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August 15, 2023

**Via U.S. First Class Mail and Requested Electronic Mail to:**

Contra Costa County Civil Grand Jury  
P.O. Box 431  
Martinez, CA 94553

[ctadmin@contracosta.courts.ca.gov](mailto:ctadmin@contracosta.courts.ca.gov)

**Re: City of Clayton Response to Findings and Recommendations of Grand Jury Report No. 2306, "Affordable Housing: A Plan Without a Home"**

Dear Grand Jury Foreperson,

Thank you for your letter and the accompanying Grand Jury Report No. 2306, in which you highlighted several findings that align with the prevailing trends and challenges in our jurisdiction.

As part of our review process, we carefully considered your concerns, and we acknowledge that some findings may lack context. As you highlighted in your letter and report, one significant challenge is the lack of funding for affordable housing initiatives. Additionally, even when funding is available, the competition for these dollars often discourages developers from pursuing projects with a lower probability of receiving funding. However essential it is to emphasize that local jurisdictions play a pivotal role in fostering housing development, including affordable housing options, development activity will often follow the path of least resistance.

Your letter and report indicate that all findings and recommendations uniformly apply to Contra Costa County and the 19 incorporated towns/cities. We recognize the challenges, and associated solutions, for Contra Costa County are different, based on geography/location, demographics, market conditions, land availability and associated costs, and land use/transportation options. Individual jurisdictions may also face unique constraints, especially environmental constraints, which may compromise a jurisdiction's ability to address housing needs.

Finally, among the key points from our review and your findings, unfunded mandates from the State that add to the administrative burden continue to impact local jurisdictions and their ability to take proactive steps to increasing housing production. On January 1, 2023, additional housing laws went into effect, including changes to the State Density Bonus law and the Accessory Dwelling Unit (ADU) law. On July 1, 2023, two additional laws came into effect, requiring local jurisdiction staff to create handouts and checklists and re-prioritize workloads to process housing applications on commercial corridors. Before January 1, 2024, local building and public works departments need to develop specific submittal requirements for post-entitlement permit applications, and all such applications, such as building and grading permits, will be subject to a “shot clock” to review and approve permits. The expectations and costs to local jurisdictions and their staff are significant and, without adequate funding and resources, impact local jurisdictions’ ability to focus their resources on implementation of various housing policies and goals.

The lack of accessible housing options has particularly impacted vulnerable populations, including low-income households, seniors, disabled, and individuals experiencing homelessness. As local jurisdictions endeavor to tackle this crisis, they are confronted with the daunting challenge of vying for limited resources and funding. The competition among jurisdictions with diverse capacities and needs often accentuates the difficulty of implementing comprehensive and equitable housing solutions.

Your report has shed some light on critical aspects of the housing crisis we face today and affirmed that we are not alone as a jurisdiction in facing these challenges. Despite potential areas of partial disagreement, we acknowledge the factual basis of your findings and recognize the interconnectedness of the underlying conditions that have given rise to the current challenges.

By working collaboratively and understanding the broader context of the housing crisis, we strive to develop more effective strategies and policies to address this pressing issue and create a more inclusive and sustainable housing landscape for all members of our community.

The response was reviewed and authorized by the Clayton City Council at its public meeting held on August 15, 2023.

Sincerely,



Jeff Wan  
Mayor

Attachment:

City of Clayton Response to Findings and Recommendations of Grand Jury Report  
No. 2306, “Affordable Housing: A Plan Without a Home”

cc: Honorable Clayton City Council Members



## **City of Clayton Response to Findings and Recommendations of Grand Jury Report No. 2306, “Affordable Housing: A Plan Without a Home”**

### *Grand Jury Findings*

*F1. Within existing city or County infrastructure, there is no clear owner who is responsible for achieving RHNA permitting targets.*

**Partially Disagree.** The City of Clayton partially disagrees with Finding 1. While a single entity is responsible for reporting on regional housing needs allocation (RHNA) permitting targets, implementing policies and measures to streamline the permitting process for housing, and ensuring the efficient processing of permits and approvals, the City of Clayton like other local jurisdictions is not a “developer” of housing projects. State Housing Law only requires that jurisdictions plan to address barriers to development through land use actions and policy, accommodate all types of housing based on the RHNA allocations, and report their progress towards RHNA. The Community Development/Planning Department is responsible for processing permits and preparing the Annual Progress Report (APR) as required by State Housing Law. These reports are presented before the City Council early in the calendar year, prior to submission to the State Department of Housing and Community Development (HCD) and the Governor’s Office of Planning and Research (OPR). Furthermore, the City of Clayton’s Housing Element does specifically identify that the Community Development Department is responsible for carrying out the Housing Element’s Plans and Programs.

*F2. City and County officials see no direct path to meet state-mandated regional housing (RHNA) targets.*

**Partially Disagree.** The City of Clayton partially disagrees with Finding 2. While City officials recognize the challenges ahead, our Housing Element identifies a clear path to accommodate the RHNA targets, and we are actively exploring and implementing strategies to work towards meeting those targets. Despite acknowledging the complexity of the task, we at the local level are committed to finding viable solutions and collaborating with stakeholders to address the housing needs of the region. Through ongoing assessments and adaptive planning, we aim to identify feasible pathways to make progress toward meeting RHNA targets. While it may be a challenging endeavor, the dedication and proactive approach of City officials, with assistance from the County, demonstrates our commitment to addressing the housing crisis and fulfilling our obligations in accordance with state mandates. However, the City of Clayton, like other local jurisdictions, is not a housing developer and does not physically construct the units.

*F3. There are currently no measurable penalties if a city or a County does not achieve RHNA targets in an approved housing element plan.*

**Partially Disagree.** The City of Clayton partially disagrees with Finding 3. While there are no legal or financial penalties if cities and counties do not achieve their RHNA targets, there are penalties for not accommodating RHNA in a Housing Element and the consequences for not issuing adequate permits can be considered punitive.

In addition, jurisdictions are subject to penalties if they do not adopt a Housing Element that is certified by the State, including designating adequate sites to accommodate the RHNA targets. For example, cities and counties may be subject to litigation from individuals, housing rights organizations, developers, and/or HCD in connection with deficient Housing Elements. Depending on court and administrative decisions, local control may further diminish, beyond that prescribed in State law, including, for example, suspending local agencies’ authority to issue building permits or approve certain land use permits. Local agencies may also be subject to court-issued fines, court receivership, and streamlined approval processes that remove local discretion.

Regardless of the reasons for lack of building permit activities, if local agencies do not issue building permits that meet the RHNA targets, developers may choose to use a ministerial process for housing projects that meet specified criteria (e.g., Senate Bill [SB] 35). In addition, a developer could choose to construct housing on certain sites that the city has not designated for housing.

*F4. Data published by ABAG shows that Contra Costa County and most of its cities have missed their current RHNA targets for very low- and low-income housing allocations. The allocation requirements continue to increase (16x for very low-income and 4x for low-income residents).*

**Partially Disagree.** It is true that many cities and the County as a whole missed their RHNA targets for very low and low-income housing, and that RHNA Allocation for very low- and low-income housing has continued to increase. However, the increase in RHNA allocation is not to the extent mentioned in this report. RHNA numbers from the past 3 cycles indicate that the current (6th) cycle has had the largest increase of 2.5x from the previous cycle in very low- and low-income housing requirements.

| Cycle       | Very Low | % permitted | Low   | % permitted | Source               |
|-------------|----------|-------------|-------|-------------|----------------------|
| 1999 - 2006 | 6,481    | 44%         | 3,741 | 48%         | <a href="#">link</a> |
| 2007 - 2014 | 6,512    | 21%         | 4,325 | 24%         | <a href="#">link</a> |
| 2015 - 2020 | 5,264    | 16%         | 3,086 | 55%         | <a href="#">link</a> |
| 2023 - 2031 | 13,346   | n/a         | 7,685 | n/a         | <a href="#">link</a> |

*F5. Many obstacles hinder the development of AH [affordable housing] at the local level, specifically for very low and low-income housing, including:*

- a. Limited availability of land;*
- b. Restrictive zoning policies specific to AH development;*

- c. *Limited developer interest to bring projects forward;*
- d. *Limited available funding;*
- e. *Lack of community support;*
- f. *NIMBY [Not in My Backyard] opposition & city council response to NIMBY opposition.*

**Partially Disagree.** Though the above list of obstacles can hinder the development of affordable housing, the City of Clayton has addressed each item in our adopted Housing Element programs, policies, and actions to the extent feasible and considered acceptable to HCD.

- a. *Limited availability of land;*
  - Policy 2.4: Recognize urban lot splits, as defined and allowed by State law, as a viable means to create new housing.
  - Policy 2.5: Promote mixed-use development in Downtown Clayton.
  - Policy 2.6: Create land use regulations that encourage the development of housing, particularly below market-rate housing on properties owned by religious institutions.
  - Program C: Comply with the surplus land act (SLA) and No Net Loss requirement.
  - Program K: Adopt a replacement housing policy when a proposed housing development involves the demolition or removal of existing residential units.
- b. *Restrictive zoning policies specific to AH development;*
  - Policy 4.2: Review and adjust residential development standards, regulations, ordinances, departmental processing procedures, and residential fees related to rehabilitation and construction that are determined to constrain housing development.
  - Policy 4.3: Identify, assess, and, when appropriate, amend ordinances and policies that adversely affect housing cost.
  - Program D-2: Amend the zoning code to rezone properties required to meet RHNA, revised development standards, and remove potential constraints to development.
- c. *Limited developer interest to bring projects forward;*
  - Program B3: Encourage development by developing process that prioritizes the processing of affordable housing applications, encourage the use of density bonus provisions through technical assistance and information dissemination, etc.
- d. *Limited available funding;*
  - Program H1: Seek funding under the Federal Housing Opportunities for special needs households such as seniors, persons with disabilities, and persons at risk for homelessness; City will continue to work with developers who cater to disable and other special needs populations to develop a housing project in Clayton.
- e. *Lack of community support;*
  - Program E: Educate community of homebuying opportunities by referring interested persons to information on mortgage and downpayment programs.

*f. NIMBY [Not in My Backyard] opposition & city council response to NIMBY opposition.*

The City of Clayton has a long history of retaining and enhancing its small-town character, taking pride in its residential nature, and working hard to protect its historic downtown. The City recognizes that while pressures to meet housing allocations have continued, resident opposition to new development and the construction of denser, more affordable housing units has remained consistent for many residents. With this awareness, the City Council has committed to the following Meaningful Actions in its current Housing Element adopted January 2023:

- Prioritize alternate and affordable housing types like such as affordable multifamily and accessory dwelling units, transitional housing, and supportive housing for individuals unable to afford the high cost of rent and home prices, by streamlining zoning and fees and offering incentives for these housing types. This will also contribute to more diverse individuals being able to move into the City and may encourage younger families to establish roots.
- Prioritize capital improvement projects to bring greater alternative mobility connectivity into, out of, and within Clayton (transit, bicycle infrastructure, sidewalks). This can help to provide more economic opportunities in Clayton by attracting more businesses and allow lower-income families without personal vehicles to live in the City.

A multitude of policies and programs in the Housing Element prescribe the steps that the City has committed to taking toward achieving these meaningful actions. These include the policies and programs listed above, as well as programs that commit the City to amending its land use and zoning regulations to increase residential density ranges to foster greater diversity in multifamily housing types (Program D1); remove discretionary land use permits for residential developments that meet a standard of 20 percent low-income affordability (Program D2); and amending land use regulations in its Town Center to allow for and encourage compact housing types including live-work, efficiency apartments and co-housing (Program B2).

*F6. Zoning changes are generally addressed only when a project is presented for development.*

*Zoning obstacles include:*

- a. Housing element plans that offer poor land choices for AH development;*
- b. Restrictive height and high-density zoning policies;*
- c. Lack of inclusionary housing ordinance(s) in many cities.*

**Partially Disagree.** Assembly Bill (AB) 1397 set forth strict criteria for adequate sites. These criteria are somewhat arbitrary (e.g., not smaller than 0.5 acre and not larger than 10 acres). The requirement to demonstrate substantial evidence that existing uses do not impede redevelopment also tends to steer sites selection to properties with declining uses and low building-to-land-value ratios.

Most jurisdictions consider amending/changing the zoning while reviewing their Housing Element and/or updating the General Plan, not just when a project is proposed for development.

- a. Pursuant to Government Code Section 65583.2(b), Housing Element sites must include information on the number of dwelling units that a site can realistically accommodate, the RHNA income category the parcel is anticipated to accommodate, whether the parcel has available or planned and accessible infrastructure, and the existing use of the site, amongst other details. When selecting sites to accommodate the lower income RHNA, HCD provides jurisdictions with best practices to consider factors such as:
  - (1) Proximity to transit
  - (2) Access to high performing schools and jobs
  - (3) Access to amenities, such as parks and services
  - (4) Access to health care facilities and grocery stores
  - (5) Locational scoring criteria for Low-Income Housing Tax Credit (TCAC) Program funding
  - (6) Proximity to available infrastructure and utilities
  - (7) Sites that do not require environmental mitigation
  - (8) Presence of development streamlining processes, environmental exemptions, and other development incentives

However, sites that meet these locational criteria do not always meet the other existing use criteria needed to demonstrate substantial evidence for existing uses to discontinue within the planning period. These other criteria include high vacancies, deteriorating conditions, marginally operating businesses, underutilization of sites, etc. These conditions are often directly contrary to access to high performing schools and jobs, amenities, adequate infrastructure, and clear of environmental hazards.

In addition to the above requirements and pursuant to AB 686 (Government Code Section 65583(c)(10)), for Housing Elements due on or after January 1, 2021, sites must be identified throughout the community in a manner that affirmatively furthers fair housing (AFFH). AFFH means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.

Very often the approach to sites selection is to target declining areas for redevelopment. Without tax increment financing as a reinvestment tool, jurisdictions must rely on private investments as catalyst to induce redevelopment in declining neighborhoods. Housing is the best catalyst. For jurisdictions that take a neighborhood revitalization approach to accommodating the RHNA, place-based strategies that focus on public improvements, economic development, prioritization of funding, and targeted outreach are used to complement the sites inventory strategies.

As such, Housing Element plans provide an inventory of land that addresses the unique conditions of each jurisdiction.

- b. According to State Density Bonus Law (SDBL), local agencies are required to allow increased density, reduced standards, and development incentives based on the number and type of affordable housing units proposed in a project. The SDBL applies to housing

projects, including mixed-use developments, new subdivisions, or common-interest developments. Developers may request incentives and concessions from the jurisdiction's regulatory or development standards that result in actual and identifiable cost reductions to provide for affordable housing costs or rents. The number of required incentives is based on the percentage of affordable units provided in the qualifying project. For example, developers may ask for increased height above that allowed by the zoning regulations. As such, height and density do not represent a restriction to development. Furthermore, many sites are located in transit-oriented neighborhoods where recent State laws have preempted restrictions on height and density.

The City of Clayton in the previous and current housing cycles has demonstrated flexibility in high-density zoning policies and implementation of regulations. During the previous (5<sup>th</sup>) housing cycle, the City of Clayton approved a residential development with very low-income units and an increase in allowed density from 20 to 27 units in accordance with SDBL. For the current (6<sup>th</sup>) housing cycle, the City of Clayton adopted programs to increase permitted density ranges from maximums of 20 units per acre to maximums of 30 units per acre, and as high as 40 units per acre for 100 percent affordable housing developments. The General Plan Land Use Element amendments establishing these expanded density ranges were adopted in January 2023, concurrently with the update of the Housing Element for the current 6<sup>th</sup> cycle.

- c. The City of Clayton adopted an inclusionary housing ordinance, codified as Chapter 17.92 of Clayton Municipal Code, in August 2016. While the initial iteration of the ordinance applied only to ownership housing, the ordinance was subsequently amended in January 2019 to reflect changes in the law that allowed inclusionary requirements to apply to rental housing developments, as well. The ordinance applies to any residential development of 10 or more units and requires that at least 10 percent of all newly constructed dwelling units be developed, offered to and sold or rented to very low, low and moderate income households. To meet the inclusionary requirements of new development, developers have the option to incorporate the inclusionary units into the proposed development; to build inclusionary units off-site; to pay a fee in lieu of building affordable units (with those in lieu fees to be used to fund affordable units elsewhere in the City); or to dedicate land for construction of affordable units, where the land value is equal to or greater than the in lieu fee amount.

Program G-1 in the City of Clayton Housing Element for the 6<sup>th</sup> cycle commits the City to reviewing its current inclusionary ordinance in the next three years to evaluate more of options for compliance, such as purchase of affordability covenants of existing units, rehabilitation of substandard existing units, and funding ADU production on other properties. The City will also re-evaluate the in lieu fee option to ensure that funds collected do not fall short of the funds required to construct the affordable unit(s) required by the market rate development.

*F7. Penalties directed at cities and the County (financial, loss of control over local planning) are tied to not meeting state deadlines for Housing Element plan approval.*



**Partially Disagree.** The City of Clayton agrees that there are penalties that are directly related to not meeting statutory deadline of the Housing Element.

The City partially disagrees with Finding 7, however, because there are other penalties that are not directly tied to the statutory deadline. There are penalties associated with lawsuits, which are rarely brought forward for simply missing the statutory deadline, but more due to a perception of continued inactions. Penalties can also include ineligibility for funding.

As stated in the response to Finding 3, local agencies may also be subject to litigation from individuals, housing rights organizations, developers, and/or HCD. Depending on court and administrative decisions, local agencies may lose additional local control, such as suspension of authority to issue building permits or approve certain land use permits; and/or local agencies may be subject to court-issued fines, court receivership, and streamlined approval processes that remove local discretion.

In addition, depending on specific programs, eligibility for some state funds requires a certified Housing Element (such as PLHA and State HOME funds). Finally, loss of local control is not limited to jurisdictions that do not meet specified timeframes for a certified housing element. For example, SB 35, the Housing Accountability Act, the No Net Loss Act, SDBL, and AB 2011/SB 6 specify what types of projects local jurisdictions must approve and where such projects must be approved, regardless of whether jurisdictions meet state deadlines for Housing Elements. More information on HCD's accountability efforts and enforcement authority can be found on their website: <https://www.hcd.ca.gov/planning-and-community-development/accountability-and-enforcement>

*F8. Builder's Remedy and SB35 projects do not address ingrained local obstacles identified in this report that prevent the completion of approved AH projects.*

**Partially Disagree.** While Builder's Remedy and SB35 projects are valuable tools that can expedite affordable housing development, they may not comprehensively address all the ingrained local obstacles identified in the report that hinder the completion of approved AH projects. The effectiveness of these streamlined processes can vary from jurisdiction to jurisdiction, and while they can help overcome certain barriers like restrictive zoning policies and prolonged approval timelines, other challenges mentioned in the report, such as limited available funding, community support, and NIMBY opposition, may continue to persist in diverse degrees in different locations. To achieve the successful completion of approved AH projects and effectively address these obstacles, a multifaceted and jurisdiction-specific approach is required, taking into account the unique circumstances and complexities faced by each locality.

Completion of AH projects is further affected by a variety of non-regulatory factors. Market conditions, capital costs, availability of financing, supply chain disruptions, and labor market constraints may affect the construction and completion of approved affordable housing projects. These factors are rarely associated with local obstacles and are beyond a jurisdiction's purview. Thus, a jurisdiction that entitles development pursuant to Builder's Remedy or SB 35 may still not see that development built if these other non-regulatory factors are not favorable to construction of the project following entitlement.

*F9. When local Redevelopment Agencies (RDA's) were discontinued by the state in 2012, the County and cities, did not address the loss of funding for affordable housing or find alternative funding to support affordable housing projects until voters passed Measure X in November 2020. Projects that target very low- and low-income residents were particularly impacted.*

**Partially Disagree.** As noted in response to Finding F6, Clayton's inclusionary housing ordinance allows market rate housing developers to elect to meet their developments' inclusionary housing requirements through payment of fees. However, developers of housing projects that have been subject to the ordinance have so far found it more economically viable to build their requisite affordable units within their market-rate developments, and the City has not received in lieu funds from this alternative approach to meeting the inclusionary requirements. While the City of Clayton did not create or find substantial new sources of funds for affordable housing after the State discontinued 452 RDAs, including Clayton's RDA, State law limits local jurisdictions' ability to create other new funding sources.

While Measure X, the Contra Costa countywide 20-year ½ cent sales tax, was approved in November 2020, Measure X is projected to provide *up to* \$12 million annually for "housing and related services" for the entire County (emphasis added). Measure X Affordable Housing funds will be distributed through a Notice of Funding Availability (NOFA) process, a competitive process.

*F10. Measure X housing funds are not fully dedicated to building AH for very low- and low-income residents.*

**Agree.**

*F11. Local funding provided by bonds like Measure X Housing Fund is a critical component of a developer's overall ability to raise funds for an AH development.*

**Partially Disagree.** Depending on the timing (economic conditions and bond measures for other competing interests), bond financing has not been the most significant source of affordable housing financing. While local funding provided by bonds like Measure X Housing Fund in Contra Costa County are a beneficial component to help fund affordable housing construction, the amount of funding available from Measure X is not high enough to be a critical factor in a developer's overall ability to raise funds for an affordable housing development. Under the Measure X Program Allocation Summary, only \$10 million dollars (about 13 percent of Fiscal Year [FY] 2022-23 funding and about 4.5 percent of total funding) were allocated to a Local Housing Trust Fund; for FY 2023-24, \$12 million dollars were allocated. The Measure X Housing Funds are to be dispersed by the County Department of Conservation and Development (DCD), the Health Services' Health, Housing and Homeless (HSD-H3) Services, and the Housing Authority of the County of Contra Costa. While a contributing factor, Measure X dollars allocated to housing production is not critical to the overall ability of the jurisdictions to meet their RHNA requirements for affordable housing.

*F12. Cities that proactively engage citizens, address zoning obstacles, make reasonable zoning concessions, work collaboratively with developers, provide local funding support, and are united in addressing NIMBY opposition, have been successful in attracting AH projects.*

**Partially Disagree.** The City of Clayton agrees that proactive strategies can help attract affordable housing developers and mitigate the barriers to housing production; however, proactive strategies alone do not result in affordable housing projects being constructed. For example, the City of Clayton staff and officials strive to proactively engage citizens through in-person meetings and virtually through social media; to work collaboratively with potential developers of both affordable and market rate housing developments in predevelopment meetings; and have committed in the City's current Housing Element to address and remove regulatory obstacles in its zoning regulations to foster a broader variety of housing types in the City. Even with all of these efforts, a variety of other obstacles towards affordable housing development exist beyond the City's control. These obstacles include: the gap in financing between constructing market-rate versus affordable housing; land costs; the land-to-building ratio when a property contains an underutilized building; the cost to upgrade or renovate an existing nonresidential building to accommodate housing; infrastructure costs (on- and off-site); and fees for public utilities (particularly for non-municipal utilities), among others.

*F13. The latest RHNA targets for cities and unincorporated Contra Costa County show a significant increase in the number of units that are expected to be permitted for very low and low-income housing.*

**Partially Disagree.** It is true that the RHNA for very low- and low-income housing has continued to increase. However, the increase in the RHNA is not to the extent mentioned in this report. RHNA numbers from the past 3 cycles indicate that the current (6<sup>th</sup>) cycle has had the largest increase of 2.5x from the previous cycle in very low- and low-income housing requirements. Please see the response to Finding 4 for detailed RHNA numbers from previous Housing Element cycles.

## Grand Jury Recommendations

*R1. Each city and the County should consider assigning a staff position with clear leadership, ownership and accountability to achieve allocated RHNA targets. The individual in this position would be responsible for establishing and promoting an operational plan to achieve the RHNA goals set forth in the housing element plan.*

**The recommendation has been implemented.** California’s Housing Element Law acknowledges that, in order for the private market to adequately address the housing needs and demands of Californians, local governments must adopt plans and regulatory systems that provide opportunities for (and do not unduly constrain) housing development. Cities and Counties are not responsible for the development and construction of housing to achieve the allocated RHNA targets. Instead, they are responsible for the effective implementation of their housing elements and associated programs to address any existing constraints to housing and for tracking and reporting the jurisdiction’s progress toward achieving their RHNA. The Community Development Department of Clayton is assigned with the responsibility of the above tasks.

*R2. Each city and the County should report AH progress and lack of progress using data across all four measured income groups. Special attention should be paid to tracking the housing needs of residents categorized as very low- and low-income. Cities and the County should communicate their progress biannually, against RHNA targets at council and supervisor Meetings.*

**The recommendation has been implemented.** The City of Clayton has complied with State Law (Government Code §65400) that requires each jurisdiction (city council or board of supervisors) to prepare an APR on the jurisdiction’s status and progress in implementing its housing element (HE) using forms and definitions adopted by HCD.

The HE APR allows HCD to track the progress of the implementation of a jurisdiction’s HE and requires its submission as a threshold requirement for several State housing funding programs ([source](#)).

Through the forms and tables provided by HCD ([link](#)), jurisdictions must report annual data on housing in the APR, including the following:

- Housing development applications received (including proposed number of units, types of tenancy, and affordability levels)
- Building/construction activity
- Progress towards the RHNA
- Sites identified or rezoned to accommodate a shortfall in housing need
- Program implementation status
- Local efforts to remove governmental constraints to the development of housing
- Projects with a commercial development bonus
- Units rehabilitated or preserved
- Locally owned lands included in the sites inventory that have been sold
- Locally owned surplus sites

Government Code §65400 requires the planning agency to provide this report to the legislative body (i.e., local Council or Board), HCD, and OPR by April 1 of each year (covering the previous calendar year). APRs are presented to the local legislative body for its review and acceptance, usually as a consent or discussion on a regular meeting agenda.

The statute does not specify in which order report should be provided to the legislative body, HCD, or OPR, and HCD does not require the report to be submitted to the legislative body prior to submitting it to HCD. However, HCD recommends that planning departments provide the report to the local legislative body prior to sending it to HCD and OPR ([source](#)). Biannual reporting would divert staff time from other housing programs.

*R3. Each city and the County should consider creating a dedicated AH commission comprised of a multi-disciplinary team of diverse citizens and led by a current, nonelected, city expert in planning. Each commission would be charged with providing a community voice in the process and helping to identify and address obstacles that hinder the development of affordable housing projects in their community.*

**The recommendation will not be implemented.** The City of Clayton appreciates the thoughtful recommendation to create a dedicated AH commission comprised of a multi-disciplinary team of diverse citizens, led by a current, non-elected, city expert in planning. While we acknowledge the potential benefits of such a commission, after careful consideration, we have decided not to pursue its implementation due to the following reasons:

Existing Planning Mechanisms: The City of Clayton already has established planning mechanisms and committees responsible for addressing affordable housing issues. These existing structures provide platforms for community engagement and collaboration, making the formation of a separate commission redundant and potentially duplicative of efforts.

Resource Constraints: Establishing and maintaining a dedicated AH commission would require additional financial and administrative resources, including assignment of a City staff member to support the commission in creation of agendas, minutes, reports and noticing. At present, the City of Clayton is already allocating its limited staff resources to multiple initiatives aimed at addressing affordable housing needs, including technology enhancements in land use and infrastructure mapping; a program to promote private construction of accessory dwelling units; and zoning amendments to implement adopted Housing Element policies pertaining to increased density, greater flexibility in residential development regulations, and more streamlined permitting processes. Adding another commission would spread resources too thin and hinder the efficiency of current efforts to facilitate construction of affordable housing in the City.

Efficient Decision-Making: The City of Clayton has a Planning Commission comprised of five appointed residents that are empowered to review and approve development projects; provide a platform for public comment and sharing of community voices; and provide recommendations on policy changes and changes to zoning regulations that can lead to a reduced number of obstacles to development. The Planning Commission is supported by

the Community Development Director, a professional land use and environmental planner. By involving a diverse range of citizens and experts in the City’s existing planning committee, we maintain a balanced and inclusive approach. This integration ensures streamlined decision-making processes and comprehensive representation of community interests without creating an additional layer of bureaucracy that would detract from the process of entitling housing projects.

Alternative Approaches: Instead of forming a separate AH commission, we are committed to strengthening the involvement of community members and experts in our existing planning and housing committees. Enhancing public outreach, conducting regular town hall meetings, and encouraging community feedback will remain focal points in our efforts to address obstacles hindering affordable housing development.

While we do not intend to pursue the recommended dedicated AH commission, we value the underlying principle of community engagement and recognize the importance of community input in the decision-making process. We will continue to explore alternative strategies that promote transparency, inclusivity, and community-driven solutions for affordable housing development in our city and County.

We remain committed to finding the most effective and sustainable approaches to address affordable housing challenges, working in collaboration with stakeholders and community members to achieve our shared goals.

*R4. Each city and the County should consider reviewing existing processes and identifying changes that would address or resolve the specific obstacles identified in this report that hinder achieving RHNA allocation targets for very low- and low-income housing in their Community.*

**The recommendation has been implemented.**

Comprehensive Process Review: As required by State Law, the City of Clayton has reviewed existing processes and identified programs to address any potential constraints to development through the Housing Element’s Constraints section.

The City of Clayton has conducted a thorough review of existing processes related to affordable housing development, permitting, and zoning regulations. This review aimed to identify any inefficiencies or barriers (“constraints”) that may have contributed to the challenges in meeting RHNA allocation targets.

Stakeholder Engagement: To ensure a comprehensive and inclusive approach, stakeholders, including community members, developers, housing advocates, and relevant government agencies, were actively engaged throughout the process. Feedback and input from these stakeholders played a pivotal role in shaping the subsequent actions.

Identifying Key Obstacles: Based on the review and stakeholder input, specific constraints hindering the achievement of RHNA allocation targets were identified. These included issues

related to zoning restrictions, lengthy permitting processes, funding constraints, and limited community support.

Development of a Housing Plan: With a clear understanding of the obstacles, the City of Clayton developed tailored action plans to address the identified challenges. These action plans outlined concrete steps, timelines, and responsible parties for implementation.

Policy and Regulatory Reforms: To streamline affordable housing development, policy and regulatory reforms were introduced to the broader community at both the Planning Commission and City Council levels and noticed public hearings. These reforms aimed to remove unnecessary barriers, expedite permitting processes, and incentivize the construction of affordable housing.

Community Outreach and Education: Recognizing the importance of community support, extensive outreach and education efforts were undertaken to inform residents about the benefits of affordable housing and dispel common misconceptions.

Outcomes Achieved: As a result of these actions, tangible progress can be made towards meeting RHNA allocation targets for very low- and low-income housing in each community. The review and reforms will lead to a more efficient and supportive environment for affordable housing development.

While challenges persist, the City's ongoing commitment to address the obstacles identified in the report demonstrates significant strides in advancing affordable housing goals. Continued efforts and collaboration will be crucial in achieving sustained progress and ensuring housing accessibility for all members of our communities.

*R5. Each city and the County should consider developing a public dashboard to report progress against RHNA targets.*

**The recommendation has been implemented.** The City of Clayton has complied with State Law (Government Code §65400) that requires each jurisdiction (city council or board of supervisors) to prepare an APR on the jurisdiction's status and progress in implementing its housing element using forms and definitions adopted by HCD. Each jurisdiction's APR must be submitted to HCD and OPR by April 1 of each year (covering the previous calendar year). HCD compiles and showcases all APRs through their interactive digital data dashboard with downloadable data sets. ([link](#))

In addition, all jurisdictions are subject to Government Code Section 65863 (No Net Loss Law), which was amended in 2017 with SB 166, and requires jurisdictions to maintain adequate sites to accommodate remaining unmet RHNA at each income level throughout the life of an adopted Housing Element. The No Net Loss Law restricts local agencies from approving a housing project at a lower density, or with fewer units than identified in the Housing Element unless a corresponding number of units are accommodated and identified elsewhere in the local jurisdiction. To assist with the monitoring, the City of Clayton along with other jurisdictions in Contra Costa County are developing standard language to include in staff reports when housing

projects come forward to decision-makers for approval and are exploring a No Net Loss Tool to help monitor RHNA progress.

*R6. Each city and the County should consider, in their individual Housing Element plans, putting forth land zoned "suitable for residential use," without development obstacles, and located strategically close to existing services, for AH purposes.*

**The recommendation has been implemented.** As required by State Law, jurisdictions are required to prepare a site inventory identifying land suitable and available for residential development to meet the locality's regional housing needs by income level. Please see the response to Finding 6(a) for details. Further, in addressing HCD's Affirmatively Furthering Fair Housing (AFFH) requirements, there is a thorough review of the site selection via the Tax Credit Allocation's Committee (TCAC) Resource Map that designates areas of low-, moderate-, high-, and highest-resource within a jurisdiction and requires specific justification for placing affordable housing projects within low-resources areas.

*R7. Each city and the County should consider reviewing their zoning policies to identify restrictive zoning policies unique to their jurisdiction that impede AH projects and consider making zoning changes in light of that review that will support AH in their community.*

**The recommendation has been implemented.** Through the Housing Element process, the City of Clayton has reviewed our zoning policies and identified potential barriers to affordable housing development in our codes and regulations. The Housing Element – Housing Plan section outlines forthcoming changes to the City's zoning policies with specified timeframes to address the identified constraints.

*R8. Cities should consider adopting an inclusionary housing ordinance as part of their standard development policy by the end of 2023 (if not already in place).*

**The recommendation has been implemented.** As stated in response to Finding F6.c, the City of Clayton adopted an inclusionary housing ordinance, codified as Chapter 17.92 of Clayton Municipal Code in 2016 (as amended in 2019), and has committed to re-evaluating certain provisions of its ordinance during this current housing cycle to ensure ongoing success of the intent of the regulation to provide affordable housing in the City.

*R9. Each city and the County should consider how to prioritize the implementation of housing projects that promote development of very low- and low-income housing.*

**The recommendation has been implemented.** The City of Clayton processes development projects in the sequence they are received and deemed complete in accordance with statutory timelines. The City has, in its current Housing Element, committed to implementing programs that prioritize housing opportunities that would meet housing needs for low and moderate income households and special needs groups:

- Policy 3.2: Assistance and Incentives. Facilitate the development of lower- and moderate-income housing by offering developers incentives such as density bonuses, streamlined



entitlement and permitting processes, City participation in on- and off-site public improvements, and flexible development standards.

- Program B3: Encourage development by developing process that prioritizes the processing of affordable housing applications, encourage the use of density bonus provisions through technical assistance and information dissemination, etc.
- Program H4: Expedited Processing Give priority to development projects that include a component for special needs groups (including the elderly, disabled, large families, the homeless, students, and transitional foster youth) in addition to other lower-income households. Priority will consist of advancing applications for review ahead of development applications not addressing special needs households. Implement priority based on community needs to ensure adequate housing for all residents within special needs groups.

Our City staff also supports and fosters collaborative efforts between and among public entities, religious institutions and private developers to maximize available resources and expertise. Through these partnerships, the City strives to leverage private sector investments to create a greater number of affordable housing units.

Further, the preservation and promotion of naturally occurring affordable housing (NOAH) is also part of our affordable housing strategy. While developing housing that is affordable to lower income households is important and a key strategy, preservation of affordable units is equally important and requires additional resources. It may, in some cases, be more cost effective to preserve existing units. Additionally, the promotion of Accessory Dwelling Units, as NOAH, is a key strategy identified in Clayton's Housing Plan.

*R10. Each city and the County should consider prioritizing Measure X funding requests that support projects that address RHNA targets for very low- and low-income residents. Each city and County should consider reporting regularly to their residents on the use of Measure X funds for such purposes.*

**The recommendation will not be implemented.** Measure X is a countywide 20-year, ½ cent sales tax approved by Contra Costa County voters on November 3, 2020 “to keep Contra Costa’s regional hospital open and staffed; fund community health centers, emergency response; support crucial safety-net services; invest in early childhood services; protect vulnerable populations; and for other essential county services.” Under the Measure X Program Allocation Summary, only \$10 million dollars (about 13 percent of FY 2022-23 funding and about 4.5 percent of total funding) were allocated to a Local Housing Trust Fund; for FY 2023-24, \$12 million dollars were allocated. The Measure X Housing Funds are to be dispersed by the County DCD, the Health Services’ Health, Housing and Homeless (HSD-H3) Services, and the Housing Authority of the County of Contra Costa. The use of Measure X funds for housing are reported by the County here: <https://www.contracosta.ca.gov/8530/Measure-X>

The jurisdiction has identified local funding sources for each of their Program Actions in their Housing Element to support affordable housing projects that address RHNA targets for very low- and low-income residents.