



*"Small Town Atmosphere  
Outstanding Quality of Life"*

September 5, 2023

Honorable Jill C. Fannin  
Judge of the Superior Court  
Contra Costa County Civil Grand Jury  
725 Court Street, 4<sup>th</sup> Floor  
P.O. Box 431  
Martinez, CA 94553-0091

Re: Contra Costa County Grand Jury Report No. 2306, Affordable Housing: "A Plan Without a Home."

Dear Judge Fannin:

Pursuant to Penal Code Section 933.05, this letter responds to Contra Costa County Grand Jury Report No. 2306, "Affordable Housing: "A Plan Without a Home." This response was reviewed and authorized by the Town Council at a duly noticed Town Council meeting on September 5, 2023.

### **Grand Jury Findings**

Finding #1: Within existing city or County infrastructure there is no clear owner who is responsible for achieving RHNA permitting targets.

Response: Danville partially disagrees with Finding #1. Because the Town does not have any control over market forces that actually lead to development of housing, we do not "own" the ability to achieve RHNA goals. However, the Town does "own" the obligation to adopt a Housing Element which provides a framework and tools to allow property owners and developers to meet the Town's RHNA allocation. The Town also owns the annual obligation to report progress towards its RHNA obligation to the state.

Finding #2: City and County officials see no direct path to meet state-mandated regional housing (RHNA) targets.

Response: Danville partially disagrees with Finding #2. While the Town recognizes the challenges in meeting the mandated RHNA targets, the Housing Element submitted to the state identifies adequate sites, programs and strategies that would provide property owners and developers a clear path to develop sufficient housing to meet our

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RHNA targets. The Town is continuing to work with officials at the Department of Housing and Community Development (“HCD”) as well as the community to ensure our Housing Element is certified by HCD. However, the Town is not a housing developer and does not actually construct the units.

Finding #3: There are currently no measurable penalties if a city or a County does not achieve RHNA targets in an approved housing element plan.

Response: Danville partially disagrees with Finding #3. While there are no direct legal or financial penalties if RHNA targets are not met, there are penalties for not accommodating RHNA in a Housing Element and the consequences for not issuing adequate permits can be punitive.

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 the County may be subject to litigation from individuals, housing rights’ organizations, developers, and/or HCD. Depending on court decisions, local control may further diminish beyond that prescribed in State law, including, for example, suspending the cities’ or County’s authority to issue building permits or approve certain land use permits. Cities and the County may also be subject to court-issued fines, court receivership, and streamlined approval processes that remove local discretion.

Finding #4: 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: Danville partially disagrees with Finding #4. The Town’s RHNA low and very-low income assignments for the 5<sup>th</sup> Cycle Housing Element (2014-2022) were not met. The Town’s assignments for the 6<sup>th</sup> Cycle did not increase by the percentages stated: both categories were increased approximately 3 times the prior number.

Finding #5: 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;

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- d. Limited available funding;
- e. Lack of community support;
- f. NIMBY opposition & city council response to NIMBY opposition.

Response: Danville partially disagrees with Finding #5. Though these obstacles can hinder development of affordable housing in any community, the Town is addressing each item in our Housing Element programs, policies, and actions to the extent feasible and considered acceptable to HCD. It has been the Town's experience that the primary obstacles to truly affordable housing are the cost of land, the cost of construction and the limited funding available to subsidize such projects.

Finding #6: 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: Danville disagrees with Finding #6. Cities adopt housing elements every eight years and as part of that process, are required to identify feasible sites for housing that meet the criteria spelled out in Government Code Section 65583.2(b). Cities are then required to change the General Plan and zoning to allow development by right on those sites. In addition, the state planning law requires cities to adopt and apply objective development standards that allow developers to understand the applicable parameters they are working with. Danville has had an inclusionary housing ordinance since the 1994 and has applied the ordinance to ensure all housing projects contain affordable units.

Finding #7: 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: Danville agrees with Finding #7.

Finding #8: 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: Danville partially disagrees with Finding #8. While Builder's Remedy and SB35 may address some obstacles identified in the report by streamlining approval processes, they do not in any way address the primary obstacles holding back the

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development of truly affordable housing in Danville: the costs of land and construction and the lack of funding.

Finding #9: 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: Danville partially disagrees with Finding #9. The Town agrees that the elimination of redevelopment took away a significant source of funding for affordable housing, the ability to replace those funds locally is significantly limited by the State Constitution, which would require 2/3's voter approval for any local tax to support housing.

Measure X, the countywide 20-year ½ cent sales tax, is projected to provide *up to* \$12 million annually for "housing and related services" for the *entire* County, including 19 cities and the County. Contrast that with the dedicated low and moderate housing funds the Town received from its RDA. In Fiscal Year 2011/12, the last year before the state mandated dissolution of the RDA, the Town received \$463,000 in low and moderate housing funds, to be spent only in Danville.

Finding #10: Measure X housing funds are not fully dedicated to building AH for very low- and low- income residents.

Response: Danville agrees with Finding #10.

Finding #11: 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: Danville partially disagrees with Finding #11. As mentioned in the Response to Finding #9, while the funds from Measure X are welcome, the amount of funding available countywide is insufficient to be deemed critical to funding. To illustrate the extent of funding necessary to ensure development of low-income housing, the Town can point to its assistance in helping finance the development of the Sycamore Place Apartment project, a 74-unit low income, senior housing project developed by BRIDGE Housing in 2003.

The total development cost for the project was approximately \$13,000,000, of which the Town contributed \$6,700,000 through a combination of land donation and the sale of

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bonds. Contra Costa County contributed an additional \$1,600,000 as a loan. These public funds, in total, constituted 64% of the total project funding. That level of funding is critical.

Finding #12: 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: Danville partially disagrees with Finding #12. While proactive strategies can help attract affordable housing developers and mitigate the barriers to housing production, strategies alone do not result in affordable housing projects being constructed. For example, while Danville engages in all of the above measures, numerous other obstacles exist that impede affordable housing development and are beyond a local jurisdiction's control. These include the gap in financing between constructing market-rate versus affordable housing, land costs, fees for public utilities (particularly for non-municipal utilities), etc.

Finding #13: 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: Danville agrees with Finding #13.

## **Grand Jury Recommendations**

Recommendation #1: 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: 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

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the jurisdiction's progress toward achieving their RHNA. The Town's Planning Division is assigned with the responsibility of the above tasks and actively engages in them.

Recommendation #2: 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 has been implemented. State Law (Government Code Section 65400) requires each jurisdiction to prepare an annual progress report (APR) on the jurisdiction's status and progress in implementing its housing element (HE) using forms and definitions adopted by the California Department of Housing and Community Development (HCD). The Town complies with this requirement.

Recommendation #3: 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: The recommendation will not be implemented because it is not warranted. While the Town recognizes and appreciates the intent behind the recommendation, we believe the goal is already being achieved through existing mechanisms. Danville has been engaged in extensive public outreach and directly seeking community opinion regarding the development of affordable housing. In addition to traditional public hearings and information on the Town's website, the Town created a separate website (Danville Town Talks, <https://danvilletowntalks.org/housingelement>) as a means of soliciting and receiving public input throughout the housing element process. Specific tools used in the process included a so-called "pin" map which allowed residents to identify suggested housing sites throughout Town and a housing simulation tool, which allowed residents to create their own housing plan that would accommodate the Town's RHNA assignment. The Town is committed to using these types of engagement tools in the future as the most effective, and cost-effective, means of providing direct civic engagement.

Recommendation #4: 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: The recommendation has been implemented. Through the process to develop and adopt a new Housing Element, the Town completed a thorough review of existing processes and development standards that may serve as governmental constraints to housing development. These are analyzed in depth in Appendix B to the Town's adopted Housing Element. As described in response to Recommendation #3, Danville has taken affirmative steps using new technological tools to further engage the community and seek early input. The Town has assigned staff to help expedite review of projects such as SB9 applications and hired local architects to develop permit-ready plans for ADUs which are provided free to any resident. The new Housing Element provides sites that already have general plan and zoning designations that allow for by-right development proposals.

Recommendation #5: Each city and the County should consider developing a public dashboard to report progress against RHNA targets.

Response: The 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 and definitions adopted by HCD (Government Code Section 65400.) Each jurisdiction's APR must be submitted to HCD and the Governor's Office of Planning and Research (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.

In addition, all jurisdictions are subject to Government Code Section 65863 (No Net Loss Law), which was amended with SB 166 in 2017, 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 cities and the County 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 cities or County. To assist with the monitoring, cities and the County are developing standard language to include in staff reports when housing projects come forward to decisionmakers for approval and are exploring a No Net Loss Tool to help monitor RHNA progress.

Recommendation #6: Each city and the County should consider, in their individual Housing Element plans, putting forth land zoned "suitable for residential use," without

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development obstacles, and located strategically close to existing services, for AH purposes.

Response: The recommendation has been implemented. As required by State Law to receive approval of a Housing Element, 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. Danville has done this. 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.

Recommendation #7: 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: The recommendation has been implemented. Through the Housing Element process, jurisdictions have reviewed their zoning policies and identified potential affordable housing development constraints unique to their jurisdiction. As described above, the Town identified potential constraints in Appendix B to the adopted Housing Element and has also proposed additional changes to development standards (including density, height, parking, etc.) along with specific timelines to complete review and adoption of additional changes to development standards.

Recommendation #8: 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: The recommendation has been implemented. As indicated previously, the Town first adopted an inclusionary ordinance in 1994, and subsequently updated the ordinance in 2014. As part of the new Housing Element, the Town has committed to reviewing the ordinance in 2024 with the intent of amending the ordinance to require units provided be for low, rather than moderate income households.

Recommendation #9: 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: The recommendation has been implemented. It is important to note that under a variety of state laws, from the Permit Streamlining Act to SB 330, every local jurisdiction has strict timelines within which to review and act upon development applications after submittal, whether those applications are for affordable or market rate projects. That being said, the Town attempts to prioritize affordable projects. Through the new Housing Element, the Town has committed to further prioritizing projects including special needs housing and those eligible for CEQA streamlining.

Recommendation #10: 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: The recommendation has not yet been implemented, but will be in the future. Measure X is a countywide funding source with limited housing funding which will be awarded through a grant process. To the extent that the Town is eligible for Measure X funds, the funds would be prioritized for affordable housing projects and if such funds are received, the Town would regularly report on the use of such funds.

The Town appreciates the time and effort spent by Her Honor and the Grand Jury in consideration of these matters.

Sincerely,

TOWN OF DANVILLE



Robert Storer  
Mayor