

Attachment: Response to HCD Comments on City of El Cerrito Draft Housing Element, March 8, 2023

On December 12, 2022, the City of El Cerrito received a comment letter from the California Department of Housing and Community Development (HCD) on the Draft Housing Element. The City reviewed these comments, revised the document, and prepared the Revised HCD Review Draft Housing Element. To help the reader track revisions, this attachment to the Housing Element outlines the comments from HCD's letter with responses from the City describing how and where comments were addressed in the Housing Element.

A. Housing Needs, Resources, and Constraints

1. *Affirmatively further[ing] fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2...shall include an assessment of fair housing in the jurisdiction. (Gov. Code, § 65583, subd. (c)(10)(A).)*

HCD Comment 1: Fair Housing Enforcement and Capacity: The element should discuss how the City complies with existing fair housing laws and regulations, any past fair housing lawsuits, consent decrees or other related legal matters.

Response 1: Expanded discussion of fair housing enforcement capacity on page 3-10.

HCD Comment 2: Racially Concentrated Areas of Affluence (RCAA): The element briefly mentions median household income by block group and notes some eastern areas with higher incomes but then concludes the City does not have RCAAs. However, based on HCD data, the City does have areas of concentrated affluence and the element should include a specific analysis of patterns and trends for RCAAs within the City. The analysis should consider data for RCAAs available on HCD's website at <https://www.hcd.ca.gov/community-development/affh/index.shtml>. The analysis should at least address trends, conditions, comparisons to other neighborhoods, effectiveness or absence of past strategies, local data and knowledge and other relevant factors related to equitable quality of life. The element must add or modify meaningful programs based on the outcomes of this analysis, including actions to improve housing mobility within the City.

Response 2:

- Added maps and analysis of RCAAs starting on page 3-34 and moved the analysis of median income to page 3-24 through 3-27.

HCD Comment 3: Disproportionate Housing Needs: The element includes some general information on persons experiencing homelessness and housing conditions but should also evaluate those needs, impacts and patterns within the City, such as areas of higher need. For homelessness, the element should examine patterns of need or areas with higher concentrations of persons experiencing homelessness, including access to transportation and services. For housing conditions, the element should discuss any areas of potentially higher needs of rehabilitation and replacement. The element may utilize local data and knowledge such as service providers and code enforcement officials to assist this analysis.

Response 3:

- Added more description of the unhoused population in the region and El Cerrito on page 3-74
- Added more information and maps on substandard housing cases from Code Enforcement and Residential Rental Inspection program on pages 3-65 through 3-67

HCD Comment 4: Identified Sites and Affirmatively Furthering Fair Housing (AFFH):

The element includes some discussion regarding identified sites and AFFH. However, this approach to whether identified sites AFFH must also account for the location of identified sites by income group. A full analysis should address the income categories of identified sites with respect to location, the number of sites and units by all income groups and how that affects the existing patterns for all components of the assessment of fair housing (e.g., segregation and integration, access to opportunity). In addition, the analysis should be supported by local data and knowledge and other relevant factors. The element should also discuss whether the distribution of sites improves or exacerbates conditions, including any isolation of the regional housing need allocation (RHNA). If sites exacerbate conditions or isolate the RHNA, the element should identify further program actions that will be taken to promote inclusive communities and equitable quality of life throughout the community (e.g., housing mobility and new housing choices and affordability in higher resource, higher income or racially concentrated areas of affluence).

Response 4: Expanded the assessment of the sites inventory relative to several additional AFFH factors starting on page 3-75

HCD Comment 5: Local Data and Knowledge: The element must include local data and knowledge to discuss and analyze any unique attributes about the City related to fair housing issues. The element should complement federal, state, and regional data with local data and knowledge where appropriate to capture emerging trends and issues, including utilizing knowledge from local and regional advocates and service providers, City staff and related local and county planning documents.

Response 5: Expanded the analysis throughout Chapter 3 with local data in several places, including adding historical context, expanded description of the relationship between zoning and fair housing, and data on substandard housing conditions

HCD Comment 6: Other Relevant Factors: The element must include other relevant factors that contribute to fair housing issues in the City. For instance, the element can analyze historical land use, lack of zoning for a variety of housing types and barriers to housing choices, investment practices, seeking investment or lack of seeking investment to promote affordability and inclusion, information about redlining/greenlining, restrictive covenants and other discriminatory practices, land use related lawsuits, local initiatives (e.g., heights, moratoriums, limits on density), demographic trends, or other information that complements the state and federal data.

Response 6:

- Added historic context on pages 3-2 through 3-4
- Added discussion of relationship between zoning and segregation on page 3-28 through 3-31
- Added discussion on City investments in the San Pablo Avenue Area on page 3-90

HCD Comment 7: Contributing Factors to Fair Housing Issues: Based on the outcomes of a complete analysis, the element should re-assess contributing factors and prioritize those factors then formulate appropriate policies and programs.

Response 7: Reviewed and confirmed contributing factors in Table 3-26 based on updated AFFH analysis and expanded actions, targets, and timeframes to better address contributing factors

2. *Include an analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected needs for all income levels, including extremely low-income households. (Gov. Code, § 65583, subd. (a)(1).)*

Include an analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition. (Gov. Code, § 65583, subd. (a)(2).)

Analyze any special housing needs such as elderly; persons with disabilities, including a developmental disability; large families; farmworkers; families with female heads of households; and families and persons in need of emergency shelter. (Gov. Code, § 65583, subd. (a)(7).)

HCD Comment 8: Extremely Low-Income (ELI) Households: While the element quantifies existing and projected ELI households, it must also analyze their housing needs. The analysis of ELI housing needs could consider tenure, overpayment, overcrowding, resources and the effectiveness of strategies and the magnitude of housing need.

Response 8: Expanded analysis of ELI households on page 2-23

HCD Comment 9: Overpayment: While the element identifies the total number of households overpaying for housing (p. 2-20), it must quantify and analyze the number of lower-income households overpaying for housing by tenure (i.e., renter and owner) and add or modify policies and programs as appropriate.

Response 9: Added new Table 2-7 showing 2015-209 CHAS data on overpayment by income and tenure on page 2-22

HCD Comment 10: Special Housing Needs: The element reports data on households and persons with special housing needs. However, for persons with disabilities, female-headed households and large households, it must also describe the resources available and effectiveness of strategies to these special housing needs groups, then determine the magnitude of housing needs to better formulate policies and programs.

Response 10: More analysis was added to pages 2-24 through 2-27 to describe programs, resources, and needs for persons with special housing needs.

3. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

HCD Comment 11: Progress Toward the RHNA: The City's RHNA may be reduced by the number of new units built, approved, or pending since June 30, 2022; however, the element must demonstrate their availability in the planning period. Availability should address the status, anticipated completion, any barriers to development and other relevant factors such as build out horizons, phasing, and dropout rates to demonstrate the availability or likelihood of development in the planning period.

Response 11: Reviewed and updated Table 4-2 to provide more information about the status of each of the approved projects included in the inventory. Three of the projects (site IDs 4, 7, and 8) were updated to provide new unit counts based on new development applications for these sites. In reviewing the table, City staff identified two projects that had inadvertently been left off the list (site IDs 9 and 10). All of these projects have current entitlements but have not yet pulled building permits. All of the projects are anticipated to move forward during the Sixth Cycle RHNA period.

HCD Comment 12: Publicly-Owned Sites: The element must include additional discussion on publicly-owned sites identified to accommodate the RHNA, particularly the Del Norte BART Station site. Specifically, the analysis should address existing uses, any known conditions that preclude or could promote development in the planning period, status, and potential schedule for development. Based on this analysis, the element should add or modify programs. Programs should include a schedule of actions to facilitate development in the planning period in stride with assumptions in the inventory such as numerical objectives, outreach, and coordination property owners, removing barriers to development, issuing requests for proposals, incentives, fee waivers, priority processing and financial assistance.

Response 12:

- More information was added on pages 4-3, 4-5, 4-11, and 4-12 on the timeline for the El Cerrito Plaza TOD development and anticipated process for the Del

Norte BART Station.

- A detailed timeline and objectives were added to Program H-2.E describing development of TOD at both stations.

HCD Comment 13: Environmental Constraints: While the element provides general information on environmental constraints (p. 5-30), it should also relate those constraints to identified sites, including a discussion of any other known conditions (e.g., shape, easements, contamination) that impact or preclude development in the planning period.

Response 13: Added additional analysis on page 4-12 to describe environmental constraints

HCD Comment 14: Accessory Dwelling Units (ADUs): HCD records indicate the City permitted 16, 24, 13 and 25 ADUs in 2018, 2019, 2020 and 2021, respectively. The records differ from trends reported in the element (p. 4-16) and should be reconciled with HCD records. ADU records may be reconciled by correcting figures in the element and adjusting assumptions or correcting annual progress reports pursuant to Government Code section 65400.

Response 14: The ADU building permit data in Table 4-8 (page 4-20) was updated to match the submitted APRs.

HCD Comment 15: AB 725: For jurisdictions that are considered Metropolitan, the element must identify at least 25 percent of the remaining moderate and above-moderate RHNA on sites that allow at least four units of housing (e.g., four plex or greater) (Gov. Code, § 65583.2, subd. (c)(4)).

Response 15: Modified discussion on pages 4-8 and 4-9 to clarify that the City does not have any remaining RHNA in the moderate- and above moderate-income categories after accounting for units in planned and approved projects.

HCD Comment 16: Water Sewer Priority: Water and sewer service providers must establish specific procedures to grant priority water and sewer service to developments with units affordable to lower-income households. (Gov. Code, § 65589.7.) Local governments are required to immediately deliver the housing element to water and sewer service providers. The element should discuss compliance with these requirements and if necessary, add or modify programs to establish a written procedure by a date early in the planning period.

Response 16:

- Added text to Page 4-12 describing requirements of Government Code Section 65589.7, EBMUD's current adopted policies, and the lack of adopted policies by Stege Sanitary District
- Added new Implementation Program H-2.K (Infrastructure Priority for Affordable Housing)

HCD Comment 17: Electronic Sites Inventory: For your information, pursuant to

Government Code section 65583.3, the City must submit an electronic sites inventory with its adopted housing element. The City must utilize standards, forms, and definitions adopted by HCD. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml#element> for a copy of the form and instructions. The City can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance.

Response 17: Comment noted. The final sites inventory will be submitted to HCD using the required sites inventory spreadsheet.

HCD Comment 18: Zoning for a Variety of Housing Types (Emergency Shelters): While the element states emergency shelters are permitted by-right, it should clarify which zones permit emergency shelters without discretionary action.

Response 18: Emergency shelters are permitted by-right in the CC zone as well as the TOHIMU and TOMIMU zones of the San Pablo Avenue Specific Plan without discretionary action. Added text on page 5-14 to clarify.

4. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures... (Gov. Code, § 65583, subd. (a)(5).)*

HCD Comment 19: Land Use Controls: While the element describes development standards and some land use controls, it must also analyze those land use controls for impacts on housing supply (number of units), costs, financial feasibility, timing, approval certainty and ability to achieve maximum densities without exceptions (e.g., conditional use permits (CUP), variance, planned development). For example, the analysis should address multifamily development standards, including heights, floor area ratios, parking and day planes. The City may engage the development community to assist with this analysis. Based on the outcomes of this analysis, the element should add or modify programs to address identified constraints.

Response 19: Expanded discussion on pages 5-6 through 5-8

HCD Comment 20: Local Processing and Permit Procedures: The element generally describes that typical multifamily development are subject to a Design Review Board and in some zones, a CUP when projects are twenty-five units or more. The element also describes project meeting development parameters in the San Pablo Avenue Specific Plan Area are also subject to the Design Review Board and a Tier II design review. The element should analyze these processes for impacts on housing supply (number of units), cost, feasibility and approval certainty. For example, the analysis should address CUP thresholds, parameters of the various design review tiers, typical number of hearings, frequency of re-designs and any related approval findings.

Response 20: Expanded analysis on pages 5-28 through 5-30

HCD Comment 21: In addition, the element should list and evaluate processing times for various permit types and clarify whether the City has a written procedure to implement streamlining provisions pursuant to Government Code section 65913.4 (SB 35) and add or modify programs if necessary.

Response 21:

- Expanded analysis of approval timelines on pages 5-28 and 5-29
- Added description of SB 35 procedures on page 5-30. Note: SB 35 does not currently apply to El Cerrito because the City has met its prorated share of the Fifth Cycle RHNA.

HCD Comment 22: On/Off-Site Improvements: The element generally describes typical on- and off-site improvements such as parking, sidewalks, street reconstruction, traffic signals and park improvements. However, the element should analyze the cost impacts on a typical development and add or modify programs if necessary.

Response 22: Expanded analysis of on/off-site improvements on page 5-31.

Constraints on Housing for Persons with Disabilities: The element must evaluate constraints on housing for persons with disabilities, as follows:

- **HCD Comment 23: Reasonable Accommodation:** The element indicates the City has a reasonable accommodate procedure but also mentions provisions that may be constraints. For example, the procedure appears limited to dimensional requirements. However, this reasonable accommodation procedure should be construed broadly in zoning and land use. In addition, the City appears to apply decision-making parameters similar to a variance (e.g., hardship test) but a reasonable accommodation procedure should be a unique exception process. Based on the outcomes of this analysis, the element should modify Program H-4.B (Reasonable Accommodation) with specific commitment to address constraints.

Response 23: More analysis was added on page 5-17 to acknowledge the constraints created by the adopted Reasonable Accommodation Ordinance and Program H-4.B was modified to commit to adopting a new ordinance that provides a more broad and inclusive reasonable accommodation procedure.

- **HCD Comment 24: Definition of Family:** The element explains the definition of family does not differentiate between related and unrelated persons occupying the same unit. However, the definition includes ambiguous provisions such as single non-profit housekeeping unit or sharing sleeping facilities that should be evaluated as potential constraints.

Response 24: More analysis has been added on page 5-20 to discuss the definition of family and Program H-2.H was modified to include an update to the current definition.

- **HCD Comment 25:** *Group Homes for Seven or More Persons:* The element describes that residential care facilities licensed by the state are allowed in residential zones subject to a CUP requirement. However, the element should analyze these requirements to better formulate policies and programs. For example, the element should discuss the licensing, CUP and parking requirements as potential constraints and modify Program H-2.H (Zoning Amendments for Special Needs) with specific commitment to address those constraints.

Response 25: More analysis has been added to pages 5-18 through 5-20 of the Constraints chapter describing the CUP requirement and parking requirements as a potential constraint on housing for persons with disabilities. Program H-2.H has been modified with specific commitments to address the constraints.

HCD Comment 26: *Other Ordinances:* The element (p. 5-12) the City adopted an inclusionary requirements but should also analyze that requirement as a potential constraint. The analysis must evaluate the inclusionary policy's implementation framework, including levels of mandated affordability and the types of options and incentives offered to encourage and facilitate compliance with the inclusionary requirements. The City could engage the development community to facilitate this analysis.

Response 26: Expanded analysis of inclusionary housing ordinance on page 5-13 based on findings from the 2018 Inclusionary Policy Analysis prepared by Kaiser Marston.

B. Housing Programs

1. *Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the Housing Element... (Gov. Code, § 65583, subd. (c).)*

HCD Comment 27: To have a beneficial impact in the planning period and address the goals of the housing element, programs must be revised with specific commitment (e.g., beyond explore, evaluate, review) to housing outcomes and discrete timelines (e.g., at least annually or by January 2025). Examples of programs that should be revised with discrete timelines include Programs H-2.B (Housing Trust Fund Priorities) and H-2.G (Shelter and Housing Solutions for Persons Experiencing Homelessness).

Examples of programs that should be revised with specific commitment include Programs H-1.C (Accessory Dwelling Unit Tools), H-1.E (Zoning for Innovative Housing Types), H-2.D (Assist in Affordable Housing Development), H-2.F (Coordinate Transportation Projects), H-2.G (Shelter and Housing Solutions for Persons Experiencing Homelessness) and H-2.J (Affordable Housing and Places of Assembly).

Response 27: The City has modified the following implementation programs to have more specific timeframes and commitments in response to this comment:

- H-1.C (Accessory Dwelling Unit Tools)
- H-1.E (Zoning for Innovative Housing Types)
- H-2.B (Affordable Housing Trust Fund Priorities)
- H-2.D (Assist in Affordable Housing Development)
- H-2.F (Coordinate Transportation Projects)
- H-2.G (Shelter and Housing Solutions for Persons Experiencing Homelessness)
- H-2.J (Affordable Housing and Places of Assembly)

2. *Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. (Gov. Code, § 65583, subd. (c)(1).)*

HCD Comment 28: As noted in Finding A3, the element does not include a complete site analysis, therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element should be revised, as follows:

- **BART Sites:** In addition, the element includes Program H-2.E (Develop on BART Lands) to facilitate development on BART owned lands. However, the program should include additional commitment for both identified BART owned sites. Examples of steps include completing on- and off-site improvements and parking strategies, completion of requests for proposals or qualifications, facilitating entitlement and issuing permits and alternative actions with timing if steps are not completed as anticipated to facilitate development in the planning period. In addition, numerical objectives should reflect both identified BART sites.
- **San Pablo Avenue Specific Plan (SPASP):** The element notes several changes pending to the SPASP that are essential to addressing housing needs in the planning period and as a result, the element should include a program with specific commitment and discrete timelines.

Response 28:

- *Program H-2.E was expanded with objectives for both BART-owned sites and more detailed timelines for supporting development of both sites*
- *San Pablo Avenue Specific Plan. The City has already adopted the updated San Pablo Avenue Specific Plan and Subsequent EIR. The text on page 5-3 has been updated to reflect this.*

3. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (Gov. Code, § 65583, subd. (c)(3).)*

HCD Comment 29: As noted in Findings A4, the element requires a complete analysis of potential governmental and non-governmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address and remove or mitigate any identified constraints.

Response 29: The City has added or revised the following programs to address additional constraints identified in the constraints analysis:

- Program H-2.H: Zoning Amendment for Special Needs Housing
- Program H-2.K: Infrastructure Priority for Affordable Housing
- Program H-4.B: Reasonable Accommodation Procedures

HCD Comment 30: In addition, as noted in Finding A4, the element should modify Programs H-2.H (Zoning Amendments for Special Needs Housing) and H-4.B (Reasonable Accommodation) with specific commitment to address identified constraints based on the outcomes of a complete analysis.

Response 30: The City has modified Programs H-2.H and H-4.B to address HCD comments.

4. *Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics... (Gov. Code, § 65583, subd. (c)(5).)*

HCD Comment 31: As noted in Finding A1, the element must include a complete assessment of fair housing. Based on the outcomes of that analysis, the element must add or modify programs. Goals and actions must specifically respond to the analysis and to the identified and prioritized contributing factors to fair housing issues and must be significant and meaningful enough to overcome identified patterns and trends. Actions must have specific commitments, milestones, geographic targeting, and

metrics or numerical targets and, as appropriate, must address housing mobility enhancement (more choices and affordability across geographies), new housing choices and affordability in higher opportunity and income areas (e.g., missing middle housing types), place-based strategies for community preservation and revitalization and displacement protection.

Response 31: The City has modified the following programs to provide stronger commitments related to fair housing:

- Program H-1.B. Promote Mixed-use Development and Amenities in San Pablo Avenue Specific Plan Area
- Program H-1.C. Accessory Dwelling Unit Tools and Resources
- Program H-1.E. Zoning for Innovative Housing Types
- Program H-2.A. Inclusionary Zoning Ordinance
- Program H-2.H. Zoning Amendments for Special Needs Housing
- Program H-4.C. Housing Choice Voucher (HCV) Program

C. Quantified Objectives

Establish the number of housing units, by income level, that can be constructed, rehabilitated, and conserved over a five-year time frame. (Gov. Code, § 65583, subd. (b)(1 & 2).)

HCD Comment 32: While the element includes quantified objectives for new construction, rehabilitation, and conservation (p. 7-14), it could consider increasing conservation objectives for all income groups. For your information, conservation objectives are not limited to at-risk preservation and may include a variety of activities that promote stability in housing. Examples of programs that may be used for conservation objectives include Programs H-3.A (Residential Rental Inspection Program), H-3.C (Tenant Protections), H-4.C (Housing Choice Vouchers).

Response 32: Added conservation target to Table 7-1 on page 7-15 related to Housing Choice Voucher program and rental inspection program

D. Public Participation

The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort. (Government Code 65583(c)(7))

HCD Comment 33: While the City made considerable effort to include the public through a survey and workshops, moving forward, the City should employ additional methods for public outreach efforts in the future, particularly to include lower-income and special needs households and neighborhoods with higher concentrations of lower-income households. For example, the City could conduct targeted stakeholder interviews or establish a committee representative of lower-income households in future public outreach efforts.

Response 33: Modified Programs H-1.E (Zoning for Innovative Housing Types), H-2.A (Inclusionary Zoning Ordinance), H-2.B (Affordable Housing Trust Fund Priorities), H-2.J (Affordable Housing and Places of Assembly), H-3.C (Tenant Protections), and H-4.D (Community Opportunity to Purchase Act) to include a commitment to ongoing community engagement during implementation of the Housing Element programs, targeting lower-income households and stakeholders

HCD Comment 34: In addition, the element includes a general statement that comments were incorporated but should better explain how the comments were incorporated into the element.

Response 34: Added text to pages 1-8 through 1-10 of the Introduction Chapter explaining which policies and programs were added or modified to address public comments.