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SF YIMBY has carefully analyzed the San Francisco Planning Department's March 2022 draft [Housing Element Sites Inventory and Rezoning Program Report, Goals, Objectives, Policies and Actions](#), and [Analysis of Government and Non-Government Constraints Report](#) from its draft housing element.

As a member of the [Campaign for Fair Housing Elements](#), led by YIMBY Action and YIMBY Law, our goal is to ensure San Francisco complies with the law and submits a housing element that succeeds in creating a future of abundant housing, affirmatively furthers fair housing, increases diversity, stabilizes at-risk populations, and builds an equitable, sustainable and thriving city for all. [A summary of our state-wide policy goals can be found here.](#)

Our analysis focuses on the areas of the housing element we believe will have the greatest impact on the success of the RHNA process. As San Francisco works to accomplish our housing goals, we must also pursue policies that ensure development without displacement. Additional specific policies to advance tenant protections and funding for affordable housing should be pursued in addition to the critical changes outlined here.

We thank the San Francisco Planning Department for their work on this draft and hope our comments are constructive in building a city that embodies the values of inclusivity and opportunity for all.

Executive Summary

We have four major concerns with this current draft of the City's housing element:

1. **The City's analysis significantly overestimates the number of units that its current policies will accommodate during the next RHNA period, meaning the City's RHNA deficit is larger than it discloses.** The City underestimates its RHNA deficit by asserting that its rate of construction will *triple* without making any policy changes. Under more realistic assumptions, **we estimate the City's true RHNA deficit is approximately 72,425 units**, not 22,555. In order to accommodate this larger deficit, the housing element must propose **more significant changes to policies** (such as eliminating discretionary review, eliminating conditional use permits for demolitions, and removing the Board of Supervisors from project-level review) and a **more significant rezoning**.
2. **The City's proposed rezoning of well-resourced areas to accommodate its RHNA deficit is unlikely to meaningfully accommodate housing due to constraints the City places on development.** The City proposes to accommodate its RHNA deficit by changing its zoning to allow low- and mid-rise projects in well-resourced areas. We applaud upzoning well-resourced areas. However, *the City's own* pro-forma analysis indicates that current constraints on development make these projects economically infeasible—meaning its proposed rezoning is unlikely to realistically accommodate nearly any new housing under current policy.¹ The City must commit to serious, specific reforms to its permitting process and other policies in order for its proposed rezoning to lead to the tens of thousands of new homes it claims, especially as we pursue building housing in neighborhoods that have historically resisted new neighbors.
3. **Because the housing element fails to meaningfully accommodate multifamily developments in well-resourced areas, the housing element fails to affirmatively further fair housing, as required by state law.** State law and guidance from HCD both indicate that a city's housing element is materially inconsistent with state law if they do not accommodate new multifamily housing in

¹ See

<https://www.sfhousingelement.org/draft-analysis-government-and-non-government-constraints-report>, Figure 24.

well-resourced areas.² Although the City's proposed rezoning ostensibly allows for low- and mid-rise multifamily development in well-resourced areas, as noted above, the City has failed to propose specific policies that would remove the constraints which its own analysis shows make such development infeasible. The current draft housing element therefore fails to affirmatively further fair housing.

- 4. The housing element fails to describe how the City will comply with state housing laws such as the Housing Accountability Act, the Permit Streamlining Act, and the State Density Bonus Law.** Guidance from HCD—including explicit instructions it issued to the City—is clear that the housing element must describe how it will comply with state housing laws, but the current draft does not do so.³ Moreover, HCD cannot take the City's compliance with these laws for granted, as it explicitly stated in a recent letter to the City.⁴ Given that [the city concedes its own noncompliance with the Permit Streamlining Act](#), the housing element must include a program to recognize and process entitlements that are “deemed approved” by operation of the PSA.

We detail these concerns below, and provide an Appendix with our supporting analysis. In summary, though, **in light of the City's recent historical record of only accommodating 2,929 housing units per year and largely accommodating these units outside well-resourced areas, the City's housing element falls far short of articulating a plan for accommodating the 11,797 units per year it must under its RHNA obligations and to affirmatively further fair housing.**⁵ The City's RHNA obligations require it to accommodate *four times* as much housing per year as it has recently—equivalent to accommodating a new 100-unit development every three days. The City's draft housing element clearly does not present a plan to accommodate the number of homes needed to meet these obligations. We close our letter with recommendations for bringing the City's housing element into compliance.

² https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf.

³ *Ibid.*

⁴ <https://www.hcd.ca.gov/community-development/housing-element/docs/sfrsanfrancisco-loi-ta-112-221.pdf>.

⁵ Similar to the City's reports, for shorthand, when we refer to RHNA obligations, we denote both the city's Regional Housing Needs Allocation as well as HCD's recommended 15% No Net Loss buffer. Likewise, when we refer to the city's RHNA deficit, we denote the deficit in accommodating the city's RHNA with HCD's recommended 15% No Net Loss buffer.

Explanation

The City’s Analysis Significantly Overestimates The Number of Units Current Policies Will Accommodate, Thereby Understating the Units it Must Accommodate Through Rezoning.

The City argues that current policy will accommodate 71,824 units of housing in San Francisco over the 2023-2031 RHNA period, leaving a deficit of only 22,555 units. The implausibility of this claim is readily apparent by simply comparing recent rates of housing production to the rates of housing production the City assumes will occur during the 2023-2031 RHNA period under current policy. Effectively, **the City’s analysis presumes that the City is already on track to accommodate over two-thirds of the City’s RHNA obligations under its longstanding policies. But this requires assuming the City is somehow already on track to *nearly triple* its recent rate of housing production.** The City’s most recent 10-year average of annual housing production is 2,929 units per year.⁶ At this annual rate, the City would accommodate only approximately 23,400 units over the next eight-year RHNA cycle. Yet, the City’s draft housing element argues that the City would somehow realize 65,000 new units over the next RHNA cycle under current policy alone.⁷

We conducted an independent analysis of the City’s projections, relying on the City’s own data, analysis, and commissioned reports. Based on our analysis, we believe **the City’s March 2022 proposals only demonstrate capacity for accommodating 21,954 units of housing during the next RHNA period, meaning the City still must propose additional policies to accommodate an additional 72,425 units of housing in order to produce a compliant housing element.**

Our differences with the Department’s projections report fall into several main areas, which we elaborate in the Appendix to this letter:

⁶ https://sfplanning.org/sites/default/files/documents/reports/2020_Housing_Inventory.pdf.

⁷ This figure is a total of the 44,234 units the City is claiming from its “housing pipeline”, the 10,398 units it claims from “underutilized sites”, and the 10,518 units it claims from sites meeting low-income criteria.

- **Housing Pipeline.** The City claims that housing projects already in its pipeline and that have not yet received building permits will produce 44,234 housing units during the next eight years. HCD has previously suggested that cities consider “past completion rates” for “pipeline project[s]” when crediting units towards a City’s RHNA obligations.⁸ Based on historical rates of completion, the City’s housing pipeline of projects currently without building permits only appears likely to accommodate approximately 9,254 units of housing during the next 8 years.⁹ By contrast, the City proposes to assume that the rate at which its housing projects “in the pipeline” will produce permitted housing will more than quadruple (from 17% to 80%) during the next RHNA cycle. This assumption is not reasonable, especially in light of the City’s own findings that the City has recently placed a number of new constraints on development. (*Difference: 34,980 units*)
- **Underutilized and Vacant Sites.** The City relied on an econometric model to estimate the probability that currently underutilized and vacant sites would be developed. Although we applaud the use of such a model, the City used estimates capturing the probability that sites would be developed within the next 15 years, not within the next eight—effectively assuming that the rate of development on underutilized and vacant sites would double during the next RHNA period. While the City points to the availability of state density bonuses and favorable changes in state law since the analysis took place to justify this decision, the City’s reports also document new unfavorable challenges to development that have materialized since this analysis took place, making it unreasonable to assume that the rate of housing production on underutilized and vacant sites would double during the next RHNA period. The City also makes the unrealistic assumption that any developed parcel would accommodate the maximum number of units allowed under zoning, when its own reports show this is unlikely. (*Difference: 4,852 units*)
- **100% Affordable Housing from Sites Meeting Low Income Criteria and Publicly Funded Projects.** The City asserts that sites meeting low income criteria and publicly funded projects will accommodate 10,518 units in 100% affordable

⁸ See <https://www.hcd.ca.gov/community-development/housing-element/docs/lanlacitydraft090321.pdf>, page 3.

⁹ https://drive.google.com/file/d/1gc8dEXA3ifCf7fjbTQ8bYwtRPMD4_OdT/view.

developments over the next eight years, a rate of 1,314 units per year. However, the City has only produced an average of 531 units in 100% affordable developments per year over the last five years from these sources.¹⁰ The number of such units developed per year has not been on an upward trajectory over the last five years,¹¹ nor does the City project that funding for 100% affordable developments will meaningfully increase during the next RHNA cycle; the City actually projects a decrease in such funding.¹² HCD should not credit these units towards the City's RHNA obligations unless the City provides both documentation of funding sources and a more realistic, detailed assessment of the probability this housing would be accommodated. (*Difference: 8,857 units*)

- **SB 9.** The City predicts that SB 9 will produce 1,500 units during the 2023-2031 RHNA period. However, other City analysis has found that SB 9 projects are economically infeasible in San Francisco, and the City has only received ten SB 9 applications in the three months SB 9 has been in effect. Even assuming 100% of SB 9 applications result in completed projects, this trend suggests the City cannot reasonably assume it will receive any more than 40 SB 9 applications per year. Finally, the draft element ignores HCD's guidance about the requirements it must satisfy to count SB 9 units towards its RHNA obligations, including conducting a site-specific inventory of sites where SB 9 projections are being applied;¹³ if the City's element predicts it will accommodate 1,500 units under SB 9, HCD requires it to list the sites where these units will be built. (*Difference: 1,180 units*)

The Appendix to this letter provides further details on our analysis of each of these categories.¹⁴

¹⁰ https://sfplanning.org/sites/default/files/documents/reports/2020_Housing_Inventory.pdf, Table 25.

¹¹ *Ibid.*

¹² See <https://www.sfhousingelement.org/draft-analysis-government-and-non-government-constraints-report>, Figure 3.

¹³ <https://www.hcd.ca.gov/docs/planning-and-community-development/sb9factsheet.pdf>, page 6.

¹⁴ We also note, although we do not include in our totals, that Planning failed to follow HCD guidance with regard to counting the number of ADUs the City is likely to accommodate during the next RHNA cycle. See <https://static1.squarespace.com/static/5fcea2bac5ab4f3059545081/t/603d407358b15d5dd4f6ba76/1614626932351/210219+Letter+to+HCD+-+Certified+HEs.pdf>, section 4 for a review.

In summary, the City proposes to meet over two-thirds of its RHNA obligations by assuming that housing production would nearly triple over the next eight years. Under current policy, this is not plausible based on the City's recent rate of housing construction and the City's own analysis that it has recently *increased* constraints on development. Indeed, the trends documented in the city's [DRAFT Analysis of Government and Non-Government Constraints Report](#) (Mar. 2022) suggest, if anything, that the City should expect its housing production rate under current policy to *decline* over the next RHNA cycle: construction costs have increased, and the Board of Supervisors has substantially increased fees, exactions, BMR mandates, and requirements for expensive design features like greywater systems. Indeed, a majority of developers “have no plans to keep building in San Francisco after their current projects are entitled” (p. 2). The City's housing element will not be compliant if it so blatantly ignores its own data and analysis about housing production under current City policy. In addition, as HCD has also noted, the Board of Supervisors has recently had a track record of vindicating dubious appeals of housing approvals, casting further doubt on the city's ability to increase housing production without [substantially curtailing the Board's review of individual projects](#).¹⁵

Correcting the City's dramatic overestimation of how much housing it can reasonably accommodate under current policy reveals that its RHNA deficit is much larger than it currently discloses. In order to accommodate this larger deficit, the City's housing element must propose more significant reductions in constraints on development, and a more significant rezoning, than it currently proposes. Table 1 summarizes the implications of our analysis for the City's RHNA deficit. The analyses described above indicate that the City's current RHNA deficit is 72,425 units, not the 22,555 units the current draft of its housing element indicates. Given the City's findings that only high-rise developments in high-demand areas are economically feasible under current policy,¹⁶ in order to meet this large deficit the City likely must both a) more meaningfully reduce constraints on development, and b) expand its rezoning proposals to include high-rise development in certain well-resourced areas in high-demand neighborhoods where development is economically feasible. We elaborate on these needs below.

¹⁵<https://www.hcd.ca.gov/community-development/housing-element/docs/sfrsanfrancisco-ta-02012-2.pdf>. As HCD notes, “the City/County should consider the effect of the Board of Supervisors' decision-making process on the ability to meet housing element objectives and include program actions as appropriate to facilitate more effective housing programs.”

¹⁶<https://www.sfhousingelement.org/draft-analysis-government-and-non-government-constraints-report>, Figure 24.

Table 1. Units Accommodated Under Current Policy and Unmet RHNA Deficit: Comparing SF Planning’s Analysis to SF YIMBY Analysis

	SF Planning's Analysis, March 2022 Report Draft	SF YIMBY Analysis
Units Accounted for by March 2022 Housing Sites Inventory and Rezoning Program Report	71,824	21,954
Remaining Deficit from 2023-2031 RHNA Obligations (with Buffer)	22,555	72,425

The City’s Proposed Rezoning Program Will Not Accommodate Its RHNA Deficit Without Additional Policy Changes Reducing Constraints on Development

Our second major concern with the City’s draft housing element is that its proposed rezoning program of well-resourced areas to close its RHNA deficit is unlikely to accommodate a meaningful quantity of housing unless the City commits to making other significant policy changes that reduce constraints on development that would make new housing economically feasible under this rezoning. Because it would fail to result in new housing in well-resourced areas, the City’s proposed rezoning fails to close even the City’s own underestimate of its RHNA deficit.

The City’s own analysis finds that the rezoning of well-resourced areas it has proposed would not accommodate additional housing because the housing it proposes to allow would be economically infeasible. In particular, the City’s draft housing element proposes a rezoning program to accommodate the shortfall of capacity under current zoning solely by upzoning transit corridors in well-resourced areas for mid-rise projects, and residential neighborhoods in these areas for fourplexes. In its [Draft Sites Inventory and Rezoning Program Report](#) (Mar. 2022), the City claims it can accommodate 22,555 new housing units with this proposed rezoning over the next eight years. However, the City’s own pro-forma analysis indicates that current constraints on development make both mid-rise and low-rise projects economically infeasible citywide. Indeed, in most of the well-resourced areas the City proposes to rezone for such projects, the City actually estimates that the rate

of return on such projects would be *negative*.¹⁷ As it stands, the City's own analysis therefore indicates that its proposed rezoning would accommodate little to no additional housing at all.

[DRAFT 3 of Goals, Objectives, Policies and Actions](#) attempts to address this with Policies 25 (a), 25 (d), and 26 (a) to make small multi-family buildings feasible.¹⁸ However:

- The City's proposals are quite modest and overly vague. These proposals are modest because a) they are written to commit the City to only addressing a few constraints to housing development, when the City's own analysis of constraints claims on page 1 that housing is dying a "death by a thousand cuts;" and b) these incrementalist proposals do not match the scale of the problem when the City's own analysis indicates that low-rise apartments currently have *negative* returns on investment in most high opportunity neighborhoods.¹⁹ Additionally, policies 25 (a) and 26 (a) are vague because they merely list a series of possible policies as examples of what the City may eventually implement without committing the City to any particular course of action.
- Moreover, these actions include no scheduled timeline with start and end dates, as required under state law.²⁰ Instead, these programs are given a "timeframe" classified as *Medium*; the draft describes Medium timeframes as lasting 6-15 years.²¹ The Department is therefore telling HCD that it knows that it plans to accommodate its 6th Cycle RHNA goals by permitting a building type which won't become feasible until—at the *earliest*—75% of the RHNA cycle has elapsed. Considering San Francisco's historical rates of housing production, the City will not be able to accommodate its RHNA goals using this policy.
- Additionally, HCD recommends that policies also provide specific, measurable outcomes that can be used to monitor and evaluate the success of these policies. We recommend that the specific, measurable outcome for tracking the success of

¹⁷ See <https://www.sfhousingelement.org/draft-analysis-government-and-non-government-constraints-report>, Figure 24.

¹⁸ <https://sfhousingelement.org/draft-3-goals-objectives-policies-and-actions>, page 26.

¹⁹ See <https://www.sfhousingelement.org/draft-analysis-government-and-non-government-constraints-report>, Figure 24.

²⁰ Government Code section 65583(c).

²¹ <https://sfhousingelement.org/draft-3-goals-objectives-policies-and-actions>, page 4.

these policies be (1) building 8,220 units of low income housing, 3,430 units of middle income housing, and 8,868 units of above moderate income housing in high opportunity areas by mid-cycle. In other words, the City's policies should actually place high opportunity areas to be on track to accommodate 25% of the City's RHNA progress, as is the City's goal; and (2) updating the city's project tracking software and database so as to publicly document compliance with the timelines of the Permit Streamlining Act (Gov't Code § 65950) as well as the notice requirements of the Housing Accountability Act (Gov't Code 65589.5(j)(2))

We believe a compliant housing element will require three adjustments to the City's upzoning proposal:

1. **The City must make specific, meaningful proposals to reduce constraints on development in order for its proposed upzoning to help accommodate new housing. It must make these proposals on a faster and more specific timeline and tie them to specific, measurable outcomes.** Unfortunately, the City did not make specific, meaningful proposals to reduce constraints on development in rezoned areas (e.g., impact fees and discretionary reviews), meaning there is no reason to expect the mid- or low-rise projects it proposes to rezone for would become economically feasible in rezoned areas during the next RHNA period. We applaud the City for proposing to upzone well-resourced neighborhoods. But if its upzoning of these areas is going to make a meaningful dent in the City's shortfall of realistic capacity, the City will have to make large commitments to reducing regulatory costs and uncertainty. **This will probably require eliminating or substantially curtailing discretionary review, eliminating conditional use permits for demolitions, removing the Board of Supervisors from project-level review, recognized "deemed approved" permits as required by the Permit Streamlining Act, and substantially reducing the total per-square-foot cost of fees, exactions, inclusionary units, and requirements for bells and whistles**

like greywater treatment systems.²² HCD should not credit any units from this proposed rezoning program towards the City's RHNA obligations unless this rezoning program is accompanied by specific, meaningful proposals to relax constraints on development in rezoned areas. In order to achieve a housing element that HCD should accept as credible, San Francisco will need to specify the legislative changes it will make to reduce constraints on development and when it will make them.

2. **The City should commit to complete an economic feasibility study of its rezoning plan and adjust its claims of capacity based on a reasonable projection of the probability that rezoned sites will be developed.** We laud the City's decision to project the probability that sites would be developed as part of the Underutilized and Vacant Sites portion of its RHNA obligations, but such an analysis (and/or an economic feasibility study) is conspicuously absent from its analysis of its upzoning proposal. (It would also be helpful to update the pro-forma analysis to account for [post-Covid changes in demand](#), which may result in even high-rise projects being less feasible today than they were at the time of the study.) The City's own findings indicate that many forms of development are currently economically unfeasible, including the very forms of development it plans to rezone to allow. As a result, we do not believe HCD should credit any units from the City's proposed rezoning program unless the City commits to studying whether any policy changes it proposes to make will render its proposed rezoning program effective at accommodating enough housing to cover its RHNA deficit.
3. Finally, as noted in the first part of our letter, it seems quite likely that accommodating the current shortfall of capacity (again, **about 72,255 units** per our estimate) **will require further upzoning in well-resourced areas with strong rental markets.** In particular, the City may wish to consider rezoning well-resourced

²² Although San Francisco's city charter provides for discretionary review, this provision of the charter is superseded by certain state laws that require or authorize ministerial review of certain types of housing projects. For example, sites that a city must rezone to accommodate its lower-income RHNA must be zoned to allow 20% low-income projects as of right (Gov't Code § 65583.2(c)); so too for sites that are "recycled" from a previous housing element if the new housing element relies on them for accommodating the lower income RHNA (Gov't Code § 65583.2(g)(2)). San Francisco also has authority to create "Housing Sustainability Districts" in which housing developments are reviewed ministerially (Gov't Code § 66201), although larger projects in these districts are subject to labor requirements that may operate as a constraint.

areas in high-demand neighborhoods for the type of high-rise projects shown to be feasible by the City's pro-forma analysis.²³

The Housing Element Is Materially Inconsistent With The City's Obligation to Affirmatively Further Fair Housing

Because the housing element fails to take meaningful actions to reduce constraints on multifamily developments in well-resourced areas, the housing element fails to affirmatively further fair housing. Guidance from HCD indicates that housing elements are materially inconsistent with state AFFH law if they do not accommodate new multifamily housing in well-resourced areas.²⁴ Although the City's proposed rezoning ostensibly allows for low- and mid-rise multifamily development in well-resourced areas, the City's own analysis shows that other constraints it places on development still make low- and mid-rise multifamily development in well-resourced areas infeasible, and its own program to address these constraints would have little to no effect until little time is left in the RHNA cycle.²⁵ The current draft housing element therefore fails to affirmatively further fair housing because it still will not accommodate multifamily development in well-resourced areas.

The City's draft AFFH analysis also does not supply meaningful actions to address key contributing factors identified in the element. The draft states, correctly in our view, that "community opposition to affordable housing and permanent supportive housing development has been a significant factor contributing to ongoing racial and economic segregation in San Francisco."²⁶ The analysis then goes on to note, again correctly, that "[b]y-right zoning laws and CEQA exemptions can ease the legal challenges with opening

²³ Examining Figures 1, 23, and 24 from <https://www.sfhousingelement.org/draft-analysis-government-and-non-government-constraints-report> suggests that well-resourced neighborhoods where upzoning for high-rises could plausibly create new housing under current law include, among others, areas of the Financial District, Russian Hill, North Beach, the Marina, Pacific Heights, and Noe Valley.

²⁴ See https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf, page 16.

²⁵ See the prior sections of this letter.

²⁶ <https://sfhousingelement.org/draft-housing-needs-assessment-and-assessment-fair-housing>, page 200.

these programs.”²⁷ In response, CEQA streamlining is included in the draft in Policy 25, action (d),²⁸ through “Community Plan Exemptions or by adopting Housing Sustainability Districts within Well-resourced Neighborhoods outside of areas vulnerable to displacement.”²⁹ However, this program has a timeframe of 6–15 years to complete while failing to commit to a single specific action, so it is insufficient for the 6th Cycle: it will apply for a fraction of the cycle, *if* it is completed during the cycle. Failing to address this key barrier to accommodating new housing is materially inconsistent with affirmatively furthering fair housing. In fact, HCD guidance on AFFH even states that “[local vetoes] of affordable and mixed-income housing in racially segregated concentrated areas of affluence create fair housing issues.”³⁰

The Housing Element Fails To Describe How The City Will Comply With State Fair Housing Laws, Despite Explicit Instructions from HCD To Do So

The housing element fails to describe how the City will comply with state fair housing laws such as the Housing Accountability Act, the Permit Streamlining Act, and the State Density Bonus Law, as HCD instructs.³¹ Guidance from HCD is clear that the City’s housing element must describe how it will comply with these laws.

This omission is particularly concerning because the City has received feedback from HCD that it believes the City may be failing to comply with laws around housing approval timelines, writing in a November 2021 letter, “HCD is concerned about the significant delays in the approval of housing generally and in the City/County in particular.”³²

²⁷ *Ibid.*

²⁸ <https://sfhousingelement.org/draft-housing-needs-assessment-and-assessment-fair-housing>, page 204.

²⁹ <https://sfhousingelement.org/draft-3-goals-objectives-policies-and-actions>, page 76.

³⁰ https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf, page 15.

³¹ https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf, page 29.

³² See

<https://www.hcd.ca.gov/community-development/housing-element/docs/sfrsanfrancisco-loi-ta-112221.pdf>, page 3.

In that same letter, HCD directed the City to describe how it complies with the Permit Streamlining Act (PSA) and the Housing Accountability Act (HAA) in its 6th Cycle element:

Academic research continues to show that San Francisco's processing and entitlement timeframes and procedures exceed the norms for other jurisdictions of similar size and complexity and act as a constraint on the development of housing. **As part of the housing element's analysis of potential and actual governmental constraints on housing pursuant to Government Code section 65583, subdivision (a)(5), it must describe and analyze the permit process from application to approvals, including a discussion on timeframe for each step in the process, impediments, and how it addresses state law application processing requirements such as those found in the Permit Streamlining Act and the HAA.**³³ [emphasis added]

If one were to doubt the seriousness of this directive, HCD repeated it for good measure in another letter it sent to the Department in February.³⁴

HCD has asked the City to take these steps for good reason: the City routinely openly and flagrantly violates multiple state fair housing laws. For instance, the City openly admits it does not follow the Permit Streamlining Act on its public website, telling the public that "[the Planning] Department does not have a system in place for tracking compliance with Permit Streamlining Act time limits."³⁵ The same website even states outright, "[t]he Planning Department is not operating in compliance with State time limits on development project applications."³⁶ The City's own website also admits that it is clearly cognizant of the PSA's provisions related to permit timelines, that it regularly and flagrantly violates said provisions, and has done so since 2001 and probably earlier:

The [Planning Department's] process for determining completeness is unclear and often consumes more than 30 days. Median processing time for a sample of 19 cases approved in 2001 that did not require environmental impact reports was 80

³³ *Ibid*, page 5.

³⁴ <https://www.hcd.ca.gov/community-development/housing-element/docs/sfrsanfrancisco-ta-02012-2.pdf>, page 2.

³⁵ <https://sfbos.org/permit-streamlining-act>.

³⁶ *Ibid*.

days, which is 20 days more, or 33 percent, than the 60 maximum days allowed by State law. A similar analysis of environmental review case processing time is not possible because the Department does not keep records of when applications are determined complete, the starting point for State environmental review time limits. However, median processing time for a sample of 56 environmental review cases was 211 days, or 31 more than the 180 day maximum allowed by State law. Even if staff took the full 30 days allowed by State law to determine application completeness on all these cases before beginning their evaluation, 28 cases, or half of the cases reviewed, still exceeded the State time limits.³⁷

The City's draft element briefly notes a subset of the requirements of the HAA³⁸ and the PSA,³⁹ but it otherwise provides no analysis of how applications are processed in accordance with the PSA or HAA. The draft does describe the permit process, and the Department's descriptions of its own timelines shows permit processing times that it itself would characterize as violations of state law. The City's draft element demonstrates that City violations of the PSA have only worsened since 2001. For instance, figures from 2015–2021 show that the median Negative Declaration takes 788 days to publish,⁴⁰ and that the median Discretionary Review period for applications takes 154 days.⁴¹ Additionally, the same table shows that approval of an Environmental Impact Report takes 1,004 days on average,⁴² when state law generally imposes a time limit of one year.⁴³

Despite these flagrant violations of state law and HCD's explicit instructions to the City to detail how they will remedy these violations specifically in the context of a 6th Cycle housing element, the City's draft does not commit to—nor plan to—become compliant with the PSA or the HAA. The draft also fails to define scheduled programs to bring down permitting timelines into compliance with the PSA. While the draft does list programs like Policy 25, action (a) to establish streamlining processes for applications,⁴⁴ this program

³⁷ <https://sfbos.org/permit-streamlining-act>.

³⁸ <https://sfhousingelement.org/draft-analysis-government-and-non-government-constraints-report>, page 20.

³⁹ *Ibid*, 23.

⁴⁰ *Ibid*, 36.

⁴¹ *Ibid*.

⁴² *Ibid*.

⁴³ Public Resources code section 21151.5.

⁴⁴ <https://sfhousingelement.org/draft-3-goals-objectives-policies-and-actions>, page 77.

does not set a goal of compliance with state law, nor does it set a date by which it will do so.

Given the city's long history of violating the PSA, the city must, at a minimum, commit to recording (and making publicly available) for each project (1) the date on which the project application was determined or deemed to be complete, and (2) the date of the project's CEQA clearance (exemption, negative declaration, or certification of EIR), so that the city and the developer can know the date on which the project becomes "deemed approved" per the PSA. At that point, the planning review is complete by operation of law and the city has a duty to issue building permits.⁴⁵

⁴⁵ Government Code §§ 65943, 65950.

Recommendations

We share the City’s goal of producing a compliant housing element for the 2023-2031 RHNA cycle. We also appreciate the hard work the Planning Department has done on its housing element drafts to date. However, the City’s current analyses of both how much housing it is likely to accommodate under current policy and the impact of its proposed rezoning program are, unfortunately, highly unrealistic. We remind the Planning Department that **the City’s RHNA obligations require it to accommodate *four times* as much housing per year as it does currently—equivalent to accommodating a new 100-unit development every three days. The City’s draft housing element clearly does not present a plan to so dramatically increase how much housing the City accommodates.** The draft element also fails to affirmatively further fair housing because it does not present a plan that would accommodate new housing in well-resourced areas, and the draft element does not follow HCD’s explicit instructions to detail how it will comply with state fair housing laws.

As the City is well aware, failure to produce a compliant element would pose drastic consequences for State funding and allow developers to ignore City zoning and general plan requirements—including its inclusionary zoning requirements—when proposing new developments. Nor can the City assume that CEQA will act as a backstop to allow it to disapprove projects, as housing developments in the City with only 10% affordable units are likely to become exempt from CEQA review under SB 35 in several years if the City does not build the housing it promises.

In order to produce a compliant housing element, we believe the City’s housing element must therefore make the following changes:

- More accurately account for the number of units it is likely to accommodate under current policy and, correspondingly, the true size of its RHNA deficit.
- Propose specific, meaningful changes to City policies that constrain development, such as CEQA streamlining, by right ministerial review for all rezoned sites, eliminating or substantially curtailing discretionary review, eliminating conditional use permits for demolitions, removing the Board of Supervisors from project-level review, and substantially reducing the total per-square-foot cost of fees, exactions, inclusionary units, and requirements for bells and whistles like greywater treatment

systems. State law is clear that the City must also propose timelines for when these changes will come into effect. HCD further recommends that the City outline measurable outcomes to monitor success.

- Commit to completing an economic feasibility study of its rezoning plans and/or adjusting its claims of capacity based on a reasonable projection of the probability that rezoned sites will be developed.
- Commit to additional rezonings of *economically feasible* housing in well-resourced areas in order to accommodate its true RHNA deficit and affirmatively further fair housing.
- Commit to compliance with state fair housing laws, including the Housing Accountability Act, the State Density Bonus Law, and the Permit Streamlining Act, per HCD's explicit instructions to the City.

Sincerely,

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Appendix

In this Appendix, we elaborate in further detail on our analysis of the number of units the City is likely to accommodate under existing policy during the next RHNA period. Table A1 summarizes our analysis of the SF Planning Department's [March 2022 draft of its Housing Element Sites Inventory and Rezoning Program Report](#). In this Appendix we detail several areas where we believe the City's report significantly overstates the amount of housing it is reasonable to assume will be accommodated during the 2023-2031 RHNA cycle.

Table A1. Summary of Disputes with San Francisco Planning Projections

Category	Unit Counts		
	SF Planning's Analysis, March 2022 Report Draft	SF YIMBY Analysis	Difference
<i>Dispute with SF Planning Projections</i>			
Existing "Housing Pipeline" (DAs/Large Projects; Privately Funded Developments)	44,234	9,254	-34,980
Underutilized and Vacant Sites Modeled Estimate of Units	10,398	5,546	-4,852
100% Affordable Housing: Sites meeting Low Income Criteria and 100% Affordable Publicly Funded	10,518	1,661	-8,857
SB 9	1,500	320	-1,180
<i>No Dispute with SF Planning Projections</i>			
ADUs	2,000		
Affordable Preservation Rehab & Acquisitions	1,674		
Preservation Acquisitions	1,500		
<i>Totals</i>			
Units Accounted for by March 2022 Housing Sites Inventory and Rezoning Program Report	71,824	21,954	
2023-2030 RHNA Obligation with 15% Buffer	94,379	94,379	
Remaining Deficit from 2023-2031 RHNA Obligations (with buffer)	22,555	72,425	49,870

Overestimating “Housing Pipeline” Units Likely to Be Constructed

First, according to the Department’s Sites Inventory and Rezoning Program Report, San Francisco Planning proposes to count projects in the City’s housing pipeline with Planning Approval or Filings and with Building Permit Filings – but without approved building permits – towards its 2023-2031 RHNA obligations. In particular, the Report proposes to count:

- 25,683 units from DAs/Large Projects that have been entitled but do not have building permits (p. 9),
- 5,209 units from DAs/ Large Projects Not Yet Entitled that are not entitled and do not have building permits (p. 10), and
- 13,342 units from Privately Funded Developments without DAs in the pipeline that do not have building permits (p. 10)

towards the City’s RHNA obligations. These three categories total to 44,234 units in the City’s housing pipeline that the Report counts towards the City’s RHNA obligations, representing nearly half of the City’s 2023-2031 RHNA obligations.

The Report notes that these totals are adjusted and discounted, in the case of the first two categories, “to more realistically reflect units likely to be delivered within the period of 2023-2030” (p. 8) and, for the third category, “based on the rates of projects that are cancelled, expired, or withdrawn in each phase” (p. 9). However, the Report does not provide details on how these adjustments and discounts were made.

UC Berkeley professor David Broockman conducted an analysis of the number of units that are likely to receive approved or issued building permits or to start construction among those currently in the City’s housing pipeline and have not yet received building permits.⁴⁶ In particular, in order to form expectations about the 2023-2031 RHNA cycle, Broockman examined the eight most recent years in the City’s housing pipeline data,⁴⁷ Q1 2013 - Q4 2021, in order to estimate the probability that units in projects at various stages “in the pipeline” typically receive building permits or start construction within an eight year period.

⁴⁶ See https://drive.google.com/file/d/1gc8dEXA3ifCf7fjbTQ8bYwtRPMD4_OdT/view. Broockman’s figures did not count 5,124 units in the “Building Permit Filed” category. In correspondence, Broockman confirmed these units were not and should have been included, meaning his analysis *underestimated* the City’s RHNA deficit.

⁴⁷ <https://sfplanning.org/project/pipeline-report>.

HCD has previously endorsed this methodology for forecasting how many units a City is likely to accommodate.⁴⁸

Broockman found that only approximately 17% of units in San Francisco’s “housing pipeline” as of eight years ago but without building permits at that time received issued or approved building permits or started construction within the following eight years. Further, City data shows that 55,300 units are currently in its “housing pipeline” and do not yet have building permits. Combining these two figures (17% of 55,300) indicates that the City cannot reasonably count much more than approximately 9,254 of these 55,300 units currently “in the pipeline” without building permits towards its 2023-2031 RHNA obligations. By contrast, the City’s report assumes that 44,234—or 80%—of these units will receive building permits within the next eight years. **In other words, the City proposes to assume that the rate at which its housing projects “in the pipeline” will produce permitted housing will more than quadruple (17% to 80%) during the next RHNA cycle.**⁴⁹

Of course, it is possible that that pipeline yield over the next eight years will more than quadruple. But the trends documented in the city’s [DRAFT Analysis of Government and Non-Government Constraints Report](#) (Mar. 2022) if anything suggest the City should expect to see a decline in yield from its housing pipeline: construction costs have increased, and the Board of Supervisors has substantially increased fees, exactions, BMR mandates, and requirements for expensive design features like greywater systems. In fact, given these headwinds, the City’s pro-forma analysis found that, as a general matter, the only type of housing project that currently “pencils” in the city is a 24+ story apartment tower in an inner-ring, high-demand neighborhood. Under these circumstances, the yield from the pipeline over the last eight years should probably be treated as an *optimistic* proxy for the yield over the next RHNA cycle—unless the city can convincingly document economic feasibility and intended construction start dates for current pipeline projects *and* provide a

⁴⁸ In particular, HCD encouraged Los Angeles to consider “supporting information for past completion rates and identify the actual completion rate applied to pipeline project[s].” See <https://www.hcd.ca.gov/community-development/housing-element/docs/lanlacitydraft090321.pdf>.

⁴⁹ Even if the City wishes to quibble with the details of this analysis, the big picture is clear: its “pipeline” of units without building permits is only 44% larger than it was eight years ago, yet the City proposes to assume that its recent rate of housing construction will more than triple even absent other changes in City policy. Without significant policy changes, this assumption is untenable.

comparable retrospective analysis showing that the “pipeline prospects” were substantially worse eight years ago.⁵⁰

Overestimating Likely Construction on Underutilized and Vacant Sites

The City relied on a model from Blue Sky Consulting Group to estimate the probability that currently underutilized or vacant sites would be developed during the 2023-2031 RHNA cycle. We applaud the City’s decision to model the probability that these sites would accommodate housing during the 2023-2031 RHNA cycle. However, the City notes that Blue Sky’s model produces estimates of the amount of housing the City would produce on these sites over the next *thirty years*. The City’s draft housing element simply cuts Blue Sky’s 30-year estimates by 50% to account for the fact that its next RHNA period is eight years long, not 30 years long. But it seems more reasonable to multiply Blue Sky’s 30-year estimates by $\frac{8}{30}$, not $\frac{15}{30}$, given that the next RHNA period covers eight years, not 15 years. Multiplying Blue Sky’s forecasts by $\frac{8}{30}$ instead of $\frac{15}{30}$ yields an estimate of only 5,546 units that existing underutilized and vacant sites are likely to accommodate, or 4,852 fewer than the City assumes. By contrast, the City’s approach effectively assumes that the rate of housing production on underutilized and vacant sites would double during the next RHNA period.

The City also uses unrealistic assumptions to translate Blue Sky’s predictions into unit estimates, which predicts the *probability a parcel will be developed at all*, into *the number of units* a parcel is likely to accommodate. In particular, the City appears to assume that any developed parcel will result in the maximum number of units allowed under zoning. But this is unrealistic. For instance, the City elsewhere notes that “sculpting at or reduced upper stories to match two- or three-story environments” often makes it illegal to build at the maximum density zoning allows (constraints report, p. 24).

The City justifies its assumption that the rate of housing production on these sites would nearly double by noting that “the model analysis did not account for increased use of State Density Bonus, or the impact of SB 9 and other housing related legislation passed since 2020” (p. 15-16). However, the City’s reports also document a number of new unfavorable

⁵⁰ Even if the city could make this showing, it’s not clear that the housing element should rely on it or that HCD should accept it. The simple rule of thumb used in Broockman’s analysis (projecting pipeline yields from one planning period into the next) is hard to manipulate and creates good incentives for cities to facilitate the development of pipeline projects.

challenges to development that have arisen since the Blue Sky model was constructed, making it unreasonable to assume that the rate of housing production on underutilized and vacant sites would double during the next RHNA period.⁵¹ Moreover, the impact of SB 9 was already considered elsewhere in the element, meaning the City is double counting SB 9 units by relying on SB 9 for this justification.

In summary, the City has not presented a systematic analysis or justification regarding why the “other housing related legislation” the draft element references would more than double the City’s rate of developing these sites despite the new governmental and non-government headwinds that new housing also faces since 2020. Absent such an analysis, the City’s decision to roughly double Blue Sky’s estimates appears arbitrary, and it is more reasonable for the City to stick to Blue Sky’s original estimates—which, as we note, may already be overestimates given new headwinds to development in the City. The City must also explain and defend how it is translating Blue Sky’s estimates that a parcel will be developed into estimates of the number of units that those parcels will accommodate.

100% Affordable Housing: Sites Meeting Low-Income Criteria and 100% Affordable Publicly Funded

The City asserts that sites meeting low income criteria and publicly funded projects will accommodate 10,518 units in 100% affordable developments over the next eight years, a rate of 1,314 units per year. However, the City has only produced an average of 531 units in 100% affordable developments per year over the last five years.⁵² The number of such units developed per year has not been on an upward trajectory over the last five years,⁵³ nor does the City’s own report project that funding for 100% affordable developments will meaningfully increase during the next RHNA cycle; the City actually projects a decrease in such funding.⁵⁴ The City’s nearly 250% projected increase in 100% affordable housing development therefore appears without basis; the City offers no justification for why it is

⁵¹ As we note elsewhere, the trends documented in the city’s [DRAFT Analysis of Government and Non-Government Constraints Report](#) (Mar. 2022) if anything suggest the City should expect to see a decline in housing construction: construction costs have increased, and the Board of Supervisors has substantially increased fees, exactions, BMR mandates, and requirements for expensive design features like greywater systems. Indeed, a majority of developers “have no plans to keep building in San Francisco after their current projects are entitled” (p. 2).

⁵² https://sfplanning.org/sites/default/files/documents/reports/2020_Housing_Inventory.pdf, Table 25.

⁵³ *Ibid.*

⁵⁴ <https://www.sfhousingelement.org/draft-analysis-government-and-non-government-constraints-report>, Figure 3.

reasonable to expect its rate of affordable housing construction to increase so dramatically. As a consequence, HCD should not credit these units towards the City's RHNA obligations unless the City provides both documentation of funding sources and a more realistic, detailed assessment of the probability this housing would be accommodated.

Much of the City's proposed RHNA accommodations in this area arise from 8,688 units of housing the City argues will likely be developed on "sites meeting low income criteria." However, to reach this estimate, the City assumed that fully 50% of such sites would be developed during the 2023-2031 RHNA period, but provided no supporting evidence. We have been unable to locate comparable historical statistics on sites meeting this criteria in order to independently evaluate this claim, but it is unlikely any such evidence would be supportive of the City's assumptions: given the City has *never* before produced 1,086 units in 100% affordable developments in *any* year,⁵⁵ it seems unlikely that the City would average this number over the next RHNA period just in this subcategory of affordable housing development.

Overestimating SB 9's Impacts And Failing To Comply with HCD Rules on Forecasting SB 9's Impacts

The City predicts that SB 9 will produce 1,500 units during the 2023-2031 RHNA period. However, the city's draft element links to analyses of SB 9's impact from the City's Planning Department and from a consultancy it commissioned, Century | Urban.⁵⁶ Both analyses find that SB 9 would have essentially no impact in San Francisco as SB 9 lot splits and duplex conversions are economically infeasible in the City. Indeed, the City's report notes that it has only received ten SB 9 applications to date. Even assuming 100% of these applications result in completed projects, this suggests the City cannot reasonably assume it will receive any more than 40 SB 9 applications per year, many of which are not likely to add more than one unit. According to the Turner Center's analysis of SB 9, San Francisco SB 9 projects yield only 1.3 additional units per parcel where SB 9 would increase the number of economically feasible units.⁵⁷

⁵⁵ https://sfplanning.org/sites/default/files/documents/reports/2020_Housing_Inventory.pdf, Table 25.

⁵⁶

https://sfplanning.org/sites/default/files/documents/citywide/SB9_Summary_FinancialFeasibilityAnalysis.pdf.

⁵⁷ <https://turnercenter.berkeley.edu/wp-content/uploads/2021/07/SB-9-Brief-July-2021-Final.pdf>, page 13.

Finally, the draft element ignores HCD’s guidance about the numerous requirements its element must satisfy to count any SB 9 units towards its RHNA obligations. In particular, HCD guidelines explicitly indicate that the City must provide a list of the site-specific inventory of sites where its SB 9 projections are being applied; if the City wishes to count 1,500 units from SB 9 towards its RHNA obligations, it must provide an inventory of such sites.⁵⁸

⁵⁸ <https://www.hcd.ca.gov/docs/planning-and-community-development/sb9factsheet.pdf>, page 6.