



June 7, 2022

Director William Gilchrist
Department of Planning and Building
City of Oakland
350 Frank Ogawa Plaza
Oakland, CA 94610

RE: Draft Housing Element 6th Cycle (2023-2031)

Director Gilchrist,

We write to provide comments on Oakland's Draft Housing Element for the 6th Planning Cycle (2023 - 2031). Overall there are many strong programs proposed in the Programs and Policies within this draft. Conversely, we have identified issues with sites within the site inventory, including the Affirmatively Further Fair Housing (AFFH) supplemental sites, related to likelihood of development, location and the non-inclusion of promising, underutilized sites in low-VMT and high-resource tracts.

Our comments, summarized, mainly fall along the following lines:

1. There are significant issues with the location, feasibility, documented landowner disinterest and development standards with the Supplementary AFFH. Some of the Supplementary AFFH sites are actually located in low-resource tracts, which runs counter to the text and spirit of HCD's AFFH guidance.
2. Several vacant and underutilized sites in high-resource tracts, especially near Rockridge BART, were not identified as Low-Income RHNA sites despite strong support from the community via the City of Oakland's own Maptionnaire survey tool. The City of Oakland's reasoning for not increasing the allowable height and density is questionable and inconsistent with actions taken elsewhere within the Draft Housing Element.
3. The City of Oakland has proposed many sorely needed actions within its Policies and Programs, including plex development in R-1 zones, an affordable housing overlay, and transit/high-resource rezoning. We provide comments on how to ensure these policies are crafted to meet their stated goals.

Site inventory

1. 288 9th Avenue (APN 018 046500204) - This site is on top of Township Park and Rocky's Market. It is unlikely this site will discontinue use within the eight year planning period. Please re-allocate these 274 units of low-income to another site or sites.

2. 514 Shattuck Avenue (APN 013 115400905) - This site is a low vacancy strip mall in Temescal and tagged as an supplementary AFFH site. The prescribed 182 units are unlikely to outbid the existing profitable uses.
 - a. Does the City of Oakland have documentation from the landowner demonstrating interest in developing this site within the next eight years?
 - b. There are nearly a dozen businesses renting on this site. Will those leases run beyond the planning period?
 - c. The City of Oakland should consider increasing the allowable density above 182 units and increasing allowable heights to ensure this site is actually developed within the planning period.
3. 6039 and 6029 College Avenue (APNs 014 126800100; 014 126800100) - These are two adjacent vacant parcels in a high-resource tract very close to Rockridge BART. Collectively these sites of .4 acres will yield 26 units under existing zoning and development standards. Despite being ¼ mile from Rockridge BART, the City of Oakland imposes a 35' height limit on this site.
 - a. In the notes for these parcels, the City of Oakland says it will not designate these parcels as Low-Income RHNA sites and re-zone them because they are below a .5 acre adequacy threshold for Low-Income sites per HCD Guidance.
 - b. These sites received some of the highest Maptionnaire Site Selections within the city's survey tool designed to solicit community feedback for siting housing as part of the Housing Element. Collectively these parcels received 23 recommendations for additional housing.
 - c. The NIMBY group Rockridge Community Planning Council has tried to get the City of Oakland to buy these parcels and create a park for years in order to prevent mixed-income or affordable housing development at the site.
 - d. The City of Oakland's reasoning for not designating this site as Low-Income and re-zoning is inconsistent with its other actions within the Draft Housing Element. For example, 4225 Broadway is a .15 acre site that is designated as a Low-Income site. 4225 Broadway is far below the .5 acre adequacy threshold for Low-Income sites provided by HCD guidance. By contrast, 6039 and 6029 College Avenue are only a 1/10th of an acre below this same threshold. In addition, 4225 Broadway has existing uses that would need to be demolished whereas 6039 and 6029 College Avenue are currently vacant. 6039 and 6029 College Avenue are also closer to Rockridge BART and are in higher-resource tracts compared to 4225 Broadway and are more likely to be feasible for construction provided additional height and density.
 - e. The City of Oakland should designate 6039 and 6029 College Avenue Low-Income sites. In addition, the City of Oakland should rezone and relax development standards to allow for at least 75 DUAs and 55' of height. This density and height is typical for sites in close proximity to BART stations. Given the wide range of small lot infill in Oakland over the past ten years as well as the prime location for TCAC

scoring, the City of Oakland should be able to provide additional analysis to meet HCD's scrutiny of Low-Income sites below the .5 acre threshold.

- f. In the alternative, the City of Oakland should retain 6039 and 6029 College Avenue as Moderate-Income sites and rezone and relax development standards to allow for at least 75 DUAs and 55'. This density and height is typical for sites in close proximity to BART stations.
 - g. **As discussed below, every BART station in Oakland apart from Rockridge has been host to specific plans to facilitate transit-oriented development. The City of Oakland's failure to identify 6039 and 6029 College Avenue as sites for Low-Income or otherwise increase the allowable height and density perpetuates a pattern or practice of the City of Oakland excluding low-income and multi-family housing from this high-resource and heavily segregated neighborhood.**
- 4. 4400 Telegraph (APN 013 109902600) - This site is proposed for 24 units of Low - Income RHNA housing at a site owned by Critical Resistance, an abolitionist non-profit.
 - a. An August 12, 2019 article from KQED describes how the prior owner of this parcel sold it to Critical Resistance after rejecting offers from "condo developers."
 - b. Does the City of Oakland have documentation of interest from the property owner in developing this parcel within the eight year planning period?
- 5. 525 21st Street (APN 008 064503301) - This site is owned by the Department of Veterans Affairs and is proposed for 137 Low-Income units per RHNA. This site is coded as an AFFH supplementary site in a "moderate-resource" census tract.
 - a. Does the City of Oakland have documentation of interest from the property owner in developing this parcel within the eight year planning period?
 - b. The Draft Housing Element claims this site is in a moderate-resource tract. The 2022 TCAC Opportunity Map, however, shows this site as a low-resource tract. Given the concentration of low-income housing, supportive services, particulate matter from 980 and 580, lack of access to grocery stores and other resources, few Oaklanders would consider siting low-income housing at 525 21st Street as affirmatively furthering fair housing.
 - c. Provided the Department of Veterans Affairs has expressed written interest in developing the site within the eight year planning period, this site should remain in the site inventory but should not be counted as a supplemental AFFH site. We have provided several sites in moderate and high-resource tracts below where these Low-Income RHNA units could be accommodated.
- 6. 4225 Broadway (APN 012 100200900) - This .15 acre site projected at 8 units of Low-Income RHNA housing is coded as a supplementary AFFH site.
 - a. This site falls below the .5 acre adequacy threshold per HCD guidance. The City of Oakland provides zero analysis or justification as to why this small site would be developed or the city's track record of developing low-income housing on these sites.

- b. TCAC will not finance 8 unit low-income projects with tax credits. How does the City of Oakland expect a low-income housing developer to finance new construction at this site?
 - c. There are several vacant and underutilized parcels surrounding 4225 Broadway that could be consolidated to create a more feasible low-income development opportunity site. Why weren't these sites included?
- 7. 4200-4224 Broadway (various APNs) - This supplementary AFFH site is in a good location and would replace underutilized commercial uses and parking lots. The 60 DUAs, however, are unlikely to outbid existing commercial uses. Consider increasing allowable density to 75 DUAs.
- 8. 6028 Claremont Avenue (APN 014 126803501) - This site is proposed for 23 Low-Income RHNA units in Rockridge on top of an existing office building. It is less than a ¼ mile from Rockridge BART. The site does not include adjacent parking lots that appear to serve the subject office building. The site is subject to a 35' height limit.
 - a. The decision to include the office building, but not the parking lots that serve it is bizarre. The former Dreyer's headquarters, of which the subject site is part of, are owned by a single owner. Why would the owner demolish an existing office building to be rebuilt into 23 units of low-income housing but retain the surrounding parking lots that serve that office?
 - b. 23 units of low-income housing will not outbid an office use so close to BART, especially with a 35' height limit.
- 9. 3875 Telegraph Avenue (APN 012 096800301) - This supplementary AFFH site is proposed for 35 Low-Income RHNA units. The existing use is a surgery center that is close to MacArthur BART, on a commercial corridor and is underutilized relative to its land value.
 - a. The owners of this site previously refused rezoning between 2006 and 2008 as part of the MacArthur BART Transit Village PUD.
 - b. The owners previously expressed interest in expanding the surgery use as recently as 2017.
 - c. Given the owners' prior resistance to rezoning the site for housing, the City of Oakland must provide written proof of interest from the landowner in development of the site within the eight year planning period.
 - d. This site, 1/8 of a mile from MacArthur BART, can accommodate much more density than 75 DUAs. If the owner provides written proof of interest in development, please consider increasing allowable density to 125 DUAs.

In order to effectively meet the demand for additional sites, especially in moderate to high-resource areas with low-VMT, we have provided a list of additional sites we ask you to consider.

Suggested Site Inventory

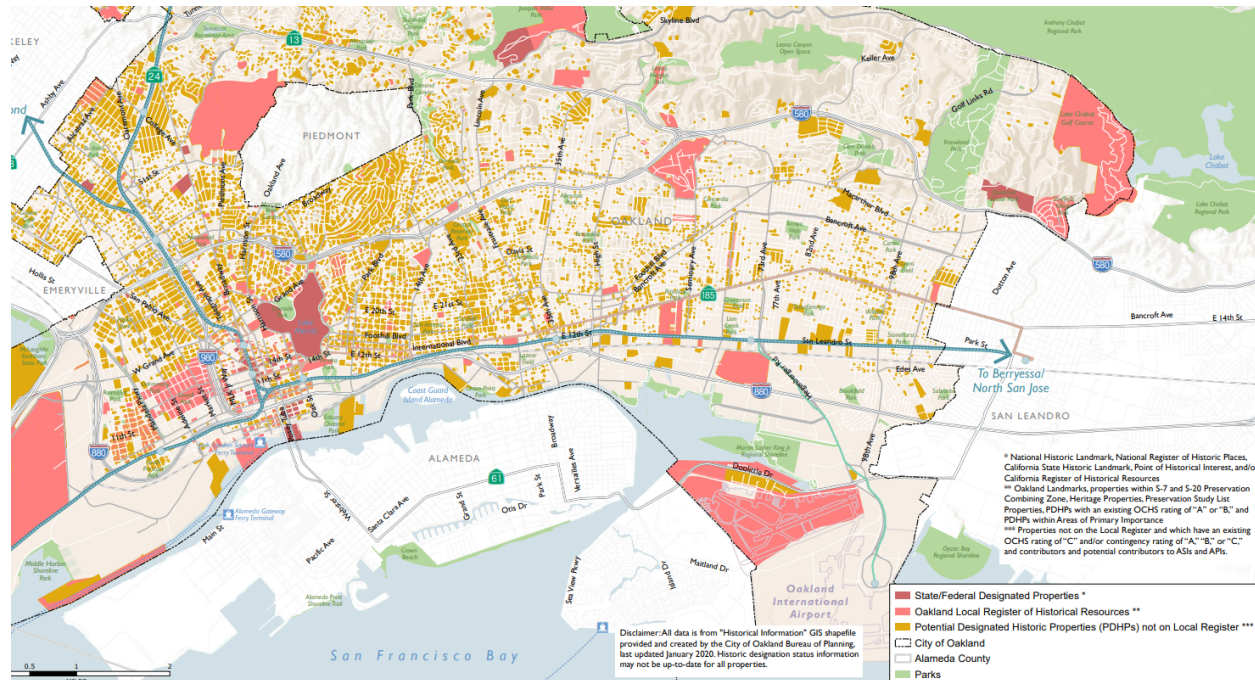
1. 501 MacArthur - underutilized commercial use at the corner of two commercial corridors.

2. 5352 Claremont Avenue - 1.5 acre underutilized commercial use surrounded by a large parking lot.
3. 3901 Broadway - underutilized fraternal lodge and parking lot.
4. 5216 Broadway - one of two Shell Gas stations within ½ mile of each in a high-resource neighborhood.
5. 6046 Claremont - .6 acre surface parking lot near Rockridge BART.
6. APN 14-1268-9-1 - .5 acre surface parking lot near Rockridge BART.

Programs and Policies Program

We are excited to see many bold programs and policies. We offer the following comments:

- Action 3.2.1 - Plex upzoning in single-family neighborhoods
 - Consider using five units as the base permitted density to allow for projects opt-in to the State Density Bonus Law and provide deed-restricted units on-site.
 - Consider allowing up to six units for larger lots and corner lots.
 - Provide a ministerial approval process so that small developers and property owners with lower risk tolerances can participate in the program.
- Action 3.3.5 - Affordable Housing Overlay
 - Please do not exempt historic districts from this policy. Historic districts and potential designated historic properties (PDHPs) tend to exist in high-resource areas that have historically excluded low-income housing. For reference, Oakland PDHPs are most highly concentrated in Rockridge, Trestle Glen and other high-resource neighborhoods that historically excluded low-income housing. By contrast there are relatively few PDHPs in low-resource places like East and Deep East Oakland where many low-income housing units have been developed historically.



- In case the City of Oakland decides to allow historic districts to be exempted from an Affordable Housing Overlay that exemption should only apply to historic districts that existed as of January 1, 2022. This will prevent the sort of defensive, dubious landmarking that we have seen from high-resource areas such as St. Francis Wood and Pasadena in direct response to the passage of SB9.
- Action 3.4.1 - Revise development standards, including allowable building heights, densities, open space and setbacks requirements
 - Transit-proximate zoning areas
 - The following BART station areas within Oakland have been subject to a specific plan to allow for transit-oriented development on public and/or private land nearby: Coliseum, Fruitvale, Lake Merritt, West Oakland, 12th Street, 19th Street, MacArthur. Tens of thousands of units have been constructed or in the process of being developed within these specific plan areas.

The only BART station area in Oakland that has not had a specific plan developed and implemented is Rockridge. This station area contains some of the highest-resource tracts in Oakland and is one of the most “whites-only” census tracts in Alameda County, according to the Haas Institute for a Fair and Inclusive Society.

The last low-income housing development constructed in Rockridge was the Otterbein Manor (SAHA Homes) in 1973. This development was completed one year prior to the 1974 Rockridge Downzoning. The 1974 Downzoning was an explicitly racist downzoning movement reacting to

state and federal fair housing laws, the perceived encroachment of Black families into the neighborhood and plans for transit-oriented development near the newly constructed BART station.

Any transit-proximate rezoning and revision of development standards must include the Rockridge station area. If the City of Oakland fails to include the Rockridge station area with transit-proximate revision of zoning and development standards, it would perpetuate an existing pattern or practice of the City of Oakland of excluding low-income and multi-family housing from this high-resource and heavily segregated neighborhood.

- Additional height and density should be allowed at least a ½ mile of heavy rail stations and within ¼ mile of high frequency bus stops. This represents the walkshed for most transit users. Where areas have access to both rail and high-frequency bus transit access overlap, such as in North Oakland, greater additional height and density should be allowed.
- For these rezonings priority should be given to vacant or underutilized commercial land and owner-occupied residential land. Consider limiting rezonings on top of filtered or rent-controlled rental housing.
- Resource-rich areas
 - Consider providing setback and other development standard relief in addition to permitting 30 DUAs by-right in resource rich areas.
- Corridors
 - Foothill Boulevard, MacArthur Boulevard and International Boulevard are all commercial corridors in East Oakland that are specifically called out by name as requiring additional height and density for development to work. While we support additional height and density along these corridors, it is frustrating that similar corridors with low height limits remain unmentioned despite having similar issues with height and density.

For example, Shattuck Avenue in North Oakland was downzoned to a 40' height from 50' in 2011. In 2021 a development application at 6300 Shattuck for housing at 50' (grandfathered in from a deemed complete application from 2010) was appealed by nearby property owners. This stretch of Shattuck Avenue is within easy walking/cycling distance to Ashby BART and near several bus routes and is in a high-resource tract. The appeal was dismissed by the Planning Commission, but it exemplifies how badly-needed multi-family housing near transit and low-VMT in higher-resource neighborhoods is often opposed and delayed by homeowners and property owners. The homeowners and property owners in higher-resource tracts have also historically been able to downzone

heights and densities on their corridors while allowable heights and densities on corridors in lower-resource areas of Oakland are increased.

The City of Oakland should commit to increasing heights and densities on commercial corridors in moderate and high-resource neighborhoods by name. Exemplar commercial corridors: Shattuck Avenue, Piedmont Avenue, upper Broadway, upper Telegraph Avenue, 51st Street, College Avenue, Grand Avenue, Lakeshore Avenue and Claremont Avenue.

- Action 3.4.2 - Revise Conditional Use Permit (CUP) requirements
 - While we support the removal of CUPs for multifamily housing development in RD-2 and RM zones, we request the City of Oakland please extend this action to include RD-1 zones as well.
- Action 3.4.3 - Revise citywide parking standards
 - Consider removing all parking minimums for housing development. At the very least, expand the ability to zero out parking minimums to all low-VMT areas.
 - Consider instituting parking maximums for residential development to reduce VMT and prevent overparking in downtown high-rise development.
- Action 3.5.3 - Advocate for statewide legislation on social housing
 - We are happy to see support for our sponsored legislation AB2053. Please consider sending a letter of support on behalf of the City of Oakland ahead of AB2053's June 21, 2022 Senate Housing Committee hearing.
- Action - 3.5.4: Evaluate acquisition and development opportunities for moderate- and middle-income households
 - While we support efforts to acquire and develop moderate-income housing we must caution against the use of bond-financed JPAs such as CalCHA for this task. These entities command high fees and underwrite risky debt.
 - The City of Oakland should consider creating and capitalizing an arms-length corporation to develop limited-equity cooperatives for moderate-income households, including public sector and essential workers.
- Action 3.7.5 - Encourage different sizes of housing for larger families – including affordable housing with courtyards, multigenerational housing
 - The City of Oakland should commit to studying the impact of second egress requirements for the feasibility of small and medium lot development of multifamily housing with 3 and 4 bedroom units.
 - The requirement of a second stairwell for purposes of egress reduces the usable floor plate for living space. The additional circulation forces many designers to arrange units along double-loaded corridors with internal hallways. This layout reduces the ability to provide natural light for more than 1 or 2 bedrooms (access to light or a light well is required for a habitable bedroom). The requirement for a second stair is a key driver in the relative overproduction of studios and 1 bedroom units compared to family-sized units.

- The US is one of two developed countries in the world that doesn't allow single stair multifamily construction for at least four to five story buildings. Other developed countries provide a second means of egress via a fire ladder or other means.
 - Single stair multifamily buildings can also provide better access to light as well cross-ventilation. This makes it easier for new housing to meet passivehouse standards and reduce operational energy demands. In addition, because less circulation space allows for more floor space to be dedicated to group open space like courtyards or private open space like balconies or decks.
- The City of Seattle passed and implemented local building code amendments in 1975 to allow a single stair as means of egress for buildings up to six stories. The current code caps such single stair structures to four units per floor, requires automatic fire sprinklers and imposes other fire-rated and corridor requirements. The City of New York also allows single stair buildings with similar mitigations. <https://secondegress.ca/>
- The City of Oakland should study local building code amendments to allow up to six stories with single stairs with mitigations for fire, life and safety.
- The City of Oakland should commit to supporting state legislation to direct the California Building Standards Commission to study allowing single stair multifamily housing up to six stories with proper fire, life and safety mitigations.
- Action 3.3.14 - Evaluate the creation of a leveraged acquisition fund or debt/equity funds for small sites to support site acquisitions for affordable housing
 - Under Section 2.41.020 of the OMC, the City Administrator must seek City Council approval for purchases of any land valued at over \$100,000. There is no parcel in Oakland with development or anti-displacement utility valued at \$100,000 in 2022. This authority should be increased to, at least, \$1,000,000 (pegged at CPI) to allow Oakland HCD staff to move quickly when the opportunity and funding present themselves for land acquisition.
- Action 1.1.8 - Create and maintain a rental housing registry
 - This policy is critical for the enforcement of SB330/SB8 tenant demolition and right to return policies. Oakland HCD needs this tool to be able to coordinate with Oakland Planning on evaluating development applications that propose to demolish protected housing and ensuring compliance with relocation and right of first refusal policies post-entitlement.
- Action 2.2.5 - Extend local replacement unit provisions
 - We appreciate Oakland's commitment to codifying these provisions locally beyond the current 2031 sunset. That codification must be paired with more proactive enforcement of SB330/SB8 demolition protections. In November 2021, EB4E notified Oakland Planning that an application for development at 469 40th Street did not include sufficient replacement units under SB330. The application was eventually re-submitted and approved with the necessary replacement units.

Projects should not be put out to public notice unless they have clearly demonstrated they have complied with SB330/SB8 demolition protections and provision of replacement units.

- We request that Oakland Planning work proactively with Oakland HCD to create internal processes to help ensure displaced tenants are not lost in the post-entitlement and demolition process.

Thank you for considering these comments. We are available to discuss them via phone or video conference, if necessary.

Sincerely,

John Minot
Jonathan Singh
EB4E Co-Executives

cc:
CA Department of Housing and Community Development
YIMBY Law
California Renters Legal Advocacy & Education Fund