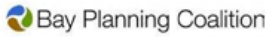




November 25, 2013  
 Elizabeth Cullinan, AICP  
 Director of Building and Planning  
 Hillsborough  
 Sent via email to [ecullinan@hillsborough.net](mailto:ecullinan@hillsborough.net)



Dear Ms. Cullinan, AICP,



The undersigned members of the Bay Area Business Coalition advocate for a vibrant regional economy and outstanding quality of life for existing and future residents of the San Francisco Bay Area. A necessary--though by no means sufficient--condition to achieve these goals is for the region to provide an adequate supply of housing within the region. State housing element law generally--and the governmental constraints component in particular--can be important tools to advance these goals. With Bay Area cities and counties currently updating their housing elements, our organizations respectfully request that your jurisdiction consider and address the following comments as part of the public review process.



We recognize that the housing element process can be resource intensive and sometimes difficult. We hope that by identifying certain priority issues and questions, this letter will assist in focusing resources on policies and practices that are of significant and recurring interest to the regulated community. We also would support incorporating these standardized issues into the framework for local jurisdictions to be able to take advantage of the housing element certification streamlining developed by the California Department of Housing and Community Development (HCD).



**I. Overview of the statutory provisions.**



The California Department of Housing and Community Development (HCD) has prepared formal guidance interpreting the constraints analysis portion of housing element law ([http://www.hcd.ca.gov/hpd/housing\\_element2/CON\\_home.php](http://www.hcd.ca.gov/hpd/housing_element2/CON_home.php)).



HCD's overview of the requirements and their purpose provides:  
*The element must identify and analyze potential and actual governmental constraints to the maintenance, improvement, or development of housing for all income levels, including housing for persons with disabilities. The analysis should identify the specific standards and processes and evaluate their impact, including cumulatively, on the supply and affordability of housing. The analysis should determine whether local regulatory standards pose an actual constraint and must also demonstrate local efforts to remove constraints that hinder a jurisdiction from meeting its housing needs.... The analysis of potential governmental constraints should describe past or current efforts to remove governmental constraints. Where the analysis identifies that constraints exist, the element should include program responses to mitigate the effects of the constraint. Each analysis should use specific objective data, quantified where possible. A determination should be made for each potential constraint as to whether it poses as an actual constraint. The analysis should identify the specific standards and processes and evaluate their impact, including cumulatively, on the supply and affordability of housing.*



**II. Requested specific areas of focus**

We have identified certain policies that generally represent significant potential constraints in the Bay Area and we request that as you conduct the constraints portion of your housing element review, these issues in particular be addressed:

**Did your jurisdiction commit to addressing specific constraints as a condition of HCD certification of the existing housing element?** If so, what was the constraint and what has been done to address it?

**Does your jurisdiction have a mandatory inclusionary zoning policy?** If so, has an analysis been done that measures the economic impact? Does it contain meaningful and regularly available incentives, and is its implementation flexible so that there are alternatives to a “like for like must build requirement” such as payment of reasonable in lieu fees, land dedication, or acquisition and rehabilitation of existing units with provision affordability covenants? Are such alternatives available at the developer’s option or with staff approval—but without need for Council or Board approval on a project-by-project basis?

**Has your jurisdiction adopted a density bonus ordinance consistent with governing state law (Gov’t Code Section 65915)?** Does the density bonus ordinance count mandatory inclusionary zoning units toward the density bonus threshold as required by the recent court of appeal decision in *Latinos Unidos del Valle de Napa y Solano v. County of Napa*, 217 Cal. App. 4th 1160 (2013)?

**What is the cumulative fee and exaction burden on new housing in your jurisdiction?** This analysis should include not only development fees that are “formally” reflected in published fee schedules, but also include exactions imposed via housing allocation program/ “beauty contests,” community benefits/amenities agreements, CFD annexation requirements, and the like. The analysis should also include fees imposed by other agencies, for example school fees, sewer and water fees, and fees imposed pursuant to an applicable regional Habitat Conservation Plan. The analysis should determine the % of the sales price of new housing in the jurisdiction is represented by the cumulative fee/exaction burden, as well as the % of costs for rental housing units represented by the cumulative fee/exaction burden.

**Does your jurisdiction have any recently adopted, proposed, or under consideration new or increased fee or exaction, such as an affordable housing impact fee?**

**Has your jurisdiction required new housing projects, including multifamily/attached projects, to pay a fee or special tax for ongoing general governmental services?**

**Does your jurisdiction have a designated Priority Development Area (PDA)? Is it a “planned” or “potential” PDA?** Have the number of residential units and densities shown in the PDA application been incorporated into the General Plan? Has the CEQA process been completed for the PDA so that no additional CEQA review is necessary for a proposed project consistent with the PDA? Have development restrictions and processes been streamlined in the area covered by the PDA?

**What were the sites relied on for the adequate sites compliance of the existing housing element?** What has been the entitlement/development activity for these sites during the prior planning period? Were any of the sites subject to “by right” development procedures?  
**Does your jurisdiction have any type of cap or limitation on the number or type of housing units that may be permitted or constructed jurisdiction wide or in specific areas of the jurisdiction—including a cap or limitation tied to a specified level of new job creation in the jurisdiction?**

**Has your jurisdiction provided for “by right” housing development in any areas?**

**Are there zoning or other development restrictions (such as voter approval requirements, density limits or building height restrictions) that have impeded infill and/or transit oriented development?**

**Has your jurisdiction consistently demonstrated compliance with both the letter and spirit of the Permit Streamlining Act?**

**What are your jurisdiction's historic preservation policies and review procedures and have they had a significant impact on the permit and entitlement processes for new development projects?**

**Has your jurisdiction adopted an ordinance pursuant to the Quimby Act that gives developers credit for private open space?**

**In implementing the Quimby Act, does your jurisdiction provide for consistency between the calculation of the existing neighborhood and community park inventory, and the criteria and procedures for determining whether to accept land offered for parkland dedication or to give credit for private open space?** For example, has your jurisdiction refused to accept an area in whole or in partial satisfaction of the parkland dedication ordinance on the basis that it is unsuitable for park and recreational uses even though the area is substantially similar to areas included in the overall parkland inventory used to calculate the parkland dedication requirement and fee?

**In the project review process, has your jurisdiction required developers to use the Bay Area Air Quality Management District's CEQA Thresholds of Significance for Toxic Air Contaminants (TAC Receptor Thresholds)?** Has your jurisdiction explored alternative procedures for addressing project siting and air quality concerns, such as in the general plan or zoning code?

**Has your jurisdiction adopted a Climate Adaptation Plan that is more stringent with respect to the per capita GHG reductions for the land use sector/transportation sector than the equivalent per capita targets established for the region by CARB pursuant to SB 375?**

Our organizations intend to monitor housing element updates throughout the region, and we respectfully request that your jurisdiction formally respond to these questions early in the update process. We also ask that you send a paper or electronic copy of the responses to:

BIA of the Bay Area  
Attn: Paul Campos  
101 Ygnacio Valley Road, Suite 210  
Walnut Creek, CA 94596  
[pcampos@biabayarea.org](mailto:pcampos@biabayarea.org)  
415-223-3775

Yours very truly,



John Coleman  
Bay Planning Coalition  
Council



Paul Campos  
BIA Bay Area



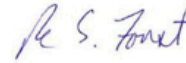
Tom Terrill  
East Bay Leadership



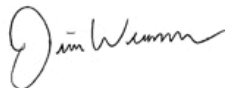
Gregory McConnell  
Jobs & Housing Coalition



Cynthia Murray  
North Bay Leadership Council



Rosanne Foust  
SAMCEDA



Jim Wunderman  
Bay Area Council



Joshua Howard  
California Apartment Association