residents. These policies and practices include but are not limited to impact fees for a community benefit fund, public health impact reports, and cargo/freight prohibition and revenue tax.

C. Disparities in Access to Educational Opportunity

The AFH's analysis of educational opportunities must include an evaluation of the presence or lack of policies, practices, and investment to promote proficient schools or that contribute to a disparity in access to opportunity," among other factors. HCD's AFFH Guidance, p. 35. Disparities in access to transportation opportunities and environmental health, including those discussed above, significantly impact access to educational opportunity. For instance, a lack of or incomplete sidewalks, stormwater drainage, and streetlights in R/ECAPs; inefficient public transportation options; and the use of local roads by heavy-duty truck traffic may prevent students from traveling to and from school safely and on time, which may in turn have a series of impacts on students' access to educational opportunity. Likewise, the presence of heavy industrial facilities near and surrounding schools and ongoing construction for the development of new warehouse distribution centers may disrupt learning by exposing students to air, noise and light pollution and increasing temperatures and thereby also undermining opportunities for outdoor recreation during school hours. The City should also consider how policies, practices, and investments or disinvestments relating to access to green space, tree canopy, and climate resiliency (including adequate cooling and wildfire smoke protection) impact educational opportunities at schools, especially in low-income neighborhoods. The City must revise its analysis of educational opportunities to address these and other issues not addressed in the Draft Element and revise and add to its actions accordingly.

VII. Incomplete Analysis of Housing Element Sites' Compliance with AFFH Duty

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Housing Element Law requires that jurisdictions' sites inventory "identify sites throughout the community" consistent with its duty to AFFH. § 65583.2; 8899.50; HCD AFFH Guidance, p. 45. The AFH must evaluate sites "relative to the full scope of the assessment of fair housing" and provide detailed instructions describing the required components of this evaluation. AFFH Guidance, p. 45.

Here, the AFH fails to evaluate important components of whether the distribution of sites in the inventory AFFH and to summarize conclusions and identify specific programs to address fair housing issues associated with the locations of those sites. Deficiencies of the evaluation include but are not limited to the following:

- The AFH's analysis of the sites inventory's impact on segregation and integration trends, like other sections of the AFH, only briefly considers impacts on the distribution of Hispanic/Latino households and does not consider at all the impact on relative integration and segregation of other races. Critically, it fails to acknowledge how the lack of lower-income sites identified in high-resource areas, including for example Northeast Fresno, will perpetuate patterns of RCAAs and R/ECAPs. *See* AFFH Guidance, p. 45.
- The AFH lacks analysis of the impact of its sites locations on access to specific forms of access to opportunity and therefore fails to identify any programs to address fair housing barriers to which its site selection gives rise. The sites inventory includes a large share of sites in low-income neighborhoods of color impacted by poor environmental health indicators, industrial zoning and concentrations of industrial and waste management facilities. The inventory also includes sites located near State Routes 99, 41, and 180 as well as many sites on Blackstone Avenue, a heavily trafficked thoroughfare. The City must analyze these and other impacts on access to a healthy environment implicated in its choice of sites. In addition, the AFH lacks analysis of how absent or incomplete infrastructure, services, and amenities impact access to opportunity on sites included in the inventory and fails to identify programs to address these barriers. The Draft Element includes a significant share of sites in areas West of State Route 99 which are not yet developed and which lack basic infrastructure, services, and amenities, such as sidewalks, streetlights, public transportation, park space, and grocery stores as well as City water and sewer connections. Many of the lower-income sites identified in low-income South Fresno neighborhoods also experience disparities in access to critical infrastructure and services which must be considered in an analysis.
- Only 23% of sites included in the inventory to meet the lower-income RHNA are in high and highest resource areas, which the AFH states is due to the predominance of single-family zoning north of Shaw Avenue. 1E-3-109. "Where the analysis of the

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inventory indicates that the community has insufficient sites appropriately zoned and located to accommodate its lower-income RHNA in a manner that affirmatively further fair housing, the housing element must include a program to address this inconsistency, such as making additional sites available to accommodate its lower-income RHNA in a manner that affirmatively further fair housing.” AFFH Guidance, p. 45. Despite its recognition of the limited number of lower-income inventory sites in high resource areas, the AFH fails to describe a program included in the Draft Element to adequately address this fair housing issue. As further discussed in this letter below, while the AFH points to Program 2 as the Draft Element’s action to address this fair housing issue, the program fails to ensure that it will actually add sites to the inventory to meet the lower-income RHNA in high-resource areas or that it will facilitate development of lower-income housing in high-resource areas at all. The program commits only to “present potential sites or rezoning options for land in high resource areas for Council consideration for higher density development.” p. 1E-18. While the time frame section indicates that City will rezone sites in high resource areas by 2027, the language in the body of the program does not make commit the City to actually rezoning sites or to include additional sites located in high-resource areas to the housing element and therefore renders the commitment that the Program is making ambiguous. The Program also makes no commitment to ensure that sites that may or may not be rezoned or impacted by this Program are “suitable” for development pursuant to the Housing Element Law’s standards, including that increased capacity is created on vacant and/or underutilized sites. Further, the City provides no analysis justifying its selection of 750 units of additional capacity as its target or if that quantity is sufficient; if changes to permitting and zoning standards of sites located in the Office District will create sites near amenities and resources and with relatively low environmental burdens within high-resource census tracts; why rezoning of sites within low-density, higher income neighborhoods which are still under development is not proposed and that impact of the failure to include such sites on addressing patterns of segregation and exclusion. The Program also fails to address barriers to housing opportunity for lower-income residents who reside in housing developed in high resource areas, including inadequate public transportation options, affordable fresh food, and cultural and linguistic resources.

- The AFH sites inventory analysis includes no discussion of local knowledge and community input, pending development, development potential and other relevant factors which must be discussed in a complete analysis. AFFH Guidance, p. 45-46.

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The City must address these deficiencies in the AFH's sites inventory analysis and include additional meaningful actions, with deadlines and clear outcomes, to overcome the fair housing issues associated with the Draft Element's inventory.

VIII. Failure to Fully Analyze Contributing Factors and Lack of Meaningful Actions to Affirmatively Further Fair Housing Render the Draft Housing Element Noncompliant.

The City has failed to complete an adequate analysis of factors that have contributed to patterns of segregation and as discussed above the program actions included in the draft housing element do not and will not effectively AFFH as required by law. Unless and until the City fully analyzes factors that have contributed to patterns of segregation, identifies which factors it will address along with the programs and policies it will rely on to do so and metrics that demonstrate success, the housing Element will be out of compliance with state mandates. (See Government Code section 65583(c)(10))

IX. Failure to Adopt Community Identified Programs That Will Result in A Beneficial Impact During the Planning Period and AFFH

Housing Element Law requires that housing elements include programs with a schedule of actions with timelines and specific commitments that will have a "beneficial impact" within the planning period to achieve the housing element's goals and objectives. As stated in the AFFH guidance "actions implement goals and consist of *concrete steps, timelines, and measurable outcomes*." Pursuant to the requirement that housing elements AFFH, housing elements must also include actions to implement priorities and goals identified in an Assessment of Fair Housing (AFH). Those actions must be "meaningful" and go beyond combatting discrimination to "overcome patterns of segregation and foster inclusive, affordable and stable communities." AFFH Guidance, p. 46; *See* Government Code §§ 65583(c)(5)&(10, 8899.50(a)&(b).

The draft element's Housing Action Plan contains numerous actions that lack concrete steps and measurable outcomes and will not necessarily result in a beneficial impact during the planning period in violation of the Housing Element Law's standards. Certain programs fail to identify concrete steps, specific actions the city will take to complete each program, use of vague language, and do not provide adequate timelines. Finally, the action plan fails to include community identified programs and solutions collected from public hearings and workshops. Examples of inadequate programs, and some of our recommendations to improve them, include the following:

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- **Program 1 - Maintain Adequate Sites.** Program 1 states that the City shall continue to maintain a current inventory of Housing Element sites to ensure that it can adequately accommodate the 2023-2031 RHNA” Given the impact of rezoning to the availability of and location of sites suitable for housing, the City should take additional steps to ensure transparency in decision-making related to proposed rezones and take diligent steps to provide notice of the proposed rezone along with an assessment of the potential impacts of the rezone on housing opportunity prior to a decision on the proposal. This includes but is not limited to public hearings and door to door canvassing to facilitate effective notice. Further, the city must conduct a racial equity analysis which would include the benefits and disadvantages of the proposed rezone and whether it would result in displacement of protected racial/ethnic groups, reduce housing opportunities for protected groups, and how it would impact patterns of segregation. Finally, the program should explicitly prohibit the rezoning of sites suitable for lower income households to industrial land use classifications which would bring industrial uses next to or near neighborhoods that include or are planned for housing affordable to lower income residents. This is critical to ensure that the City is compliant with its duty to affirmatively further fair housing.
- **Program 2- Variety of Housing Opportunities in High Resource Areas (*identified in the AFH as a Meaningful Action*).**

The program states that the City “will identify and pursue opportunities” with affordable housing developers to promote the development of affordable units in high resource areas. Unfortunately, it does not provide any details on how they will in fact promote the development of affordable units for lower income households in high opportunity areas. There is no clear commitment to zone sites for multi-family development in areas of high opportunity or a commitment to ensure that such units are affordable to all income levels. Further, there is no commitment to match funding opportunities with the identification of available sites to facilitate their development. Notably, the City will not conform with its duty to AFFH if it does not ensure adequate sites for affordable housing for lower income residents in high resource areas. Without clear and enforceable commitments and timelines, this program will not provide a beneficial impact or further fair housing. Furthermore, in order to expeditiously address the lack of housing opportunities accessible to lower-income residents in high resource areas, the timeline of this program should be shortened.

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Accordingly, a specific objectives of this program should be changed to (a) assess the number of sites that must be rezoned in high resource areas (as identified in TCAC/HCD's Opportunity Maps) to effectively AFFH , and (b) rezone the adequate number of sites pursuant to that analysis by December of 2025.

- **Program 3 - Encourage and Facilitate Accessory Dwelling Units (ADUs) (*identified in the AFH as a Meaningful Action*).** While we support and encourage the development of ADUs, the program does not outline clear commitments that will yield identifiable beneficial outcomes. The program states “a primary objective of this program is to increase the supply of affordable units throughout the city” but fails to identify any specific commitments to take any action on how this objective will be reached. Additionally, building ADUs is generally not an accessible housing option to low income households who cannot afford predevelopment costs associated with ADUs. We recommend additional measures in this program to make ADUs accessible to lower income households such as targeted outreach to low-income homeowners, incentives for landlords to make ADUs affordable, no interest loans for ADU development and waivers for inspection fees. Additionally, a dedicated liaison in the Office of Community Affairs should be available for all questions regarding ADUs.
- **Program 8 - Use of Sites in Previous Housing Elements.** Program 8 should be updated to clarify that streamlined approval will be available to both vacant and non-vacant sites through a zoning amendment. As written it appears that the zoning amendment will only apply to vacant sites included in the 4th and 5th cycle housing elements.
- **Program 9 - Annual Reporting Program.** While we appreciate the sentiment that the City will “engage all members of the Fresno community,” and the specific commitment to use multilingual notices and media, the City should revise this program and avoid using vague language with no commitments. To make the public engagement associated with this program meaningful, we recommend that the program include a commitment and associated timeframe for the City to implement input received through its various outreach efforts such as workshops and surveys in addition to the annual public hearing. The annual report should include specific actions the City will take to overcome identified constraints and barriers to complying with Housing Element programs.
- **Program 10 - Incentives for Housing Development (*identified in the AFH as a Meaningful Action*).** This program does not present a commitment to address housing

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production for low-income units or actions that will be taken to complete the program. To facilitate and promote the use of available incentives, the city should make a list of incentives, including density bonus incentives and impact fee waivers, available to the public through an accessible database.

Additionally, the program's current language that it will "identify site opportunities in higher resource areas and ...improve access to resources" suffers from the same issues that program 2 does insofar as it fails to identify clear and enforceable commitments and steps that it will take to ensure the availability of sites for lower income households in high opportunity areas. It is critical for this program's success and the City's role in AFFH that the housing element includes clear, timebound, and enforceable actions to ensure availability of sites for lower income households in high resource areas, as outlined above.

Finally, the City should include enforceable commitments to avoid displacement and gentrification in the Downtown Planning Area, and assess the role that priority processing in the area has on the City's duty to AFFH.

- **Program 11 - Local Housing Trust Fund (*identified in the AFH as a Meaningful Action*).** The Local Housing Trust Fund is a great tool to alleviate the housing crisis and we are glad to see the City's commitment to leverage State matching funds. We recommend adding the creation of a Community Advisory Board as an action to ensure that projects are driven by a community process and benefit the most impacted residents. Housing advocates have met previously with City staff to develop an equitable Community Advisory Board made up of a diverse group of residents most impacted by housing barriers, legal experts, and small landlords.
- **Program 16 - Surplus Public Lands.** The commitment to release surplus sites appears to simply be a commitment to comply with its existing duties under the Surplus Lands Act. The language is ambiguous, non-committal and must be revised. In addition, the program states the City will "consider depositing a portion of up to 100 percent [of sale proceeds] to the LHTF" We recommend instead that the City commit to depositing 100 percent of sale proceeds into the LHTF.
- **Program 18 – Home Buyer Assistance (*identified in the AFH as a Meaningful Action*).** While a critical program for many Fresnoans, this Program should include

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additional commitments to ensure that low-income residents, undocumented residents, residents who speak languages other than English, and residents in racially and /ethnically-concentrated areas of poverty (R/ECAPs) have the opportunity to benefit from these funds. During the 5th Cycle planning period, many residents without social security numbers or who faced language access barriers were unable to apply for the City's homebuyer assistance program. While the City was able to assist nine families with this program, this program must incorporate mechanisms that will allow more families to apply during the next 8-year cycle by addressing barriers and pursuing state funds every year. This program has other deficiencies that must be addressed such as lack of public outreach and lack of interpretation for applicants applying by phone. Solutions include: ensuring that low-income residents are knowledgeable about the programs, undocumented residents are able to successfully apply for this program, including closing costs as part of funding packages. In order to ensure that residents living in R/ECAPs are targeted, we recommend the City create annual reports listing how many applicants were assisted, outreach efforts made and whether they live in R/ECAPs. Due to the concerns outlined above, the program as currently implemented and drafted fails to adhere to HCD's AFFH Guidance that "actions must be specific with timelines, discrete steps and measurable outcomes to have a 'beneficial impact' during the planning period."

- **Program 19 – Housing Choice Voucher Incentive Program (HCV) (*identified in the AFH as a Meaningful Action*)**. This action fails to include meaningful actions with specific timelines, and measurable outcomes to have a "beneficial impact" during the planning period. The program should develop and implement a proactive enforcement program housed within that legal department to ensure HCV . The City should revise this program action to include a timeline of one workshop a month (twelve workshops throughout the year) to ensure residents and landlords are able to access housing quickly and better assist residents/landlords going through any issues that prevent them from using/accepting HCV. Additionally, collaborating with and funding CBOs and fair housing organizations to provide information to voucher holders and landlords on California's source of income discrimination prohibitions. The program should also commit the City of Fresno to finance billboard ads about protections against HCV discrimination and send informational materials to all landlords in Fresno registered in the rental registry regarding HCV. Finally, the program should be revised to include a commitment to actively pursue enforcement against discrimination against voucher-holders and supplementing vouchers with additional subsidies to support voucher use in higher-cost markets in high resource areas. Northeast Fresno has very

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limited HCV use, with only four census tracts north of Herndon Avenue containing any HCVs, and of those four tracts, no tract exceeds 5 percent HCV use. By revising the program to include the above recommendations would help address fair housing needs in Fresno.

- **Program 21 – Housing Rehabilitation (*identified in the AFH as a Meaningful Action*).** Government Code section 8899.50 requires ““meaningful actions” well beyond combating discrimination to overcome patterns of segregation and foster inclusive communities. These actions, as a whole, must address significant disparities in housing needs and in access to opportunity.” The current program has failed to address the needs of extremely low income residents and vulnerable populations such as undocumented residents. As we continue to see the negative effects of Climate Change across the world, it is imperative that the City include weatherization such as cooling mechanisms, like heat pumps, air conditioning, insulation and other cooling assets to increase resilience to extreme heat as part of the rehabilitation program. It is a critical and urgent need given that extreme heat kills thousands per year and impacts disadvantaged communities the most. Additionally, the City must establish an acquisition and rehabilitation fund to purchase older, blighted, and/or abandoned homes/buildings. The City of Fresno can establish a revolving fund to insure that rehabilitated homes are sold back to the community at a low cost. Finally, for the program to have a beneficial impact the timeframe section should include 15 rehabilitation grants annually, and 5 distressed property grants using PLHA and CDBG funding for extremely low and low income residents.
- **Program 22 – Comprehensive Code Enforcement.** While we appreciate Code Enforcement’s response and the City’s diligence to keep increasing staff, there are still additional actions that should be taken to create a comprehensive code enforcement. HCD’s AFFH Guidance recommends that “to overcome contributing factors to fair housing and affirmatively further fair housing, actions must consider a wide range of actions across all action areas. The number and scale of actions will depend on the severity of the needs but regardless of need, a cohesive and effective program will consider multiple action areas.” This program as written continues to fail to address critical housing issues since the last housing element cycle. The program should be revised to include actions around legally holding landlords accountable for retaliation, unlawful evictions, and harassment towards tenants who file code enforcement complaints such as a commitment to adopt a tenant anti-harassment ordinance. As stated,

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we recommend that the City adequately analyze code enforcement's procedures and incorporate tenant feedback for a comprehensive code enforcement program.

- **Program 23 - Special Needs Housing (*identified in the AFH as a Meaningful Action*).** Much of the language in this program is vague, noncommittal, and does not provide adequate actions in order to provide a beneficial outcome. This program states the City "shall advocate for provision of special needs," "partner with and encourage local and state non profits," and "provide/encourage." These actions are not concrete or specific and provide no assurance of a beneficial impact on persons' with disabilities access to housing. This should be revised to include review and enforcement of compliance with legal requirements for accessibility of multi-family and affordable housing, including in permitting processes, not just "encourage[ing]" accessibility features. Additionally, we recommend that the program add specific actions to remove barriers to housing by special needs groups such as allowing undocumented residents to apply for and receive housing assistance, vouchers and other subsidies unless otherwise required by federal law.
- **Program 26 - Equitable Community Investments (*identified in the AFH as a Meaningful Action*).** Program 26 states it will "seek funding," "continue to actively seek resources," and "continue implementing the written policies." These commitments are vague and non-committal. There are no actions on how these will be completed and is ambiguous and as a result provides no indication that a beneficial outcome will result from the program and further fair housing. The programs continue not to commit the City to take a lead role in planning, funding, and/or constructing projects or indeed any role beyond identifying issues and needs and seeking funding on an annual basis. Additionally, it should not rely on the General Plan's identification of Priority Areas for Development Incentives in Chapter 12 and should instead use the Urban Displacement Project data to guide investments.
- **Program 28 – Opportunity To Purchase Act (OPA) (*identified in the AFH as a Meaningful Action*).** Although we appreciate the City's action to initiate research on a local Opportunity to Purchase Act, we strongly recommend that the City implements robust outreach and engagement, in partnership with CBOs that work closely with low-income communities in racially/ethnically-concentrated. Additionally, the program states it "shall research" and "consider establishing an OPA." These are not commitments

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and fail to implement any specific, firm, or enforceable commitment such that no beneficial outcome of the action is indicated.

- **Program 29 – Mobile Home Parks (*identified in the AFH as a Meaningful Action*).** Program 29 contains no commitments, actions, or enforceable language that will ensure a beneficial impact throughout the planning period. Additionally, this program repeats verbatim language included in Program 10A of the 2015-2023 without explaining how or why reliance on the same program action will have better results during the next planning period. With residents like Three Palms and Trails End Mobile Home Park experiencing the negative impacts of slumlords, it is crucial that the City make significant improvements to the program actions. Furthermore, the program must address the need for heat resiliency such as weatherization and insulation especially to older mobile home parks by funding a mobile home park renovation fund for all mobile homes. This fund will help low income families with issues that they need to address due to inspection violations or other habitability concerns. Additionally, this program should include a commitment to penalize and fine mobile home park owners who are not providing adequate and safe conditions for their tenants. For example, Three Palms Mobile Home Park had not had safe drinking water for quite some time and the owner was never made responsible for this clear human rights violation. Finally, consistent with the City's responsibility to AFFH, the program should support quality of life and access to opportunity improvements for all mobilehome parks in Fresno by taking meaningful actions to increase green space, transit, and resources near mobile home parks.
- **Program 30 – Emergency Rental Assistance Program (*identified in the AFH as a Meaningful Action*).** Although we appreciate the City adding this program, it states that the City will “seek additional funding” and fails to commit ongoing funding that can come from the Local Housing Trust Fund, the General Fund, or its own permanent funding source to ensure a beneficial impact during the planning period. Identification and commitment of a permanent local source of funding by 2024 will highlight a commitment to prevent displacement and protect tenants.
- **Program 31 - Eviction Protection Program (EPP) (*identified in the AFH as a Meaningful Action*).** The Eviction Protection Program is a critical anti-displacement and anti-homeless tool. However, the program's current language to “seek additional funding to support the “EPP” is not a strong commitment and does not provide indication that a beneficial outcome will occur if funding is not replenished. We strongly recommend that

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the City commit to staffing 5 full-time staff for screening so tenants are able to receive help as soon as possible. We also recommend program expansion to include:

- Wide-reaching outreach and education campaigns
 - Direct legal representation and assistance for low-income tenants encountering legal issues. This includes but is not limited to being served with a notice from their landlord (e.g. 3-day notice, notice of rent increase, etc.)
 - Evaluation of the Eviction Protection Program to ensure it is effective and address issues to improve the program.
-
- **Program 33 – Homeless Assistance (*identified in the AFH as a Meaningful Action*).** Program 33 does not commit the City to any concrete action. The program states it will “identify partnership opportunities,” “leverage the homeless assistance response team” and “support the Voucher Incentive Program” none of which commit to any enforceable and actionable items. The city must commit to completing an adequate analysis of needs of unhoused City residents. This should include the completion of an AFH analysis of disproportionate needs.
 - **Program 34 - At-Risk Housing.** Program 34 includes actions without a clear commitment to take steps that will lessen the severity or impact of the issue in any timeframe. Again, the language is non-committal, vague, and ambiguous in how the program will reach its objective. Additionally, stronger tenant protections should be included as an objective and completed no later than June 2024 for residents facing displacement and an affordable housing resource map for tenants so they have the option to relocate.

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Thank you for your consideration of our comments. We look forward to discussing them with you and continuing to work with the state and the City to ensure that the City adopts a Housing Element that fully complies with the law and addresses the serious housing needs and disparities that impact Fresno City residents.

Sincerely,

Valerie Feldman
Staff Attorney
PILP

Karla Martinez
Policy Advocate
LCJA

CC: Hillary Prasad, Housing Policy Specialist, California Department of Housing and Community Development

Jose Ayala, Housing Policy Specialist, California Department of Housing and Community Development

Scott Lichtig, Deputy Attorney General, Bureau of Environmental Justice, Department of Justice

Robert Swanson, Deputy Attorney General, Bureau of Environmental Justice, Department of Justice

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Attachment A:

Resident Katie Taylor's Declaration of Industrial Impacts



**DECLARATION OF KATIE TAYLOR IN SUPPORT OF
SOUTH FRESNO COMMUNITY ALLIANCE'S COMMENTS ON THE CITY OF
FRESNO'S GENERAL PLAN FINAL PROGRAMMATIC
ENVIRONMENTAL IMPACT REPORT (SCH #2109050005)**

I, Ms. Katie Taylor, declare:

1. I am a resident of Fresno, California. For over fifty years, I have lived on Central Avenue near its intersection with Orange Avenue in unincorporated Fresno County, just South of Fresno City limits.
2. The Amazon Fulfillment Center was constructed across the street from my house in 2017. The Ulta Beauty distribution center was built less than half a mile from my house in 2017 as well. There are other large facilities near my house, including the FedEx terminal, that attract traffic. Several other truck terminals and truck stops have been built around my neighborhood in the last few years as well. It seems like there are always new facilities being built nearby.
3. I was never notified that large warehouses were going to be built so close to me. When I saw the orchard trees being plowed down across the street, I did not know why. I thought the property owners were just going to plant more fruit trees. My neighbors thought the same thing. The next thing we knew there were big buildings being constructed. We were not given an opportunity to provide input on whether these projects went forward, the types of impacts they might have on the community, and what types of mitigation to avoid and reduce the projects' impacts might be appropriate. We were not given the opportunity for our voices to be heard.
4. I am not aware of the City ever contacting me or my family to inform us of the City's development of its current General Plan ("2014 General Plan"), the 2014 General Plan Master Environmental Impact Report, the Programmatic Environmental Impact Report for the 2014 General Plan, the Roosevelt Community Plan, or other action to zone or pre-zone land in my neighborhood for industrial land uses.
5. Three of my family members have passed away from cancer. My husband, daughter, and son all died of cancer. Some of my neighbors have died of cancer too. I have a heart condition and thyroid problems. I have allergies as well. My allergies have gotten worse since the warehouses were built. Some of my neighbors' children have asthma, which they say has gotten worse.
6. The construction of the Amazon facility had major impacts on me and my neighborhood. While construction was ongoing for months, the Amazon construction covered my house with dust. The construction occurred at night as well. The nighttime construction was loud and they used very bright lights. The truck traffic during the construction was also extremely loud,

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and I could hear the noise from within my home with the windows shut. The construction caused vibrations that were so strong that my house shook on some occasions.

7. Since the Amazon and Ulta facilities began operating, the car and truck traffic in my neighborhood has increased significantly. People who come visit my house are shocked by how much traffic there is now. There is traffic traveling to the facilities 24 hours a day, seven days week. A loud rumbling from the trucks passing can be heard all hours of the day and night. The vibration from the trucks shakes my house. The trucks are so loud sometimes that it sounds like someone is knocking at my door, and it can sometimes be hard to hear visitors talking in my house when trucks pass by.

8. The trucks going to and from the facilities create a lot of dust and fumes, which covers my house and car constantly. I have to clean the dust off the windows of my house and car almost every day. The dust also seeps into my house through cracks in my doors and windows. My neighbors complain about the dust getting inside their houses too.

9. Traffic lights were put up at the intersection of Central and Orange when the Amazon warehouse was constructed. The lights are very bright and blink continuously. They shine into my windows, which disrupts my sleep. My daughter has Down syndrome and autism. The constant flashing of the traffic lights is very disturbing for her because of her condition.

10. I have noticed that my neighborhood has become hotter since the warehouses were constructed, including during the night. I am forced to use my air conditioning more, which increases my energy bill. My neighbors have also noticed that it is hotter, that the neighborhood does not seem to cool down as much in the evening as it used to, and that they have to use their air conditioners more.

11. I have noticed that the traffic from the warehouses affects pedestrians. People I know that walk around the neighborhood have to be very careful because of the traffic. Some of the Amazon employees drive recklessly. I have noticed more accidents because of the traffic from the warehouses. There is frequently congestion from employee vehicles backed onto Orange Avenue near my house.

12. The water pressure at my house has dropped in the last four or five years. I have to pay for a water tank that comes every two weeks. My water is contaminated. One of my family members tested the water and found that it was not safe to drink. A person from UC Davis came and tested my water too and told me not to drink it because of the contamination.

13. I am worried that the value of my house has gone down because of the warehouses and other facilities. I believe that the value of my neighbors' houses has gone down too. This really hurts us because we do not have very much money, my home is my main source of wealth, and we are trying to pass our homes down to our kids to help support them economically.

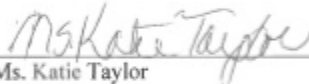
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14. Since about 2017, my neighbors and I have made many efforts to seek that the City stop approving new warehouses and industrial facilities in my neighborhood, that they notify us before studying and approving any new projects and allow us an opportunity to provide input, and that industrial developers and land owners respect these requests. When I and my neighbors have talked to the City and the developers, we tell them about the noise, dust, traffic, health problems, lowered property values, and other impacts from the warehouses and other projects. But they ignore us and keep building projects here without even notifying us first. It feels like we are not being heard. It feels like they are bullying us—like we are being targeted because of our race and because we do not have a lot of money.

15. The traffic, noise, dust, health, and other impacts from the facilities have caused me to suffer from a significant amount of stress and anxiety. For example, the abrupt loud noises and flashing lights are very unnerving and stressful. The heavy traffic from cars and trucks makes me constantly worry about my family's safety. My daughter has also said that she worries about the traffic, noise, and other impacts from the facilities.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed on September 13, 2021, in Fresno, California.


Ms. Katie Taylor

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