



July 26, 2021

County of Los Angeles Board of Supervisors
Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

Thank you for the opportunity to comment on the process of updating the housing element of Los Angeles County's general plan. We are writing on behalf of **Abundant Housing LA, YIMBY Law, and the League of Women Voters of Los Angeles County** regarding the 6th Cycle housing element update.

- **Abundant Housing LA** is a pro-housing, nonprofit advocacy organization working to help solve Southern California's housing crisis.
- **YIMBY Law's** mission is to make housing in California more accessible and affordable through enforcement of state housing law.
- **The League of Women Voters of Los Angeles County** is a nonpartisan political organization encouraging the informed and active participation of citizens in government.

We support more housing at all levels of affordability and reforms to land use and zoning codes, which are needed in order to make housing more affordable, improve access to jobs and transit, promote greater environmental sustainability, and advance racial and economic equity.

We have reviewed the County's draft Housing Element, and believe that **portions of the approach deserve commendation**. It acknowledges the need for significant rezoning in order to achieve the Regional Housing Needs Assessment (RHNA) target, and proposes to accommodate 55,000 homes (over 60% of the RHNA goal) through rezoning. Additionally, Planning's rezoning strategy is systematic, relying on a scoring model to identify parcels where redevelopment is likely, and prioritizes relatively well-resourced areas with higher environmental quality. Many parcels identified for rezoning are in high-resource areas, with only 6% of the lower-income RHNA goal accommodated in racially or ethnically concentrated areas of poverty (R/ECAPs), which helps to affirmatively further fair housing. Planning has also avoided sites that are in very high fire risk zones or are environmentally sensitive; these locations are often far from jobs, transit, and infrastructure.

However, we still have serious concerns about the County's plan to meet its state-mandated RHNA targets. The staff report and draft site inventory contain significant inconsistencies with the State Department of Housing and Community Development (HCD)'s instructions and the requirement that housing element updates affirmatively further fair housing (AFFH) under Assembly Bill 686.

The following issues are of particular concern to us:

1. Protections and preservation

A. The housing element does not adequately prioritize rezoning in transit-rich, job-rich, and high-resource neighborhoods, including single-family zoned areas. This is necessary to expand affordable housing opportunities while minimizing the impact on existing renters in multifamily-zoned areas.

AB 686 (2018) requires housing element updates to “affirmatively further fair housing”, which is defined as “taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and fosters inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.” The City must address the issue of residential segregation by accommodating the lower-income RHNA targets in a way that conforms with AFFH requirements.

HCD requires that a housing element’s site inventory and rezoning programs must not concentrate opportunities for affordable housing development in areas of segregation or high poverty. Rather, “sites must be identified throughout the community in a manner that affirmatively furthers fair housing.”¹ HCD recommends that jurisdictions distribute affordable housing opportunities throughout the jurisdiction, and first identify development potential for affordable housing in its best-resourced neighborhoods², [as defined in the TCAC/HCD Opportunity Map](#). Additionally, HCD’s [AFFH Guidance Memo](#) defines “high-opportunity” holistically, defining areas with strong access to public transportation and job centers as being locations where affordable housing should be promoted through the housing element.³ These policies will create more affordable housing in well-resourced areas, promoting inclusion of people of all backgrounds and income levels in formerly exclusionary neighborhoods.

Unfortunately, the County has only proposed rezoning parcels that are already zoned for multifamily residential or mixed-use development, and has not proposed any rezoning of parcels where apartments are currently banned. The County does not propose the legalization of apartments in R1-zoned areas, which today make up over 80% of the unincorporated County’s residentially-zoned land.

Single-family zoning is particularly prevalent in high-income communities like Altadena, East Pasadena, Ladera Heights/View Park, and La Crescenta, effectively blocking new housing opportunities, including housing that is affordable to lower- and moderate-income families, in these areas. An overreliance on parcels where multifamily housing already exists may lead to greater demolition of rent-controlled housing units, risking the loss of affordable homes and displacement of lower-income communities of color.

While we applaud the County for proposing to accommodate 36% of the lower-income RHNA goal in high- or highest-resource census tracts, as defined by the California Tax Credit

¹ HCD, Site Inventory Guidebook, pg. 9

² [HCD Site Inventory Guidebook, pg. 3](#)

³ HCD, AFFH Guidance Memo, pg. 48

Allocation Committee (TCAC) ⁴, the County must go further in order for the housing element to advance socioeconomic integration and greater housing affordability, especially given the heavy existing concentration of lower-income households in low-resource neighborhoods within unincorporated L.A. County.

B. The housing element fails to institute appropriate local programs and funding sources for preservation of existing affordable housing.

Under state law, a housing element must affirmatively “[a]ssist in the development of adequate housing to meet the needs of extremely low, very low, low, and moderate-income households” (Gov’t Code 65583(c)(2)). Additionally, HCD’s AFFH Guidance Memo states that “The schedule of actions generally must (1) enhance the mobility of low-income and minority communities, (2) encourage the development of new affordable housing in high-opportunity areas, (3) protect existing residents from displacement, and (4) invest in disadvantaged places.”⁵

Housing elements should use available public resources, including real estate transfer taxes and publicly owned land, in order to fund and encourage the preservation of existing affordable housing, potentially through a local Tenant Opportunity to Purchase Act, community land trusts, land banks, or assisting mission-driven nonprofits with acquisition of housing whose affordability covenants are close to expiration. This is important to ensure that lower-income households are able to maintain access to quality affordable housing options.

While the draft housing element references new and ongoing programs that preserve or create affordable housing, such as the Affordable Housing Programs Budget⁶, the Public Housing Modernization Program⁷, and Ownership Housing Rehabilitation Assistance⁸, the housing element anticipates that only about 3,000 affordable homes will be preserved as a result of these programs⁹. **This is far from adequate, and we urge the County to increase its commitment to funding and supporting affordable housing preservation and production.**

Recommendations - Protections and preservation:

- **Rezone parcels located near transit, job centers, schools, and parks in order to expand the supply of housing in high- and highest-resource areas, including R1 parcels where single-family detached homes are currently mandated by law.**
- **Identify additional funding sources to support the preservation of existing affordable housing.**

2. Prioritization of affordable housing

⁴ Appendix, p. 88

⁵ AFFH Guidance Memo, p. 54

⁶ Draft Housing Element, p. 58

⁷ Draft Housing Element, p. 59

⁸ Draft Housing Element, p. 70

⁹ Draft Housing Element, p. 13

A. The housing element does not adequately identify funding sources, public resources, and density bonus programs to maximize the likelihood that projects with below-market-rate units are built.

Under state law, a housing element must affirmatively “[a]ssist in the development of adequate housing to meet the needs of extremely low, very low, low, and moderate-income households” (Gov’t Code 65583(c)(2)). Additionally, HCD’s AFFH Guidance Memo makes clear that “The schedule of actions generally must (1) enhance the mobility of low-income and minority communities, (2) encourage the development of new affordable housing in high-opportunity areas, (3) protect existing residents from displacement, and (4) invest in disadvantaged places.”¹⁰

To accomplish these goals, housing elements should incorporate a program that creates affordable units, such as a density bonus program or base-bonus incentive system, that would apply to rezoned parcels. This will ensure that new housing development will directly create affordable units within mixed-income properties.

The City of Los Angeles’s Transit Oriented Communities program, which offers generous by-right density bonuses to developers who include affordable housing in new developments near mass transit, is worth emulating. Transit Oriented Communities has led to the [proposal of over 35,000 homes](#) (of which 20% are deed-restricted affordable units) in Los Angeles.

While Los Angeles County recently updated its density bonus program and passed an inclusionary zoning ordinance, these programs do not apply to residential parcels where apartments are banned. This acts as a significant barrier to the production of mixed-income housing with subsidized units in many high-resource neighborhoods. **Rezoning R1 parcels to legalize small apartment buildings, especially in high-resource, high-demand neighborhoods, would expand usage of the density bonus program and lead to greater production of subsidized housing units for lower-income households.**

Additionally, the draft housing element states that County-owned sites will accommodate over 7,000 affordable homes for lower-income households by 2029.¹¹ **However, the County provides no evidence that production of any housing, affordable or market-rate, is likely on these sites.** There is no information provided on active RFPs or ongoing development agreement negotiations for new housing on these sites, nor has the County offered a credible plan for funding the subsidized units that are being counted towards the RHNA goal.

B. The housing element fails to streamline housing production.

Housing element law requires cities to provide an analysis of governmental constraints on housing development, as well as a program to mitigate or remove these governmental

¹⁰ AFFH Guidance Memo, p. 54

¹¹ Draft Housing Element, p. 162

constraints. This is important because local governmental constraints are a major reason why affordable housing production in most California cities is low.

Unfortunately, building housing in unincorporated L.A. County is slow and difficult, due to the County's complex regulatory regime. The County's housing stock growth was flat between 2015 and 2020¹² (putting it 85th out of 89 jurisdictions in Los Angeles County), while the median renter household pays \$1,550/month, 40th-highest in Los Angeles County)¹³. Just 7% of the unincorporated County's housing stock was built after 2000.¹⁴ Per Professor Chris Elmendorf of the University of California, Davis and his co-authors of [Superintending Local Constraints on Housing Development](#), the above data suggest that restrictive land use rules are making homebuilding difficult in the County, leading to continued shortage and high costs.

While the housing element discusses governmental constraints in detail, including minimum lot sizes, parking requirements, strict limits on building height and size, high construction costs, slow approval processes, and a lack of local funding for affordable housing production, the report does not commit to a strong enough program to remove policy constraints that deter housing production at all levels of income.

Other cities in California have successfully implemented process reforms that streamline housing production. For example, the City of Los Angeles' Transit Oriented Communities program approves qualifying mixed-income and 100% affordable projects by-right, leading to an average approval time of 6 months for these projects. This would dramatically streamline the process of building new affordable housing. **We urge the County to commit to major constraint removal policies in order to streamline housing growth.**

Recommendations - Prioritization of Affordable Housing:

- **Strengthen the County's density bonus program to apply to low-density parcels where apartments are banned today.**
- **Decline to count housing on County-owned sites towards the lower-income RHNA goal, or provide strong evidence that affordable housing development on these sites is likely during the 6th Cycle.**
- **Establish a fast by-right review process for all new multifamily and mixed-use buildings which meet the zoning law and the General Plan.** Sacramento's Ministerial Housing Ordinance is an excellent model to follow.
- **Pre-approve standard accessory dwelling unit (ADU), small-scale "missing middle" multifamily and small lot subdivision housing plans, allowing developers to receive a permit quickly if they use a pre-approved design.**
- **Eliminate on-site parking requirements, instead allowing property owners to decide how much on-site parking is necessary.**
- **Reduce restrictions on maximum height, floor-area ratio, unit size, setbacks, and lot coverage.**

¹² California Department of Finance, Report E-5, 2020

¹³ American Community Survey

¹⁴ Draft Housing Element, p. 100

3. Site Capacity Assessment

A. The housing element fails to estimate and report both the likelihood of development and the net new units if developed of inventory sites, both vacant and nonvacant.

Assembly Bill 1397 (2017) requires cities to provide an accurate assessment of realistic site capacity, including “the city’s or county’s past experience with converting existing uses to higher density residential development, the current demand for the existing use, and an analysis of existing leases or other contracts that would perpetuate the existing use or prevent redevelopment.”

While the Housing Element Law does not expressly use the term “likelihood of development,” [legal scholars from across the state have shown](#) that AB 1397 (2017), read together with other recent laws, requires cities to discount sites’ capacity by the sites’ probability of development during the planning period. The Legislature has also put HCD in the driver’s seat for purposes of resolving any ambiguities about the definition or calculation of site capacity. Specifically, SB 6 (2019) authorizes HCD to promulgate “standards, forms, and definitions” for the site inventory and associated assessment of site capacity and constraints. An accurate assessment of the site inventory’s housing capacity is necessary in order for the housing element to achieve sufficient housing production.

The site capacity estimate should account for the following **two factors**:

- What is the likelihood that the site will be developed during the planning period?
- If the site were to be developed during the planning period, how many net new units of housing are likely to be built on it?

These are the **likelihood of development**¹⁵ and **net new units if developed**¹⁶ factors, as required by HCD guidelines. The portion of the jurisdiction’s RHNA target that a site will realistically accommodate during the planning period is:

(likelihood of development) x (net new units if developed) = realistic capacity.

The draft housing element has made reasonable estimates of sites’ net new units if developed, adjusting their capacity down by 20% based on a sample of recently completed multifamily projects.¹⁷ However, the analysis doesn’t estimate a likelihood of development for the site inventory or rezoned parcels, effectively assuming that all parcels will be redeveloped during the 6th Cycle.

This is a very unlikely outcome, given that during the 5th Cycle, only about 17% of the county’s theoretical zoned capacity was actually built. Through 2019, the County permitted 6,157 housing units, which equates to 8,209 housing units permitted by the end of the 5th Cycle (assuming that the same annual permitting pace continues through 2021). Additionally, as of the

¹⁵ [HCD Site Inventory Guidebook, pg. 20](#)

¹⁶ [HCD Site Inventory Guidebook, pg. 21](#)

¹⁷ Draft Housing Element, p. 165

end of 2020, the County had only built 7,116 homes during the 5th Cycle, or 26% of the County's 5th Cycle RHNA goal of 27,440 homes.¹⁸

The County must *fairly* estimate the likelihood of development for all parcels on the suitable sites inventory. There are multiple acceptable approaches: the City of Los Angeles' draft housing element includes a sophisticated parcel-level regression model that uses recent development trend data to estimate parcels' likelihood of redevelopment during the 6th Cycle. The City of Sacramento's [draft site inventory](#) provided a high-quality, numerical analysis of the likelihood of their sites' development through a "tiered classification system to classify the non-vacant underutilized sites".¹⁹ Either of these approaches offers a good model for the County to build on.

B. The housing element does not report the proportion of sites from the previous housing element's inventory that were developed during the previous planning period, and HCD-recommended methodologies and data sources were not used in order to conduct a thorough "factors" analysis of sites' realistic development capacity.

Assembly Bill 1397 (2017) requires cities to provide an accurate assessment of realistic site capacity, including "the city's or county's past experience with converting existing uses to higher density residential development, the current demand for the existing use, and an analysis of existing leases or other contracts that would perpetuate the existing use or prevent redevelopment."

To assess the likelihood of development, a city can calculate a citywide discount factor, using the proportion of 5th Cycle sites subsequently developed as a starting point. One approach could be to create a citywide estimate of a site's redevelopment likelihood during the 6th Cycle, and apply that discount factor to all housing element sites. The Site Inventory Guidebook states, "if no information about the rate of development of similar parcels is available, report the proportion of parcels in the previous housing element's site inventory that were developed during the previous planning period".²⁰

Alternatively, cities could estimate a citywide discount factor by comparing citywide unbuilt capacity at the beginning of the 5th Cycle to the number of homes permitted citywide during the 5th Cycle. Cities could also make reasonable neighborhood-specific estimates of redevelopment likelihood, based on recent development trends and market conditions.

The proportion of 5th Cycle sites that were later developed is an important piece of evidence validating the 6th Cycle housing element's assumptions about redevelopment likelihood, which is why cities must report it. **Unfortunately, the County does not report the proportion of 5th Cycle sites subsequently developed, nor does it undertake a quality "factors" analysis using any of the above suggested methodologies.**

¹⁸ Appendix, p. 5

¹⁹ [Public Review Draft, City of Sacramento Housing Element 2021-2029, p. H-2-15](#)

²⁰ HCD Site Inventory Guidebook, pg. 21

C. The housing element assigns more than 50% of the lower-income RHNA target to nonvacant sites, but fails to use statistical methods (e.g. surveying a random sample of owners of nonvacant sites) to determine that the sites' existing uses are likely to be discontinued during the planning period.

Assembly Bill 1397 (2017) requires cities to provide an accurate assessment of realistic site capacity, including “the city’s or county’s past experience with converting existing uses to higher density residential development, the current demand for the existing use, and an analysis of existing leases or other contracts that would perpetuate the existing use or prevent redevelopment.”

When cities allocate over 50% of their lower-income RHNA targets to nonvacant sites, they must demonstrate through *substantial evidence* that the current use of these sites is likely to be discontinued during the planning period. This is necessary in order to ensure that enough parcels for affordable housing production are identified, and that the lower-income RHNA targets are ultimately achieved.

HCD requires housing elements to describe the methodology used to estimate sites’ realistic development capacity²¹, while also giving cities leeway on how to arrive at these estimates²². One option we recommend is the Survey Method; the city would survey the owners of each lower-income sample site and ask whether they intend to discontinue the site’s current use and sell or redevelop the site during the next eight years. Another option is the Historical Redevelopment Rate Method; the city would calculate the share of owners in each category who filed permits for demolition, change of use, or redevelopment during the previous planning period.

While the draft housing element describes a reasonable methodology for removing sites with a low likelihood of development from the site inventory and rezoning plan, this is not the same as undertaking a robust quantitative analysis to demonstrate that sites are likely to have their existing uses discontinued during the 6th Cycle. The County’s draft housing element does not utilize either the Survey Method or the Historical Redevelopment Rate Method to provide evidence that redevelopment has a high likelihood of occurring on the parcels in the site inventory and rezoning plan. This appears to violate AB 1397.

D. A buffer of at least 15-30% extra capacity is not included in the housing element site inventory. This capacity buffer is especially necessary in order to accommodate the lower-income RHNA target.

The No Net Loss law established by SB 166 (2017) requires adequate sites to be maintained at all times throughout the planning period to accommodate the remaining RHNA target **by each income category**.²³ If a jurisdiction approves a development on a parcel listed in the site inventory that will have fewer units (either in total or at a given income level) than the number of

²¹ HCD, Site Inventory Guidebook, pg. 19

²² HCD, Site Inventory Guidebook, pg. 20-21

²³ HCD [No Net Loss Law Memo](#), pg. 1

units (either in total or at a given income level) anticipated in the site inventory, then the jurisdiction must identify and make available enough sites to accommodate the remaining unmet RHNA target for each income category.²⁴

If additional sites with adequate zoned capacity don't exist, then the jurisdiction must rezone enough sites to accommodate the remaining unmet RHNA target within 180 days. If the jurisdiction fails to accomplish this rezoning in the required period, then the consequences will include decertification of the housing element and potential state legal action. HCD recommends that "the jurisdiction create a buffer in the housing element inventory of at least 15-30% more capacity than required, especially for capacity to accommodate the lower income RHNA."²⁵ **This is important because it ensures that adequate affordable housing capacity exists in the housing element through the 6th Cycle.**

The County's draft housing element claims to provide capacity for 94,474 housing units, only 5% higher than the RHNA goal of 90,052 homes. **This does not fulfill HCD's recommendation to maintain a 15-30% capacity buffer at each income level,** giving the City little margin in the event that a site intended for affordable housing is developed with market-rate housing. Additionally, it seems unlikely that the County would achieve more than double the low-income RHNA target while falling 36% short of the above moderate income RHNA target; this suggests that the County is counting a large number of sites rezoned to the Mullin density towards the low-income target, even though most new development on these sites is likely to be unsubsidized.

Income Category	RHNA Target	Claimed Capacity	Buffer
Very Low Income	25,648	28,405	7%
Low Income	13,691	28,130	105%
Moderate Income	14,180	14,692	4%
Above Moderate Income	36,533	23,247	-36%
Total	90,052	94,474	5%

The City should ensure that enough housing capacity is created to provide 15-30% capacity buffers at each level of income, to avoid violating the No Net Loss requirement. Otherwise, the City risks falling afoul of the No Net Loss requirement, making it vulnerable to mid-cycle rezoning, a costly process in terms of time, money, and political will.

E. The housing element does not provide a quantitative estimate of the likelihood that in-pipeline projects will be completed, based on historical data, and does not adjust the number of in-pipeline units counted towards the 6th cycle RHNA target accordingly.

²⁴ [HCD Site Inventory Guidebook, pg. 22](#)

²⁵ [HCD Site Inventory Guidebook, pg. 22](#)

HCD allows cities to count permitted or entitled units towards its 6th Cycle RHNA goals, on the grounds that some of these projects will be built during the 6th Cycle. However, the city must **realistically** estimate how many of these units will ultimately be built during the 6th Cycle, based on recent historical data. This is necessary because not every pending project gets approved, and not every approved project gets built. Assuming that all permitted or entitled projects will ultimately be built is a faulty assumption, and would make it likelier that the city does not achieve its 6th Cycle RHNA goals.

Unfortunately, the County has made this faulty assumption, counting towards the 6th Cycle RHNA target 2,752 units in projects that have been approved but not yet permitted. The County has therefore assumed that all 2,752 units will ultimately be built, without adjusting for the likelihood that some will not.

The County should instead emulate the approach taken by the City of Los Angeles. Their [Initial Study](#) counted active planning entitlements, approved planning entitlements with no building permit, and permitted projects that have not yet been completed towards its 6th Cycle RHNA goals, but discounted each category based on the share of proposed units expected to be built, using the City's historical data.

The County must incorporate a similar estimate into its Inventory Analysis. Using data from recent projects, the City of Los Angeles estimated that 37% of projects with pending entitlements, 45% of projects with approved entitlements, and 79% of permitted projects, are ultimately completed.²⁶ **The County** should discount the number of pending and approved entitlements counted toward its RHNA target by *at least* the same factors:

2,752 units entitled x 45% chance of completion = 1,238 units

Thus, the County might reasonably claim 1,238 units from entitled projects towards the RHNA target. Alternatively, the County could use local data from recent projects to estimate these percentages. **But the County should certainly not count 2,752 units towards its 6th cycle RHNA goal.**

F. The housing element does not commit to a mid-cycle review to verify the housing element's assumptions about development probabilities.

No city can perfectly forecast future redevelopment trends, and it is entirely possible that despite best efforts, a city's 6th Cycle housing production falls short of the RHNA target due to less redevelopment than expected.

For this reason, **the County should commit to a mid-cycle review of all housing production relative to the RHNA target**, perhaps by comparing the proportion of sites that were developed by midcycle to the housing element's assumed likelihood of development at the start of the

²⁶ [Initial Study, City of Los Angeles, pg. 21](#)

cycle. The housing element should provide for by-right density bonuses on inventory sites and/or implement a fallback rezoning plan, which would automatically take effect mid-cycle in the event of a production shortfall. This is necessary in order to ensure that the County remains on track to achieve its RHNA target by the end of the 6th Cycle.

Recommendations - Site Capacity Assessment:

- **Provide a quantitative estimate of parcels' development probabilities, and incorporate this factor into the estimate of sites' realistic capacity.**
- **Report the proportion of sites in the previous housing element's inventory that were developed during the planning period.**
- **Share letters from owners of the site inventory parcels, indicating their interest in selling or redeveloping these properties during the 6th Cycle.**
- **If the City lacks enough suitable sites to achieve the RHNA target, rezone additional parcels where redevelopment is likely.**
- **Identify sufficient sites to provide a 15-30% No Net Loss buffer, especially for the very-low income (VLI), low-income (LI), and moderate-income (MI) categories, and rezone more parcels if there aren't enough suitable sites to provide this buffer.**
- **Provide a quantitative estimate of the likelihood that in-pipeline projects will be completed, based on historical data, and adjust the number of in-pipeline units counted towards the 6th cycle RHNA target accordingly.**
- **Commit to a mid-cycle review to verify Planning's assumptions about development probabilities.** If it turns out that sites within a tier, or category, were developed at a lower-than-expected rate during the first half of the cycle, then the city should rezone for additional capacity or make other appropriate adjustments for the second half of the planning period.

4. Affirmatively Furthering Fair Housing

A. The housing element fails to meaningfully increase the concentration of lower-income households in areas of the city where the existing concentration of lower-income households is low.

AB 686 (2018) requires housing element updates to "affirmatively further fair housing", which is defined as "taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and fosters inclusive communities free from barriers that restrict access to opportunity based on protected characteristics." The City must address the issue of residential segregation by accommodating the lower-income RHNA targets in a way that conforms with AFFH requirements.

HCD's [AFFH Guidance Memo](#) establishes a number of important principles for promoting fair housing, including that the distribution of housing-element inventory sites with lower or moderate income capacity must not be skewed toward lower-income neighborhoods. This is necessary in order to reverse the concentration of lower-income households and communities of color in high-poverty neighborhoods that lack economic and educational opportunities.

The guidance memo requires cities to calculate the percentage of households at lower, moderate, and above-moderate income levels in each census tract or “block group” in the city, and then do the same for the lower, moderate, and above-moderate-income RHNA units assigned to the tract or block group. The share of lower-income RHNA units assigned to tracts (or block groups) with a higher-than-average share of lower-income households should be less than the current share of lower-income households in those tracts.²⁷

The draft housing element takes some positive steps towards promoting more lower-income housing opportunities in higher-resource areas; 36% of the lower-income RHNA units are planned for in census tracts with a high- or highest-resource TCAC designation. **However, this isn’t nearly enough to meaningfully reduce the concentration of lower-income households in disadvantaged neighborhoods.**

This is because the housing element’s rezoning plan is too modest to meet the 90,000-unit RHNA goal by 2029, which means that many of the planned-for 17,500 lower-income RHNA units in high-resource areas will not be built during the 6th Cycle. Additionally, even if these 17,500 units are built, few of them will actually be occupied by lower-income households. This is because most of these units are located on parcels that will be rezoned to the Mullin density, technically making them appropriate to count towards the lower-income RHNA target, but aren’t subsidized units within all-affordable or mixed-income residential projects.

By the County’s own admission, 62% of the lower-income RHNA units are being planned for in areas where the majority of households have low or moderate incomes.²⁸ The final housing element must instead present convincing data that its rezoning program will significantly reduce the number of lower-income households living in areas with heavy concentrations of low- and moderate-income households. **HCD’s recent AFFH guidance makes it abundantly clear that this benchmark will be used to help determine AFFH compliance.**²⁹ Additional rezoning of high-resource neighborhoods, including parcels where apartments (and thus affordable housing) are currently banned, will be needed for the housing element to meaningfully reduce the concentration of lower-income households in disadvantaged neighborhoods.

B. The housing element fails to meaningfully reduce the concentration of lower-income households in areas with significant exposure to noise/pollution.

HCD’s AFFH guidance memo also requires cities to consider locations’ environmental quality when developing a housing element’s site inventory and rezoning program. “The analysis should not only address an overall score value of access to opportunity, but must also individually address access to...environmentally healthy neighborhoods and other important opportunities.”³⁰

²⁷ AFFH Guidance Memo, p. 47

²⁸ Appendix, p. 90

²⁹ AFFH Guidance Memo, p. 47

³⁰ AFFH Guidance Memo, p. 48

This is important because access to safe and affordable housing has a direct impact on public health. The very communities facing the highest rent burden are often the same frontline communities who bear the brunt of the negative impacts of pollution, noise, and low overall environmental quality, worsening health disparities by income and race. Cities must therefore promote affordable housing opportunities in locations with high environmental quality.

While the draft housing element acknowledges that a high share of lower-income households live in neighborhoods with poor environmental quality, it does not provide evidence that its proposed distribution of lower-income housing opportunities would reduce the concentration of lower-income households in locations with lower environmental quality or significant exposure to pollution and noise. **The County must provide this evidence, or must rezone additional parcels where environmental quality is relatively high.**

C. The housing element fails to meaningfully reduce the concentration of lower-income households and communities of color in R/ECAPs (Racially or Ethnically Concentrated Areas of Poverty).

HCD requires that a housing element's site inventory and rezoning programs must not concentrate opportunities for affordable housing development in areas of segregation or high poverty. Rather, "sites must be identified throughout the community in a manner that affirmatively furthers fair housing."³¹ Additionally, the site inventory must not only include an analysis of site capacity to accommodate the RHNA target for each income level, "but also whether the identified sites serve 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".³² This is necessary to ensure that patterns of racial and income segregation are reversed, and that people of all backgrounds and walks of life are able to access economic and educational opportunities.

To the County's credit, just 6% of the lower-income RHNA goal is planned for R/ECAPs.³³ However, for the reasons outlined in Sections 1A, 2A, and 4A, the draft housing element is unlikely to create the conditions where a large number of lower-income housing opportunities are built in high-resource areas. This means that the concentration of lower-income households in R/ECAPs will, at best, only fall a small amount because of the draft housing element and rezoning program. **This is inadequate.**

D. The housing element does not adequately prioritize high-opportunity census tracts and well-resourced areas (e.g. near transit, jobs, schools, parks, etc.) when selecting sites for lower-income housing opportunities.

High-income neighborhoods with good access to jobs, transit, schools, and parks tend to have very high housing costs. Racially motivated zoning [created many of these neighborhoods](#), and

³¹ HCD, Site Inventory Guidebook, pg. 9

³² HCD, Summary of AB 686, pg. 6

³³ Appendix, p. 86

today's single-family zoning reinforces historical patterns of racial and income segregation, disproportionately harming Black, Indigenous, and People of Color (BIPOC) communities.

AB 686 requires jurisdictions to analyze fair housing issues and to affirmatively further fair housing (AFFH) through their housing element. It's no longer permissible to allow relatively affordable housing to be built only in areas of socioeconomic disadvantage. HCD recommends that jurisdictions distribute affordable housing opportunities throughout the jurisdiction, and first identify development potential for affordable housing in its best-resourced neighborhoods³⁴, [as defined in the TCAC/HCD Opportunity Map](#). Additionally, HCD's AFFH Guidance Memo defines "high-opportunity" holistically, defining areas with strong access to education, transportation, economic prosperity, safety, parks and recreation areas, and environmental quality as being locations where affordable housing should be promoted through the housing element.³⁵

As described in Sections 1A, 2A, and 4A, the draft housing element does not take meaningful steps towards legalizing affordable housing in exclusionary neighborhoods where apartments are today banned, despite the heavy prevalence of R1 zoning in the County's best-resourced, highest-income neighborhoods. By failing to reform exclusionary zoning and encourage strong housing growth in all of the County's unincorporated areas, the draft housing element will continue to steer housing opportunities for lower-income households away from high-income neighborhoods where apartments are currently banned, and will fail to achieve the lower-income RHNA target. It is very hard to see how such a policy affirmatively furthers fair housing.

Therefore, the County must further rezone transit-rich, job-rich, and well-resourced neighborhoods, including single-family zoned areas, in order to expand housing opportunities at all levels of income and achieve the RHNA target.

E. The jurisdiction did not adequately solicit public feedback and commentary on the housing element in a way that accurately reflects the jurisdiction's socioeconomic makeup.

Under state law, cities are required to "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." (Gov't Code 65583(c)(7)). This is necessary in order to ensure that all segments of the community, including those who are frequently excluded from decision-making, have a seat at the table in determining the future of their city. Housing element outreach and public feedback should not cater to the predominantly [wealthy, white, and homeowning populations that customarily dominate land-use policy forums](#).

To overcome bias in patterns of public participation, jurisdictions should sample a random cross-section of the community (e.g., using postal service addresses), and elicit the respondents' preferences and priorities regarding zoning and residential development. If response rates favor privileged groups, the survey results should be reweighted accordingly so

³⁴ [HCD Site Inventory Guidebook, pg. 3](#)

³⁵ HCD, AFFH Guidance Memo, pg. 48

that they more accurately reflect the distribution of opinion within the community. Additionally, the City should consider giving increased weight to members of groups disproportionately affected by high housing costs and housing discrimination.

Additionally, when the jurisdiction takes public comment on its draft housing element, it should determine whether public comments accurately reflect the diversity of the community. If the pattern of participation proves to be demographically skewed, the jurisdiction should not include these comments as a valid representation of community input.

While the County undertook a public comment outreach effort throughout the housing element update process that included focus groups, surveys, and engagement with a wide range of community organizations, housing advocates, and other nonprofits, these efforts did not go far enough. The County did not undertake statistically robust random polling or surveying of the population, nor did it reweight the results of surveys it did conduct in order to reflect the distribution of opinion among the County's population groups.

Recommendations - Affirmatively Furthering Fair Housing:

- **Upzone parcels located near transit, job centers, schools, and parks in order to expand the supply of housing in the County's highest-opportunity areas. This should include R1 zoned parcels where single-family detached homes are currently mandated by law.**
- **Do more to reduce the concentration of lower-income households in neighborhoods with high concentrations of low- and moderate-income households, in neighborhoods with high exposure to pollution, and in R/ECAPs.**
- **Identify new funding sources and public resources to encourage the production of affordable housing, such a real estate transfer tax, an introduction of congestion pricing, and expansion of the County's density bonus program.**
- **Exempt parcels containing rent-restricted and de facto affordable housing units from rezoning.**
- **Ensure that "no net loss" provisions apply to parcels in the site inventory and rezoning program with a monitoring and implementation program.**
- **Prioritize the production of affordable housing on publicly-owned land.**
- **Create a 100% affordable housing zoning overlay that encompasses high-opportunity neighborhoods, including R1 zoned parcels.**

5. Forecasts of ADU Development

A. The housing element did not use an HCD-recommended safe harbor methodology for forecasting future ADU production.

Local jurisdictions frequently use overly optimistic estimates of ADU capacity and future production to avoid necessary housing reform and rezoning. This is why HCD has established two safe harbors for forecasting ADU production during the 6th Cycle³⁶. One option ("Option

³⁶ [HCD Site Inventory Guidebook, pg. 31](#)

#1”) is to project forward the local trend in ADU construction since January 2018. The other, for use when no other data is available (“Option #2”), assumes ADU production at five times the local rate of production prior to 2018.

HCD’s guidelines ensure that ADU development estimates reflect actual on-the-ground conditions so that they are realistic. This will maximize the likelihood that ADUs will be built to the level forecasted in the housing element update.

Unincorporated L.A. County issued permits for 128 ADUs in 2018, 592 ADUs in 2019, and 395 ADUs in 2020. Under a correct calculation of HCD’s “Option #1”, the County would take the average of the ADU permitting trend between 2018 and 2020, and forecast that 272 ADUs will be permitted per year during the 6th Cycle. **This would allow for a total 6th cycle forecast of 2,973 ADUs.**

However, the County counts 6,708 ADUs, or 840 ADUs per year, towards the City’s RHNA target. The County contends that a modest effort to “develop pre-approved plans and other tools to streamline the ADU approval process, and review and revise permitting procedures” by 2029 will be sufficient to increase ADU permitting to an average of 500 units/year throughout the 6th Cycle.³⁷ However, the County provides no tangible evidence that providing these relatively minor incentives halfway through the 6th Cycle will yield this outcome. Additionally, the County assumes that 1,354 ADUs that were approved during the 5th Cycle will be permitted during the 6th Cycle, without providing an explanation as to why these permits haven’t yet been granted, and how long ago these permits were approved.

The housing element therefore significantly overstates the likely production of ADUs during the 6th cycle, possibly as a tactic to avoid further rezoning. **The County must correct its calculation of the ADU safe harbor, and simply apply the average of annual ADU permits issued between 2018 and 2020, per HCD’s guidelines.**

B. The housing element does not provide for mid-cycle adjustments if inventory sites are developed at lower rates, or lesser densities, than the housing element anticipated and if ADU production falls short of projections. Mid-cycle adjustments should automatically implement a by-right density bonus on inventory sites, starting mid-cycle, and be large enough to make up for an ADU shortfall.

No city can perfectly forecast future redevelopment trends, and it is entirely possible that despite best efforts, a city’s 6th Cycle housing production falls short of the RHNA target due to less redevelopment than expected.

Anticipating this issue for ADUs, HCD’s Site Inventory Guidebook states that cities’ housing elements “should also include a monitoring program that a) tracks ADU and Junior ADU creation and affordability levels, and b) commits to a review at the planning cycle midpoint to evaluate if

³⁷ Draft Housing Element, p. 31

production estimates are being achieved.”³⁸ “Depending on the finding of that review, amendments to the housing element may be necessary, including rezoning pursuant to Government Code 65583.2 (h) and (i).”³⁹ This wisely provides a fail-safe in the event that ADU development falls short of forecasted production by the midpoint of the planning cycle.

A housing element’s provision for mid-cycle adjustment should be feasible to implement at the midpoint of the cycle. Rezoning is generally a multiyear process, often involving extensive California Environmental Quality Act (CEQA) review and litigation. Rezonings initiated at the midpoint may result in little (if any) new zoned capacity during the planning period. For this reason, we recommend that jurisdictions proactively plan for the possibility of an ADU shortfall by providing in the housing element for by-right density bonuses on inventory sites, which would become automatically available mid-cycle if the ADU target is not met.

Unfortunately, the draft housing element does not include a commitment to a mid-cycle adjustment. We recommend that the final housing element be amended to include by-right density bonuses on inventory sites that become automatically available at mid-cycle in the event of an ADU shortfall; this is necessary in order to ensure that the County remains on track to achieve its RHNA target by the end of the 6th Cycle.

C. The housing element does not assess the affordability of forecasted ADUs using city-specific data; it instead uses a regional average.

HCD requires cities to estimate the affordability of forecasted ADUs⁴⁰, and provides the following examples for methodologies:

- Surveying existing ADUs and JADUs for their current market rents, considering factors like square footage, number of bedrooms, amenities, age of the structure and general location, including proximity to public transportation.
- Examining current market rents for comparable rental properties to determine an average price per square foot in the community. This price can be applied to anticipated sizes of these units to estimate the anticipated affordability of ADUs and JADUs.
- Available regional studies and methodology on ADU affordability can also be a resource to determine the likely affordability mix for ADUs and JADUs.

However, many local jurisdictions’ housing elements contain overly optimistic forecasts of production of ADUs that are rented at below-market rates; some cities do this to claim that it can meet its VLI and LI RHNA goals without additional rezoning. As with forecasts of total ADU production, forecasts of affordable ADU production must reflect actual on-the-ground conditions to ensure that they are realistic. This will help ensure that the housing element update accommodates affordable housing production commensurate with the VLI and LI RHNA targets.

The draft housing element assumes that 70% of new ADUs in the County will be affordable to

³⁸ Site Inventory Guidebook, HCD, pg. 31

³⁹ Site Inventory Guidebook, HCD, pg. 31

⁴⁰ [HCD Site Inventory Guidebook, pg. 30](#)

moderate-income households.⁴¹ This assumption is based on the Southern California Association of Governments' (SCAG) [ADU Affordability Analysis](#), which makes the following estimates of ADU affordability in the "Los Angeles II" region (a disparate group of 20 Los Angeles County jurisdictions, including unincorporated areas):

- 15% affordable to extremely low-income (ELI) households
- 9% affordable to VLI households
- 45% affordable to LI households
- 2% affordable to MI households
- 30% affordable to AMI households

This is an unusual interpretation of SCAG's analysis (the analysis doesn't state that 70% of ADUs in the Los Angeles II region are priced to the budget of a moderate-income household), and will likely result in an overestimate of the County's ability to meet the moderate-income RHNA target through ADU production. The County should instead research current market rents in unincorporated areas to assess the likely affordability of new ADUs, and should supplement this analysis with a survey of the owners of recently-constructed ADUs (to determine average rent, as well as the number of ADUs that are rented for free or at a low cost to family members). This would provide a more accurate forecast of the number of ADUs that will be built at each level of income during the 6th Cycle.

Recommendations - Forecasts of ADU Development:

- **The County must use HCD's Option 1 safe harbor, and project that 2,973 ADUs will be permitted during the 6th Cycle.** High-quality data is available on the local trend in ADU construction since January 2018, so this is the appropriate safe harbor to use. If the County believes that higher ADU production forecasts are warranted, it must provide well-grounded estimates, based on the pace of ADU production in neighboring jurisdictions, and must explain what programs or policy efforts it will adopt that would lead to higher ADU production than it currently observes.
- **Follow HCD's recommendation to track ADU and JADU creation and affordability levels, and commit to a review at the planning cycle midpoint to evaluate if production estimates are being achieved.**⁴²
- **The County should follow HCD's guidance, which clearly demonstrates a preference for assessing the affordability of forecasted ADUs using jurisdiction-specific data, rather than regional data.**

Los Angeles County has a legal obligation to sufficiently plan to meet current and future residents' housing needs, in a way that guarantees access to opportunity for Californians of all racial and ethnic backgrounds. The issues that we've highlighted above suggest that the County is not on a path to fulfilling this legal obligation. We urge you to change course and actively embrace this opportunity to provide a variety of attainable housing options for the residents and

⁴¹ Draft Housing Element, p. 159

⁴² [HCD Site Inventory Guidebook, pg. 31](#)

workers of Los Angeles County.

Finally, state law imposes penalties on jurisdictions that fail to adopt a compliant 6th Cycle housing element update by October 15, 2021. On that date, noncompliant jurisdictions will forfeit the right to deny residential projects on the basis of local zoning, so long as projects include at least a 20% set-aside for below market-rate units or are 100% moderate-rate projects⁴³. Noncompliant jurisdictions may also lose the ability to issue building permits, including permits for kitchen and bath renovations. Jurisdictions that want to maintain local control over new development should therefore plan to adopt a compliant housing element update on time.

In May, HCD [declined to certify San Diego's 6th Cycle housing element](#), on the grounds that it did not adequately meet the legal requirements to affirmatively further fair housing, and to demonstrate the likelihood of redevelopment of non-vacant sites. If San Diego does not meet these requirements by June 16, 2021, HCD will find the housing element out of compliance. This suggests that HCD will be bold in enforcing housing element law, and that the County risks rejection of its 6th Cycle housing element and decertification if it continues down this path.

We request the opportunity to meet with you and your colleagues to address the concerns raised in this letter. Thank you for your time and consideration.

Sincerely,

Leonora Camner
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⁴³ [California Government Code 65589.5\(d\)\(5\)](#).