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September 6, 2023

By U.S. Mail and email (ctadmin@contracosta.courts.ca.gov)

Ms. Cynthia Roberts, Foreperson
Contra Costa County Civil Grand Jury
P.O. Box 431
Martinez, CA 94553

RE: City of Concord Response to June 16, 2023, Grand Jury Report No. 2306, Affordable Housing: "A Plan without a Home"

Dear Ms. Roberts:

This letter serves as the response from the City of Concord ("City") to the Contra Costa County Civil Grand Jury's findings and recommendations set forth in Report No. 2306, hereafter referenced as the "Report" in this letter. This letter was reviewed and approved by the Concord City Council at its September 5, 2023, meeting, and I was directed to submit the response for the City of Concord. This response satisfies the City's response requested by September 13, 2023.

The City recognizes the lack of adequate affordable housing is a matter of vital importance to the economic security of California families and creates challenges for employers striving to retain and recruit workers; however, Contra Costa County's lack of affordable housing production is not unique. In fact, as of June 1, 2023, according to the California Department of Housing and Community Development (HCD), only 42 jurisdictions in the entire state have fulfilled their obligation by meeting their RHNA targets¹. This is a statewide issue and not confined solely to jurisdictions within Contra Costa County. Further, the Report only focuses on one facet of affordable housing, production, and did not examine protection or preservation, which are two important approaches to maintaining the existing supply of affordable housing. To address the State's housing challenges a holistic approach regarding governmental policies is necessary.

¹ https://www.hcd.ca.gov/sites/default/files/2022-06/sb35_statewidedeterminationsummary.pdf

For example, the State Legislature has not taken action to address Article 34 of the California Constitution, which requires voter approval for public housing to be built, has not taken action to address Costa Hawkins which prohibits cities from imposing rent control on post-1995 units, and repealed California Communities Redevelopment laws which had previously provided funds for local match dollars to stimulate affordable housing development. Despite these failures, the State Legislature – and by extension the Grand Jury -- incomprehensibly fault local governments with an inability to produce affordable housing without the legal ability, or funding sources, to serve their populations.

Despite many of the challenges to affordable housing production being outside the control of local governments, the City has made significant progress on the protection, preservation, and production of housing for all residents. The City's 2023-2031 Housing Element² ("2023-2031 HEU") provides a summary of all current City tenant protection and housing programs and services (Section 1.5) and contains over 100 programs (Section 1.6) that will be implemented over the next eight years to meet the goals of the 2023-2031 HEU and to remove barriers and constraints to facilitate housing development

Findings

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

Response: The City agrees with the finding.

By State law, Cities must plan for their RHNA of housing units and remove barriers to their construction. All of which Concord has done within its current Housing Element. The actual construction of the units is in the hands of private property owners, non-profits, and developers. As stated in the page before local governments are actually legally prohibited from constructing residential units without a vote of the people. Further it is worth noting that the costs to construct affordable units is currently averaging between \$750,000 to \$1 million dollars for each unit constructed. Thus, funding is a critical issue in building adequate supplies of affordable units. The State eliminated the historic source for local funding for affordable housing when the State eliminated Redevelopment Agencies and so far the State has not "replaced" local match affordable housing dollars. Further development of housing is highly influenced by the regional economy, local economics, interest rates, and other factors beyond local government control.

For those actions within its control, the City has designated the Planning Manager as the position responsible for overseeing the implementation of the programs and objectives as identified in the 2023-2031 HEU. Implementation of the 2023-2031 HEU in Concord includes taking active steps to remove constraints to development, reducing costs, and expediting and streamlining approvals for residential development across all levels of affordability. More

² <https://concordhousingelement.org/>

*information about the HEU and its implementation are available at:
<https://concordhousingelement.org>.*

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

Response: The City agrees with the finding.

Without a dedicated funding source from the State of California or other mechanism to obtain additional funding, the majority of jurisdictions throughout the State of California will continue to miss their RHNA targets for very low- and low-income households. Units affordable to lower income households require significant subsidies since the cost of construction exceeds the return on investment and there is inadequate funding to support the housing need.

The high cost of subsidizing affordable units also limits the number of units inclusionary housing ordinances can require of developers, as too high of a burden will simply stifle market-rate development and thereby further exacerbate the housing crisis. The City has to work within those larger market realities and economic conditions when adopting and amending its inclusionary housing ordinance to ensure very low and low-income units are developed alongside market rate units to the extent economically feasible. Unfortunately, rising construction costs, high interest rates, labor shortages, and the cost of labor are currently exacerbating the ongoing economic challenges of constructing affordable 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.

Response: The City disagrees with the finding.

While there are no legal or financial penalties if the City does not achieve their RHNA targets (nor should there be as the actual construction of these units is dependent in large part upon the private sector and the availability of funding) there are punitive consequences. For jurisdictions that do not meet their RHNA targets, developers may choose to use a ministerial, streamlined process for housing projects pursuant to Senate Bill 35. This removes local control regarding these important land use decisions.

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).

Response: The City agrees with the finding.

The noted increase within the finding (16x for very low-income and 4x for low-income residents), however, does not match the increases for the City. The table below shows fifth- and sixth-cycle allocations by income group and the percentage increase within the City of Concord.

Table 1: Concord’s RHNA Targets by Income Level

Income Level	5th Cycle RHNA	6th Cycle RHNA	Increase
Extremely/Very Low	798	1,292	494 (61.9%)
Low	444	744	300 (67.6%)
Moderate	559	847	288 (51.5%)
Above Moderate	1,677	2,190	513 (31.6%)
Total	3,478	5,073	1,595 (45.9%)

F5. Many obstacles hinder the development of AH 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 opposition & city council response to NIMBY opposition.

Response: *The City partially disagrees with the finding.*

While it is true that items a, c, d, and f can hinder the development of affordable housing, the City has taken significant steps to promote the development and preservation of affordable housing, including the recent award of \$14.44 million (almost the entirety of its remaining Redevelopment Successor Agency funds) for the construction of a 62-unit affordable project and the acquisition and rehabilitation of 116 units that are currently affordable and with this purchase will remain affordable. All of these units will be deed-restricted, guaranteeing their affordability for 55 years. The City has also approved a 313-unit project under the provisions of SB 35 and approved building permits within the last year for a total of 103 units of deed-restricted multifamily housing.

The City is also taking further actions in connection with the 2023-2031 Housing Element Update to expedite and fast track residential development projects with very low-and low-income housing. These efforts by the City have received broad community support and recent projects with very low- and low-income housing have been celebrated by the City and within the community it serves.

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.

Response: *The City disagrees with the finding.*

Housing Element law requires jurisdictions to demonstrate there is adequate capacity to meet their RHNA and if adequate sites do not exist, rezoning is required. Demonstrable capacity also must include a buffer between 15-30% over the RHNA target. Concord has done so in its Housing Element. Zoning standards may also have to be amended based on the constraints analysis of the Housing Element.

- a) *The City of Concord has seen a number of its identified sites develop with housing. Further, under recent changes to housing element law, the sites identified within the Housing Element are required to be analyzed to demonstrate their true potential for development or redevelopment; therefore, the identified sites cannot be “poor land choices for AH development.”*
- b) *The City has zoning designations that allow up to 100 units per acre and also provisions for a 25% density increase around its BART stations. The City has found that height has not been a constraint to achieving identified densities in Concord.*
- c) *The City of Concord has an inclusionary housing ordinance and at the City Council’s direction is currently going through the process of amending it to create an even more expansive program.*

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.

Response: *The City agrees with the finding.*

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.

Response: *The City agrees with the finding.*

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.

Response: *The City agrees with the finding.*

The loss of RDA funding has had a significant impact on the City's ability to provide funding for projects that target very low- and low-income households. See Response F5 for additional information regarding the City's recent use of the majority of its remaining RDA Successor Agency funding.

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

Response: *The City agrees with the finding.*

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.

Response: *The City agrees with the finding.*

Measure X is allocating \$12 million per year for affordable housing development. This funding level is woefully inadequate when compared to the amount of funding required to facilitate construction of low- and very low-income housing development throughout the County. Affordable housing developers typically require multiple sources of financing such as federal and state grants, tax credits, private investments, and partnerships with nonprofit organizations. While local funding like Measure X can enhance a project's financial feasibility and facilitate its development, this local funding is only one piece of a complex tapestry of funding necessary for a project to move forward in today's economy.

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.

Response: *The City partially disagrees with the finding.*

While the factors listed above help attract developers, there are many other factors that can prevent a project from moving forward despite a city's best efforts. Other factors include high land costs and limited availability of developable sites, increasing labor and materials costs, expenses associated with compliance with the California Environmental Quality Act (CEQA) and associated project opposition, a lack of adequate infrastructure, transit and other amenities, environmental constraints, supply chain and material/labor costs, and unwilling landowners. Even where a project is approved by a city and set to move forward, circumstances can change that result in the development not moving forward. For instance, the City of Concord approved an SB 35 project for 313 units in close proximity to BART; however, the Tax Credit Allocation

Committee changed their scoring criteria, which resulted in the project no longer being competitive for that critical funding.

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.

Response: *The City agrees with this finding.*

As shown in Table 1 above, RHNA targets for the number of units expected to be developed for Concord have increased for very low- and low-income groups.

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.

Response: *This recommendation has been implemented.*

The Planning Manager has been assigned to ensure those elements of meeting the allocated RHNA targets that are within the City's control (the programs and objectives of the Housing Element) are implemented. The goals of these programs and objectives are to reduce barriers and constraints for housing development to facilitate achieving the RHNA targets, but the City is not ultimately responsible for achieving RHNA goals (i.e., constructing housing units); this is done by the private market. The Planning Manager's role is to ensure those assigned to completing the program or objective do so within the timeframe identified within the 2023-2031 HEU.

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.

Response: *The recommendation will not be implemented because it is not warranted or is not reasonable.*

The City is already required by law to submit its annual progress report (APR) report to the state on its Housing Element implementation and RHNA progress (including very low- and low-income households) and does so each year. This report is reviewed by the City Council during a public meeting, which ensures transparency and an opportunity for the public to easily access and track this information. Biannual reporting will not be implemented, as it is not warranted and it

would impact the already heavy workloads of our staff. Construction projects take time and reporting annually allows the community and the State to track progress. Increased frequency of reporting would be difficult to achieve with current staffing levels given the amount of data that must be assembled

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.

Response: *This recommendation will not be implemented because it is not warranted or is not reasonable.*

The City of Concord already has established planning mechanisms and committees responsible for addressing affordable housing issues. In fact the City just held many, many public meetings on this topic as part of developing the current Housing Element. These existing structures provide platforms for community engagement and collaboration, making the formation of a separate commission redundant and potentially duplicative of efforts. Further, establishing and maintaining a dedicated commission would require additional financial and administrative resources. At present, the City is already allocating resources to multiple initiatives aimed at addressing affordable housing needs and implementing the policies and programs spelled out in the Housing Element. Adding another commission will spread resources too thin and hinder the efficiency of current efforts.

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.

Response: *This recommendation has been implemented.*

As required by state law, the City has reviewed existing processes and identified programs to address any potential constraints to development through the 2023-2031 Housing Element Update process.

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

Response: *This recommendation has been implemented.*

Each jurisdiction must prepare an annual progress report (APR) on the jurisdiction's status and progress in implementing its housing element using forms provided by HCD. The APR is available to the public through the City's and HCD's websites.

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.

Response: This 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 City's regional housing needs by income level.

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.

Response: This recommendation has been implemented.

Through the City's 2023-2031 HEU process, the City reviewed its zoning policies and identified potential affordable housing development constraints and developed programs to address those constraints. More information is available at <https://concordhousingelement.org/>.

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).

Response: This recommendation has been implemented.

The City already has an adopted inclusionary housing ordinance³ and is currently going through the process of amending the program to make it more expansive. These amendments will be considered by the City Council in the late summer/early fall of 2023.

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.

Response: This recommendation has been implemented.

The City of Concord has an Affordable Housing Incentive Program⁴ available for affordable housing developers. This program provides increased densities, alternative development standards (lot coverage, height, setbacks, etc.), and a streamlined and expedited review process for projects that include a certain number of units affordable to lower income households.

³ <https://www.codepublishing.com/CA/Concord/#!/Concord18/Concord18185.html#18.185.040>

⁴ <https://www.codepublishing.com/CA/Concord/#!/Concord18/Concord18185.html#18.185.060>

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.

Response: This recommendation has been implemented.

The City of Concord has incorporated the following program within its Housing Element to address affordable housing:

“Within 3 months following the adoption of program guidelines for the award and distribution of Measure X affordable housing trust funds, coordinate with Contra Costa County staff to determine potential funding that will be available for programs and/or projects within Concord. If necessary to meet Concord’s housing needs, continue coordinating with County staff and elected officials within 1 year of adoption of Measure X guidelines to evaluate and advocate for potential expansion of Measure X affordable housing funds including the evaluation of a partnership between the City and County.”

Mindy Gentry, Planning Manager for the City, is available to answer any question or provide any additional information concerning the above responses. You can reach her at (925) 671-3369 or by email at mindy.gentry@cityofconcord.org.

Sincerely,



Valerie Barone
City Manager