



November 26, 2013

Housing/Planning Director
Jurisdiction
Via email

Bay Planning Coalition

Re: Housing Element Update



The undersigned members of the Bay Area Business Coalition advocate for a vibrant regional economy and outstanding quality of life for existing and future residents of the San Francisco Bay Area. A necessary—though by no means sufficient—condition to achieve these goals is for the region to provide an adequate supply of housing within the region. State housing element law generally—and the governmental constraints component in particular—can be important tools to advance these goals. With Bay Area cities and counties currently updating their housing elements, our organizations respectfully request that your jurisdiction consider and address the following comments as part of the public review process.



We recognize that the housing element process can be resource intensive and sometimes difficult. We hope that by identifying certain priority issues and questions, this letter will assist in focusing resources on policies and practices that are of significant and recurring interest to the regulated community. We also would support incorporating these standardized issues into the framework for local jurisdictions to be able to take advantage of the housing element certification streamlining developed by the California Department of Housing and Community Development (HCD).



I. Overview of the statutory provisions.



Jobs and Housing Coalition

The California Department of Housing and Community Development (HCD) has prepared formal guidance interpreting the constraints analysis portion of housing element law (http://www.hcd.ca.gov/hpd/housing_element2/CON_home.php).



HCD’s overview of the requirements and their purpose provides: *The element must identify and analyze potential and actual governmental constraints to the maintenance, improvement, or development of housing for all income levels, including housing for persons with disabilities. The analysis should identify the specific standards and processes and evaluate their impact, including cumulatively, on the supply and affordability of housing. The analysis should determine whether local regulatory standards pose an actual constraint and must also demonstrate local efforts*



to remove constraints that hinder a jurisdiction from meeting its housing needs.... The analysis of potential governmental constraints should describe past or current efforts to remove governmental constraints. Where the analyses identifies that constraints exist, the element should include program responses to mitigate the effects of the constraint. Each analysis should use specific objective data, quantified where possible. A determination should be made for each potential constraint as to whether it poses as an actual constraint. The analysis should identify the specific standards and processes and evaluate their impact, including cumulatively, on the supply and affordability of housing.

II. Requested specific areas of focus

We have identified certain policies that generally represent significant potential constraints in the Bay Area and we request that as you conduct the constraints portion of your housing element review, these issues in particular be addressed:

- **Did your jurisdiction commit to addressing specific constraints as a condition of HCD certification of the existing housing element?** If so, what was the constraint and what has been done to address it?
- **Does your jurisdiction have a mandatory inclusionary zoning policy?** If so, has an analysis been done that measures the economic impact? Does it contain meaningful and regularly available incentives, and is its implementation flexible so that there are alternatives to a “like for like must build requirement” such as payment of reasonable in lieu fees, land dedication, or acquisition and rehabilitation of existing units with provision affordability covenants? Are such alternatives available at the developer’s option or with staff approval—but without need for Council or Board approval on a project-by-project basis?
- **Has your jurisdiction adopted a density bonus ordinance consistent with governing state law (Gov’t Code Section 65915)?** Does the density bonus ordinance count mandatory inclusionary zoning units toward the density bonus threshold as required by the recent court of appeal decision in *Latinos Unidos del Valle de Napa y Solano v. County of Napa*, 217 Cal. App. 4th 1160 (2013)?
- **What is the cumulative fee and exaction burden on new housing in your jurisdiction?** This analysis should include not only development fees that are “formally” reflected in published fee schedules, but also include exactions imposed via housing allocation program/ “beauty contests,” community benefits/amenities agreements, CFD annexation requirements, and the like. The analysis should also include fees imposed by other agencies, for example school fees, sewer and water fees, and fees imposed pursuant to an applicable regional Habitat Conservation Plan. The analysis should determine the % of the sales price of new housing in the jurisdiction is represented by the cumulative fee/exaction burden, as well as the % of costs for rental housing units represented by the cumulative fee/exaction burden.
- **Does your jurisdiction have any recently adopted, proposed, or under consideration new or increased fee or exaction, such as an affordable housing impact fee?**
- **Has your jurisdiction required new housing projects, including multifamily/attached projects, to pay a fee or special tax for ongoing general governmental services?**

- **Does your jurisdiction have a designated Priority Development Area (PDA)? Is it a “planned” or “potential” PDA?** Have the number of residential units and densities shown in the PDA application been incorporated into the General Plan? Has the CEQA process been completed for the PDA so that no additional CEQA review is necessary for a proposed project consistent with the PDA? Have development restrictions and processes been streamlined in the area covered by the PDA?
- **What were the sites relied on for the adequate sites compliance of the existing housing element?** What has been the entitlement/development activity for these sites during the prior planning period? Were any of the sites subject to “by right” development procedures?
- **Does your jurisdiction have any type of cap or limitation on the number or type of housing units that may be permitted or constructed jurisdiction wide or in specific areas of the jurisdiction—including a cap or limitation tied to a specified level of new job creation in the jurisdiction?**
- **Has your jurisdiction provided for “by right” housing development in any areas?**
- **Are there zoning or other development restrictions (such as voter approval requirements, density limits or building height restrictions) that have impeded infill and/or transit oriented development?**
- **Has your jurisdiction consistently demonstrated compliance with both the letter and spirit of the Permit Streamlining Act?**
- **What are your jurisdiction’s historic preservation policies and review procedures and have they had a significant impact on the permit and entitlement processes for new development projects?**
- **Has your jurisdiction adopted an ordinance pursuant to the Quimby Act that gives developers credit for private open space?**
- **In implementing the Quimby Act, does your jurisdiction provide for consistency between the calculation of the existing neighborhood and community park inventory, and the criteria and procedures for determining whether to accept land offered for parkland dedication or to give credit for private open space?** For example, has your jurisdiction refused to accept an area in whole or in partial satisfaction of the parkland dedication ordinance on the basis that it is unsuitable for park and recreational uses even though the area is substantially similar to areas included in the overall parkland inventory used to calculate the parkland dedication requirement and fee?
- **In the project review process, has your jurisdiction required developers to use the Bay Area Air Quality Management District’s CEQA Thresholds of Significance for Toxic Air Contaminants (TAC Receptor Thresholds)?** Has your jurisdiction explored alternative procedures for addressing project siting and air quality concerns, such as in the general plan or zoning code?

- **Has your jurisdiction adopted a Climate Adaptation Plan that is more stringent with respect to the per capita GHG reductions for the land use sector/transportation sector than the equivalent per capita targets established for the region by CARB pursuant to SB 375?**

Our organizations intend to monitor housing element updates throughout the region, and we respectfully request that your jurisdiction formally respond to these questions early in the update process. We also ask that you send a paper or electronic copy of the responses to:

BIA of the Bay Area
Attn: Paul Campos
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415-223-3775

Yours very truly,



John Coleman
Bay Planning Coalition
Council



Paul Campos
BIA Bay Area



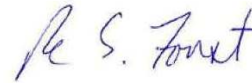
Tom Terrill
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Gregory McConnell
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Bay Area Council



Joshua Howard
California Apartment Association

From: Thomas Thurston [<mailto:tmthurston@msn.com>]
Sent: Thursday, February 27, 2014 9:54 PM
To: Strategic Planning
Subject: Housing Element

I have long been a vocal supporter of the continued development of housing in Oakland. I will be out of town for the main public hearing on March 25, so I would like to weigh in by email.

I would like to cite the megatrend of young people seeking "urban life at its best." Young workers seek the edginess of the Oakland cool. More mature people seeking not the quiet of the suburbs but the cultural richness of the cities. These raise demand in the North Gate/Koreatown area, for example. I encourage dense housing and cite the popularity of the Ellington and the Broadway Grand, for example. I encourage developments with units of a range of sizes, which would encourage economic diversity, aside from any affordability requirement. And I support meeting affordability requirements in or near new market rate developments rather than being pushed out to neighborhoods already facing economic challenges.

New dense housing should be planned to allow nearby rich commercial and cultural experiences, so that the new residents can find the quality urban life they sought in Oakland.

I have reservations about affordable housing ownership. It is not responsive to the dynamic nature of the housing market. A young family may find affordable purchase attractive. But then as the family size or the family budget changes, they are constricted from moving by price controls, whereas if they were renters or market rate buyers, they would be more free to move if they wanted to.

I also encourage strict enforcement of zoning so that so that neighborhoods are not degraded by surreptitious units built to respond to an otherwise unanswered housing pressure.

When considering the policy of rental assistance I ask that the City consider what percentage of Oakland residents either receive some form of direct rental assistance or live in "affordable (subsidized) housing" of some sort or another. There should be a balance between helping working class people and people on fixed income on the one hand, and attracting an ever growing pool of low income residents through more and more subsidies. There should come a point where the city says, "We've done our share and more. Let other cities do their share."



MEMORANDUM

TO Alicia Parker, Edward Manasse, and Devan Reiff
FROM Adam Maloon, Northern California Land Trust and Steve King, Oakland Community Land Trust
DATE April 28, 2014
RE **Prospective Housing Element Comments**

Per our conversation earlier in the month, please find comments regarding the inclusion of Community Land Trusts (CLTs) in the upcoming Oakland Housing Element. These comments represent the joint opinion of the Northern California Land Trust and the Oakland Community Land Trust, nonprofit organizations who have worked to develop and steward permanently affordable housing in Oakland for many years.

Founded in 1973, the Northern California Land Trust (NCLT) has developed over 200 units of affordable housing, community facilities and gardens using the Community Land Trust model with a number of long-established Oakland projects. NCLT transforms blighted properties into vibrant homes and community facilities, making them permanently affordable by selling the homes to low- and very-low income families, while retaining ownership of the land.

The Oakland Community Land Trust (OakCLT) was established in 2009 in direct response to the blight and abandonment due to foreclosure that was profoundly impacting the low-income flatland neighborhoods of Oakland. OakCLT's mission is to combat community deterioration and expand housing and economic development opportunities for low and moderate income residents. To date, OakCLT has created 18 permanently affordable single-family homes, and preserved one vacant lot for urban agriculture.

The CLT model keeps ownership and control of the land in the hands of the local community rather than speculators or absentee landlords. Through resale restrictions in the 99-year renewable land lease, NCLT and OakCLT ensure that homes are re-sold at affordable prices in perpetuity.

In 2013, NCLT helped form the Bay Area Consortium of Community Land Trusts (BACCLT), a regional partnership of Community Land Trusts in the Bay Area, in order to share tools and systems to build capacity and leverage scarce time and resources. We are working to collaborate, coordinate, and develop a shared resale, education and stewardship program and promote the interests of CLTs in California as well as across the country.

CLTs have been a particularly strong and unique development option in the San Francisco Bay area, where the land trusts are able to provide a variety of homeownership opportunities not often available to low- and moderate-income individuals in areas experiencing a rapid rise in land value. CLTs in the Bay



Area have been able to provide housing opportunities in the form of single-family homes, limited equity condominiums, limited equity housing cooperatives, zero equity cooperatives and affordable rentals for low- and moderate-income individuals. These options provide the opportunity for homeownership at a lower buy-in than many other forms of ownership.

Community Land Trusts are effective modes of providing permanently affordable homeownership to low-income individuals and families, as successful implementation reduces the cost to the municipality¹ while providing stability through reduced risk of loss due to foreclosure² and as a community barrier to displacement.³ In particular, the permanent affordability of CLT homes has the effect of multiplying the value of original subsidies, as the market value outpaces the growth in incomes over time; no additional subsidies are required to keep CLT units affordable throughout the duration of the lease, as the permitted resale price is tied to either Area Median Income (AMI) or another acceptable index which tracks what is affordable to low-income community members. CLTs steward this investment in subsidized homeownership by providing ongoing technical assistance and community to first time homebuyers, as well as by providing a backstop to recoup and retain the original subsidy should the homeowner need to sell the property.

Policy Objectives

Below, please find our current policy goals for the City of Oakland. Beyond any of the following policy goals held by NCLT and BACCLT and outlined below, it is our desire to provide technical assistance to the City of Oakland, and to use our position and expertise in monitoring, maintaining, and certifying homeowner compliance to reduce the burden of oversight on City Staff.

Goal: Increase the profile of Community Land Trusts⁴ as affordable housing providers and long-term stewards, and desirable community investments.

¹ John E. Davis & Rick Jacobus, *The City-CLT Partnership: Municipal Support for Community Land Trusts*, Lincoln Institute of Land Policy (June 2008) at 9.

² Emily Thaden & Greg Rosenberg, *Outperforming the Market: Delinquency and Foreclosure Rates in Community Land Trusts*, Land Lines (Lincoln Institute of Land Policy) October 2010 at 4.

³ Tasha Harmon, *Integrating Social Equity and Growth Management: Linking Community Land Trusts and Smart Growth*, The Institute for Community Economics (2003) at 35.

⁴ Community Land Trusts as defined by meeting the basic membership criteria of the National Community Land Trust Network, with emphasis on perpetual affordability, community health cohesion and diversity, community stewardship of land, sustainability, representative governance, resident and community empowerment, and openness to a variety of organizational structures. For more information see <http://cltnetwork.org/who-we-are/>.



Suggested Action Item:

- (1) Promote an annual regional Community Land Trust Stewardship Conference, to be sponsored by local Community Land Trusts with support from the National Community Land Trust Network, and recommend that financial institutions, housing developers and key City Staff attend.

Goal: Adapt First Time Homeowner programs to account for CLT homebuyers' particular needs, so as to avoid putting the homebuyer at a disadvantage due to the resale restrictions incorporated into the Land Lease intended to maintain the unit's affordability.

Suggested Action Items:

- (1) Meet with representatives of local Community Land Trusts to discuss how City programs affect CLT homebuyers, and propose solutions that would ensure CLT homes remain affordable under the various programs and avoid developing negative equity.
- (2) When developing new homeownership programs invite CLT staff to comment on the potential impact of CLT homeownership.

Goal: Increase the portfolios of Community Land Trusts in Oakland in order to provide more permanent affordable housing for City residents, as well as improve the economies of scale for Oakland based CLTs.

Suggested Action Items:

- (1) Convert existing MAP down payment assistance loans recorded against CLT units to SAM loans, made explicitly assumable by qualified purchasers, in order to prevent negative equity for homeowners of limited appreciation CLT units.
- (2) Develop a new program in conjunction with CLT staff to allow the conversion of the City's down payment assistance loans, including MAP and SAM, into permanently affordable homes in the CLT model, providing an option to purchase to CLTs and leveraging loan forgiveness to preserve affordable homeownership opportunities for Oakland residents.
- (3) Identify Oakland-based CLTs as approved recipients of land donation under the updated Density Bonus Ordinance.⁵

⁵ The City of Petaluma is a successful example of CLT and private developer partnership, where the city has encouraged developers to meet its city-mandated inclusionary requirements by conveying property to the Housing Land Trust of Sonoma County. Under these agreements, developers sell the homes to CLT-selected buyers and simultaneously donate the land under the homes to the land trust. This program allows developers to meet their inclusionary requirements while transferring the duty to monitor and report to the CLT. CLT oversight is in the municipality's best interest as many for-profit development companies dissolve after they complete their projects. See City of Petaluma 2009-2014 Housing Element,



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- (4) Provide an opportunity to identified CLTs to purchase and steward affordable housing developments with expiring affordability covenants in order to expand Oakland's existing stock of permanently affordable housing.
 - (5) Provide for CLT specific programs when considering the adoption of an Inclusionary Zoning Ordinance.
 - (6) Subsidize CLT projects by donating land and buildings from the municipality's own inventory to a CLT or by selling the properties to the CLT at a discounted rate.



EAST BAY HOUSING ORGANIZATIONS (EBHO) FRAMING PAPER ON GENTRIFICATION, DISPLACEMENT AND PUBLIC BENEFITS IN OAKLAND MAY 2014

While a lot of attention is being paid to gentrification and displacement in San Francisco, these issues have become far more important in Oakland as well.

As the housing market rebounds, and with a regional focus on more intensive transit-oriented development, Oakland is actively seeking to develop 7,500 new units of housing. While we welcome new investment to Oakland, we must ensure that this investment benefits the existing residents of the city. Neighborhood revitalization that forces lower income people out of their neighborhood and their city is not sustainable community development.

Our efforts around this are two-fold. First, we support measures to ensure an expansion of affordable housing, particularly in the Priority Development Areas. Second, we support anti-displacement measures such as tightening the rent stabilization ordinance and strengthening the condo conversion ordinance in order to prevent displacement of lower income residents and preserve existing affordable housing resources.

Oakland already has a tremendous unmet need for affordable housing - something that's painfully obvious from the numbers of lower income households paying more than 30% of their limited income for rent, and often paying more than 50% of their income. Every day we hear stories of tenants pushed out by higher rents. And it is becoming increasingly difficult for lower income households to find affordable, quality rental housing, as they are being priced out by an influx of more affluent residents.

Oakland also has tremendous future needs - job growth in Oakland and the Bay Area will draw new residents to Oakland. Oakland is in the midst of updating its Housing Element, and for the 2015-2023 period, it must accommodate the development of new housing totaling nearly 15,000 units, including over 4,100 units for very low and low income households.

With the demise of redevelopment, Oakland no longer can finance affordable housing to the degree it could in the past. Developers of market-rate housing need to do their fair share and contribute to the development of affordable housing. Most new development will take place in Priority Development Areas (PDAs) and along transit corridors where new development is particularly attractive because of (a) public investment in transportation and infrastructure, and (b) rezoning to encourage higher densities. As a result, land values in these areas could rise significantly. We need a Community Benefits policy that ensures that the community gets some share of the new value that it is creating, by requiring the inclusion of affordable housing units or the payment of a housing impact fee to the City for the financing of new affordable housing. If such policies are implemented early, developers could absorb the cost of such contributions - most likely they would do so by not paying as much for land. In this way, instead of the benefits flowing primarily to owners of land, some of the value that is created by public action can be captured in the form of public benefits.

EBHO RECOMMENDATIONS FOR POLICIES ON EXPANSION OF AFFORDABLE HOUSING, PREVENTION OF DISPLACEMENT, AND PRESERVATION OF EXISTING HOUSING

EBHO advocates the establishment of citywide policies to ensure inclusion of affordable housing in PDAs and other major development areas, and to prevent displacement of lower income residents. We also seek inclusion of these policies in individual Specific Plans. We recommend the following language:

DEVELOPMENT OF HOUSING FOR A RANGE OF INCOMES AND NEEDS:

The City is committed to equitable development in Specific Plan Areas, Priority Development Areas (PDAs) and large development projects that provides housing for a range of economic levels to ensure the development of thriving, vibrant, complete communities

The City intends, as part of a citywide community benefits policy, to require developers in Specific Plan Areas, PDAs and large development projects to make contributions to assist in the development of affordable housing, through options that may include impact fees, land dedication, and inclusionary zoning. Among other actions, the City will conduct a nexus study and an economic feasibility study to evaluate new programs to achieve this objective, including inclusionary zoning and impact fees for new housing development. The study will be completed no later than July 1, 2015.

The City will also consider programs for acquisition and land banking of opportunity sites in these areas to ensure that development of affordable housing takes place within the Plan Area, and doesn't simply generate fee revenue that builds affordable housing elsewhere.

PRESERVATION OF AFFORDABLE HOUSING AND ANTI-DISPLACEMENT POLICIES

The City will take measures to ensure that higher density and mixed-use development close to transit avoids displacement of existing lower income communities and preserves existing affordable housing resources.

The City will strengthen existing policies and adopt new policies to prevent displacement of existing residents and preserve existing housing affordable to lower income residents, including both publicly-assisted and non-assisted housing that currently has affordable rents. This may include, among other policies, the following:

- Strengthen the Rent Stabilization Ordinance.
- Strengthen and harmonize relocation benefits under the City's Ellis Act Ordinance, Code Enforcement Relocation Ordinance, and SRO Preservation Ordinance.
- Strengthen the City's Condominium Conversion Ordinance by extending protections to 2-4 unit buildings throughout the entire City, eliminating provisions that allow condominium conversion credits to be generated by existing housing rather than newly developed housing, and establishing mandatory tenant protections as part of the requirement for Tenant Assistance Plans.
- Require one-for-one replacement, with units of comparable size and affordability, of all housing units demolished or converted to non-residential use by either public or private action. These replacement units should not be counted toward meeting the City's RHNA requirement, given that they maintain but do not increase the affordable housing stock.
- Develop and implement programs for the acquisition and rehabilitation of existing rental housing and its preservation as permanently affordable housing for lower income individuals and families.