

December 4, 2023

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VIA EMAIL ONLY: lilyc@cityofclovis.com

RE: Clovis November 2023 Draft Housing Element

Dear Ms. Cha –

Thank you for the opportunity to comment on the City's revised draft Housing Element (hereinafter Draft or November Draft). The Draft includes considerable revisions from the City's prior version and because of the small window for review our comments, we did our best to highlight areas that require additional information or analysis in order to comply with state law; the time limitations did not allow for an in-depth review but we will provide additional comments to the City and HCD in the future. We appreciate your offer that we can continue to review while the draft is under review at HCD, but the purpose of the public review draft period is for City to receive our input prior to submitting the Draft to HCD, in order to correct remaining areas of non-compliance *before* submitting a draft to HCD. Once the City has reviewed our comments and made any revisions to address our comments, we plan to review the draft that is submitted to HCD for review. We would appreciate the City providing us with prompt notice when a draft is submitted to HCD. We would also greatly appreciate receiving the version the draft that is submitted to HCD along with an appendix of inventory sites.

Constraints

Recognize that the open space and parking requirements will prevent achieving maximum density (p. 6-11) do corresponding programs do enough to remove those constraints?

The November Draft both recognizes the open space requirements for multi-family development as a constrain (p. 6-11) and then later states the open space requirement does not impose a constraint on multi-family development (p. 6-36) despite the prior analysis demonstrating that it is a constraint. The later statement should be revised for consistency.

The November Draft recognizes that inconsistencies between the General Plan designations and Development Code zoning districts may act as a constraint due to the confusion caused by these inconsistencies. The corresponding program to eliminate this constraint does not require the Code update until 2027. The deadline for implementing this program should be moved up to remove this constraint as soon as possible.

Identifying primarily large sites for affordable housing development not only is inconsistent with the duty to affirmatively further fair housing because it can create an over-concentration of housing affordable to lower income households in one area but it also poses a constraint on receiving the needed funding to facilitate affordable housing. The ability to subdivide these parcels (Program H9) in order to develop portions of the parcel is helpful for the initial residential development projects but as development continues the concentration of sites to accommodate the lower income housing need is inconsistent with the City's duty to affirmatively further fair housing and a potential violation of its duties under Government Code section 8899.50.

Street width requirements clearly raises an issue that needs a solution to address both the cost concerns, that is resulting in the construction of private streets, and also address the safety concerns of narrow streets (p. 6-35). The Draft states that the current street widths are required due to the needs of emergency vehicles but the street width requirements do not actually result in wide streets but in developers creating private street that can be narrower and therefore also are more difficult for emergency vehicles to maneuver. The City's effort to make public streets safer thus results in less public streets and the City should explore whether a revision can be made that will address safety concerns and cost concerns so that

AFH¹

Although the November draft includes more historical context for development patterns it fails to describe its past compliance with Housing Element requirements to zone to accommodate all income levels and a variety of housing types. Past failures to zone for the identified need for lower income households is inconsistent with the duty to affirmatively further fair housing.

The changes to Housing Element law required by AB 686 and the duty to affirmatively further fair housing require that jurisdictions recognize that the status quo is what has created limited housing choice and segregation, so the programs to address these factors must do more than continue the status quo. Thus a commitment to facilitate affordable housing production requires identifying new incentives and actions and not just a reliance on state density bonus law, or other incentives that have been available in the past. As HCD indicated in its August findings letter the programs and site inventory that address the City's AFFH duties are "beyond compliance with state housing laws and meeting the RHNA." (See HCD's August 14, 2023 letter, Appendix, p. 2 – Identified Sites and AFFH.

And in addition to facilitating new housing opportunities the City should also focus on preventing displacement of existing tenants due to the recognized increase in housing costs. Adopting a just cause ordinance and a tenant anti-harassment ordinance are two ways to help prevent the displacement of existing tenants, especially those on fixed incomes that would have a difficult time finding new housing in Clovis.

¹ Note that in 2023 the Department of Fair Employment and Housing changed its name to the Civil Rights Department.

Sites

A comprehensive review of the available sites is crucial as the City has identified a very small surplus of sites to accommodate the lower income RHNA and the removal of any parcel, or the lack of adequate analysis about the feasibility of the sites could eat into that surplus and result in a shortfall. (p. 5-99).

1. Annexation/Phasing/Environmental Review Timelines

The City's stated in its attachment summarizing the changes made to address HCD's August findings letter (Comment 21) that "Appendix B of the Housing Element includes a PDF version of the electronic sites inventory form," but the Appendix is not available and instead the inventory is provided in parts which makes it difficult to review the inventory of sites identified to accommodate the lower income RHNA. The Draft should facilitate input from the public as part of the City's ongoing duty to comply with the statute's public participation requirements.

2. Non-Vacant Sites

HCD's comments on this issue urged the City to "consider factors including, but not limited to, the extent existing uses constitute an impediment, recent developments, development trends, and market conditions. ... Given the region's status as a strong agricultural producer, the element should describe the likelihood of agricultural uses discontinuing to facilitate residential development. For example, the element lists some recent trends and should describe any similarities to the identified sites." (HCD Comment 14.)

In response, the City's draft points to conversions of non-vacant agricultural uses to residential development. The City points out that land use designation and zoning of the non-vacant sites identified allow for "much higher intensity of development," and on that basis concludes that existing uses on these sites are not an impediment to development. This response is conclusory and fails to consider all of the factors identified in HCD's findings and Government Code section 65583.2(g).

In addition many of the non-vacant sites identified are non-vacant due to the residencies being located on the premises (p. 5-78), not due to uses associated with agriculture. These sites also need to be evaluated pursuant to section 65583.2(g) and without adequate assurances that they are available for development in this planning period they must be removed from the inventory.

Programs

Program H1. Near-term Annexation Program. The program has been updated to include more information about what steps still need approval before sites are available for development (eg. Sheperd North requires approval of sphere of influence expansion, annexation, general plan amendment, etc.). The Program highlights steps that are planned to allow residential development within the first year of the planning period, which is limited to development affordable to moderate and above-moderate income households. The Program should be updated to indicate the timeline, phasing requirements, etc that are required to facilitate housing

affordable to lower income households to determine whether these actions will ensure development of these units within the planning period.

Program H6. Revise the program to describe how the City will determine the affordability of the ADU's produced in the planning period (eg. rental registry, rent surveys) and how the information about production and affordability will be reviewed (ie. by the City Manager, City Council, in the APR) and how the additional incentives, if needed, will be determined.

Program H9. While the intention of the program is to respond to HCD's findings regarding the feasibility of large sites pursuant to Government Code section 655583.2, the program should also respond to how the City will mitigate the impact on its duty to further fair housing while identifying sites that create a concentration of affordable housing in a few areas within the City.

Program H10. This program should be revised to describe actions the City will take to coordinate with the Housing Authority if an owner indicates it will not renew a subsidy and intends to convert the affordable units to market rate. In HUD subsidized properties most tenants will be eligible for enhanced vouchers that the Housing Authority must process in a timely way so that no tenants are left without a subsidy when the conversion to market rate occurs.

Program H20. Additional revisions are needed to identify how the program will assist the Fair Housing Council of Central California to conduct fair housing testing and to what groups the fair housing trainings will focus on, landlords, property managers, banks, tenants, etc. It is unclear what it means to encourage the Center to conduct fair housing testing, will this be done through providing compensation to the Center?

Program H25. The City has revised its planned action items regarding its reasonable accommodation policies but additional clarification is still necessary. In order for an accommodation request, and the information in support of the request, to remain confidential it cannot be combined with a separate request for a discretionary action that requires a public hearing. As written, Program H25 is unclear whether the City's policy contemplates requiring a reasonable accommodation to go through the discretionary process, let's say for a variance, whether the variance is necessitated as a reasonable accommodation or not. This would be antithetical to the federal and state requirements regarding reasonable accommodations. Pursuant to the regulations implementing the Fair Employment and Housing Act, if the request is required to provide a person with a disability equal use and enjoyment of their home, the request is processed as a reasonable accommodation request and not a discretionary request subject to a hearing. See 2 CCR 12161(b)(8):

Refuses or fails to make reasonable accommodations in public or private land use practices or services related to the enjoyment of residence, land ownership, tenancy, or any other land use benefit related to residential use, or in connection with residential real estate or existing or proposed dwellings, including charging a fee for seeking or processing a reasonable accommodation, or using land use permitting processes for variances, conditional use permits, or other land use approvals rather than a reasonable accommodation process to respond to a request for a reasonable accommodation if the variance or conditional use process takes

into consideration different criteria or uses different procedures than those required by this article for considering requests for a reasonable accommodation;

Thus, if a discretionary permit is required separate and apart from a modification needed as a reasonable accommodation they should not be reviewed on the same track as they are not subject to the same standards.

Create/Maintain equitable disbursement of high density sites. There are no programs that commit the City to maintaining a distribution of sites to accommodate the lower income RHNA throughout the City. Although No Net Loss requires the City to replace a site identified for housing affordable to lower income households if that site is developed to serve other income levels or the density for the site is decreased and that action results in an inadequate inventory to accommodate the remaining need. But the City should also commit to ensuring that if No Net Loss is triggered the City will also make sure any sites rezoned to address the net loss will not create an overconcentration of sites to accommodate affordable housing – a move that could constrain funding for affordable housing.

Quantified Objectives

The November Draft includes a goal of conserving and preserving about 1600 units of affordable housing and references that number includes preserving 490 housing choice vouchers. It is unclear what number this refers to, are there 490 housing choice vouchers in use in Clovis or the City expects to take action to help increase the number of vouchers in use in Clovis to 490 households. Further detail is required to understand the basis for the stated objectives.

Further revisions will be necessary for the draft to comply with state law and we look forward to continuing to work with the City toward that goal. Again, thank you for the opportunity to provide comments to the City regarding the November 2023 Draft Element and please alert us to the City's submission of a draft to HCD as we intend to review in more detail in the future.

Sincerely,

/s/

Valerie Feldman
Public Interest Law Project

/s/

Patience Milrod
Law Office of Patience Milrod