

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Planning and Community Development

BOARD AGENDA # 6:35 p.m.

Urgent  Routine

AGENDA DATE April 20, 2010

CEO Concurs with Recommendation YES  NO

4/5 Vote Required YES  NO

(Information Attached)

SUBJECT:

Public Hearing to Consider Planning Commission's Recommendation for Approval of General Plan Amendment No. 2009-04, Housing Element

PLANNING COMMISSION RECOMMENDATIONS:

After conducting a duly advertised public hearing at its regular meeting of March 18, 2010, the Planning Commission, on a unanimous (8-0) vote, recommended the Board approve the project and take the following actions:

1. Adopt the Negative Declaration pursuant to CEQA Guidelines Section 15074(b), by finding that on the basis of the whole record, including the Initial Study and any comments received, that there is no substantial evidence the project will have a significant effect on the environment and that the Negative Declaration reflects Stanislaus County's independent judgement and analysis.

(Continued on page 2)

FISCAL IMPACT:

There are no fiscal impacts to the General Fund associated with this item. Direct costs for preparation of the update have been paid for with funds from the General Plan Maintenance Fund. Implementation of the various programs and measures defined in the Housing Element have the potential to increase property values in the unincorporated County, which could lead to increased property tax revenue throughout the planning horizon (2007-2014) and beyond.

BOARD ACTION AS FOLLOWS:

No. 2010-215

On motion of Supervisor O'Brien, Seconded by Supervisor Chiesa

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Monteith, DeMartini, and Chairman Grover

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) \_\_\_\_\_ Denied

3) \_\_\_\_\_ Approved as amended

4) \_\_\_\_\_ Other:

MOTION:

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

**PLANNING COMMISSION RECOMMENDATION: (Continued)**

2. Order the filing of a Notice of Determination with the Stanislaus County Clerk-Recorder's Office pursuant to Public Resources Code Section 21152 and CEQA Guidelines Section 15075.
3. Find that:
  - a. The General Plan Amendment will maintain a logical land use pattern without detriment to existing and planned land uses;
  - b. The County and other affected government agencies will be able to maintain levels of service consistent with the ability of the government agencies to provide a reasonable level of service; and
  - c. The project is consistent with the overall Goals and Policies of the Stanislaus County General Plan.
4. Direct staff to make the modifications to pages V-17 and VI-14 as requested by the California Department of Housing and Community Development (HCD) and add the 2002 Housing Conditions Survey to the General Plan Support Documentation.
5. Approve General Plan Amendment 2007 to 2014 Draft Housing Element Update, inclusive of the modifications.

**DISCUSSION:**

**Introduction.** The current Housing Element of the Stanislaus County General Plan was adopted by the Board of Supervisors in 2003. It is one of the State-mandated elements of any General Plan. As such, it must comply with State standards and also be internally consistent with other elements of the entire General Plan. The Housing Element is also unique in that it is the only element that is reviewed by the State and must be updated every five years. The purpose of the Housing Element is to:

- Assess housing needs of existing and future residents;
- Propose specific goals and implementation measures to meet housing needs; and
- Comply with the requirements of State law.

The Draft Housing Element Update (Attachment 1) was prepared by Planning and Community Development Department staff beginning in 2009, and a variety of forums were offered to maximize citizen participation.

The Draft Housing Element has been reviewed by the State Housing and Community Development Department (HCD), modified based on HCD's comments, and released for public review. On March 18, 2009, the Planning Commission considered the update to the Housing Element at a properly advertised public hearing and has forwarded a recommendation of approval to the Board for consideration.

**Regional Housing Needs Allocation.** The Housing Element must also respond to the Regional Housing Needs Allocation (RHNA), as proposed by the State Housing and Community Development Department (HCD) and the Stanislaus Council of Governments (StanCOG).

The overall housing numbers are determined by HCD based on their estimates of forecasted growth in households in the County. In 2007, HCD proposed that all of Stanislaus County would require 25,602 units for the 7-year period from January 2007 through June 2014. In 2007, StanCOG, with input from the Planning Directors from each of the nine cities and the County, distributed the required allocation among the ten jurisdictions. Based on those allocations, unincorporated Stanislaus County was required to provide adequate entitlement for 5,568 units.

It is important to note that the RHNA is a *planning target, not a development quota*. While State law requires cities and counties to demonstrate that their land use plans and regulations could accommodate the type and amount of housing identified in the RHNA, the law does not require that sites identified in the Housing Element as suitable for affordable housing be developed for that purpose. The law recognizes that cities and counties do not build housing, and development depends on many factors including property owner desires, interested builders, available financing, and prevailing market forces.

To determine whether the County has adequate sites with realistic capacity for development to commensurate with the RHNA, an analysis of vacant and underutilized parcels was conducted. The analysis included a review of recent development trends and a thorough review of potential development sites. The most significant aspect of this analysis deals with the capacity for new lower-income units.

Based on current allowable densities, as well as planned programs and projects to be implemented during the Housing Element period, the County can accommodate this allocation, and in fact has a dwelling unit capacity of 6,398 units.

The Housing Element also shows, through a variety of methods, that there is capacity within its residentially-zoned land categories that could respond to development for the very low- and low-income populations.

**Programs.** While demonstrating an adequate inventory of potential residential development sites commensurate with the RHNA is one of the most noteworthy issues related to the Housing Element, the update also proposes to continue implementing projects and programs designed to assist in the creation and strengthening of affordable housing. These include:

- First Time Home Buyer Program
- Home Buyer Counseling
- Density Bonus Ordinance

- Second Units
- Farmworker Housing
- Housing Rehabilitation
- Construction or rehabilitation of municipal services in unincorporated neighborhoods
- Consortium with the cities of Ceres, Turlock, Newman, Patterson and Waterford to access and use Home Investment Partnership (HOME) funds
- Community Block Grant (CDBG) and Home Investment Partnership (HOME) funds
- Land acquisition with Habitat for Humanity/Stanislaus
- Rehabilitate Farm Labor housing with Housing Authority of Stanislaus County
- Minor Home Repair Program with Housing Authority of Stanislaus County
- Homeless day and emergency shelters with Turlock

The Draft Housing Element Update also proposes a number of new programs for consideration that respond to the challenges of affordable housing opportunity within the unincorporated areas of Stanislaus County. Some are:

- Promote energy conservation features in new and rehabilitated assisted affordable housing to conserve resources and lower housing costs.
- Consider additional incentives to address housing for special need groups such as seniors, persons with disabilities, and large families.
- Address the requirements of new legislation regarding emergency shelters, transitional and supportive housing, as well as flood hazards and management.
- Establish minimum residential densities.
- In-fill development.

**Public Review and Comment.** The first draft of the Housing Element was released in December 2009. Prior to release, a survey was sent to a list of 51 housing-related service providers, City Managers of all nine incorporated cities, and community groups that represent low- and moderate-income households. A total of four community workshops advertised County-wide were offered in June 2009 throughout Stanislaus County in Oakdale, Crows Landing, Salida, and at the Stanislaus County Agricultural Center in the Modesto/Ceres area. All the Municipal Advisory Councils have received notices of all public meetings as well as a Draft Housing Element in December. Also, the draft Housing Element was placed on the Stanislaus County Planning and Community Development website for public review and input. Additionally, the General Plan Update Committee was presented progress reports as the update was prepared.

On February 1, 2010, staff received a letter from HCD dated January 29, 2010 (Exhibit A). HCD addressed four main topics: Housing Needs, Resources, and Constraints; Housing Programs; Quantified Objectives; and Public Participation. Within those general topics, HCD primarily requested additional data and analysis related to the various land and housing inventories provided and clarification regarding the implementation of existing and

planned programs and processes. HCD further requested clarification regarding Measure E (the 30-year Land Use Restriction Initiative passed by voters in 2008) and regarding implementation of the Salida Community Plan.

Staff responded to HCD's comments and incorporated the corrections, further analysis, and discussion within the revised "Draft Housing Element" under the appropriate sections.

On February 10, 2010, staff received a letter from the Building Industry Association of Central California (BIAOC). They addressed concerns over the County's share of housing, constraints on development, lack of residential zoning on non-prime farmland, lack of infrastructure limits of affordable housing, and removing governmental constraints. They requested an Environmental Impact Report for the Housing Element in lieu of a Negative Declaration. Staff appreciates the concern the BIA has on having a variety of housing, including affordable dwelling units. However, most of their concerns are in relation to future ramifications of the voters' initiative "Measure E", or in relation to the Salida Community Plan Initiative that was adopted by the Board in 2007.

Many of the issues and comments within the BIA letter were similar to those in the response from HCD and have been addressed in the revised Draft Housing Element. The revised Draft Housing Element responds to comments received from both the BIA and HCD, complies with all requirements of State Law, provides for a variety of housing types that can be available for all income levels including very-low income, and includes various programs and measures designed to reduce constraints to residential development and to the greatest extent possible and feasible to provide incentives for special needs groups.

**Planning Commission.** On March 18, 2009, the Planning Commission considered the update to the Housing Element of the Stanislaus County General Plan at a properly advertised public hearing. The complete staff report and analysis are provided as Attachment 1.

At the hearing, Steve Madison of the Central California Building Industry Association spoke in opposition. He addressed many of the same issues as were outlined in the BIA letter of February 10, including farmland mitigation, future impacts of Measure "E", Greenhouse Gas issues, depending too much on Salida for growth, and the perceived lack of housing opportunities for future Housing Elements.

The discussion section of the Planning Commission staff report had provided responses to these concerns and an overview of the various referral responses received during the California Environmental Quality Act (CEQA) referral/public review period.

The Planning Commission voted unanimously (8-0) to recommend the Board of Supervisors approve General Plan Amendment Application # 2009-04, based on the reasons stated in the March 18, 2010 staff report. The Planning Commission further requested that the Board add the 2002 Housing Conditions Survey that was done as Appendix A in the 2003 Housing Element and place it in the Support Documentation of the

General Plan. A detailed discussion of the request and staff's recommendation of approval can be found in the attached Planning Commission Staff Report.

**Post - Planning Commission Correspondence.** On April 1, 2010, staff received a phone call from HCD requesting additional clarification of two topics regarding the Salida Community Plan Development and Air Pollution Control District fees. HCD requested the additional information be inserted into the Draft Housing Element for their final review.

The modifications are:

Salida Community Plan Page V-17; Last sentence of second paragraph to read:

"Prior to development of any phase of the project, these current plans will be finalized to meet the specific needs of each phase and formally adopted."

Air Pollution Control District fees Page VI-4; Insert following new paragraph after paragraph regarding fire and school district fees:

"In December of 2005, the San Joaquin Air Pollution Control District adopted Rule 9510, known as the 'Indirect Source Rule', as part of the District's overall Rules and Regulations. The purpose of the Indirect Source Rule is to achieve emissions reductions from the construction and use of development projects through design features and on-site measures, as well as off-site measures. Each residential development of 50 or more units is subject to the Indirect Source Rule, and must supply an Air Impact Assessment (AIA) for the project and each phase thereof, and is subject to applicable fees. The fees (\$9,350/ton for NOx emissions; \$9,011/ton for PM-10 emissions) vary greatly for each project, depending on the size, location, features, etc., and are based on the sum necessary to offset emissions not reduced on-site. For this reason, the Indirect Source Rule fees are not generalized or standardized, but if applicable to a project, would impact the cost of development at all income levels. For properties identified with development potential within the timeframe of this Housing Element, primarily those within the Salida Community Plan are large enough to accommodate development of projects larger than 50 residential units, thereby triggering the Indirect Source Rule, while smaller projects throughout the unincorporated County would be exempt. Stanislaus County, through various policies and programs contained in this Housing Element is committed to utilizing available resources (i.e. financial assistance, density bonuses, fee deferrals, etc.) to assist in the provision of adequate, affordable housing for all residents of all income groups, which will be extended to land developed within the Salida Community Plan. "

Based on language in Government Code Section 65356, substantial modification to the Planning Commission's recommendation should be returned to the Commission prior to Board of Supervisors final action. The proposed modifications as requested by HCD are not, in staff's opinion, substantive enough to require additional Commission review.

**Next Steps.** The next step in adoption of the Housing Element Update is for the Board of Supervisors to hold a public hearing and consider the Planning Commission's recommendation for approval. Should the Board approve the update, staff will forward the adopted Housing Element to HCD for final State certification.

If HCD requests further substantive modifications to the Housing Element after adoption by the Board, those changes would be brought back to the Planning Commission and Board for approval. If, however, HCD simply requests additional data or clarification, staff can respond as necessary without the need for additional hearings.

**POLICY ISSUES:**

The Board should determine if approval of this proposed General Plan Amendment furthers the goals of a well-planned infrastructure system and a strong local economy.

**STAFFING IMPACT:**

There are no staffing impacts associated with this item.

**CONTACT PERSON:**

Kirk Ford, Planning and Community Development Director. Telephone: (209) 525-6330

**ATTACHMENTS: (ALL ATTACHMENTS AVAILABLE FROM THE CLERK)**

1. Draft Housing Element with modifications requested by HCD

2. Planning Commission Memo, March 18, 2010

Exhibit A: Letter from Department of Housing and Community  
Development dated January 29, 2010

Exhibit B: Letter from Department of Housing and Community  
Development dated December 17, 2007

Exhibit C: Letter from Building Industry Association of Central California  
dated February 10, 2010

Exhibit D: Initial Study

Exhibit E: Negative Declaration

Exhibit F: Environmental Review Referrals

Exhibit G: Draft 2007-2014 Housing Element Update

3. Planning Commission Minutes, March 18, 2010

*original rec'd*  
BOARD OF SUPERVISORS

2010 APR 21 P 2:12

April 20, 2010

Via Email – GroverJ@StanCounty.com, and  
FedEx – Airbill No. 8704 0621 3540

The Honorable Jeff Grover  
Chairman, Board of Supervisors  
County of Stanislaus  
1010 – 10th Street  
Modesto, California 95354

400 Capitol Mall, Eleventh Floor  
Sacramento, CA 95814  
916.558.6000 : 916.446.1611 FAX  
: www.weintraub.com

 MERITAS LAW FIRMS WORLDWIDE

Douglas L. White  
916.558.6022 DIRECT  
dlwhite@weintraub.com

Re: Housing Element, General Plan Amendment No. 2009-04

Dear Chairman Grover:

We have been retained by the Building Industry Association of Central California ("BIACC") to address concerns regarding Stanislaus County's (the "County") proposed adoption of the 2009-2014 Housing Element update to the County's General Plan (the "Proposed Housing Element"). This letter supplements the BIACC's letter to Stanislaus County Senior Planner Bill Carlson dated February 10, 2010, in which the BIACC detailed several of its concerns related to the adequacy of the County's planning and environmental review of the Proposed Housing Element (the "Planning Commission Letter"). We have enclosed a copy of this letter for your review as Enclosure 1.

We have reviewed the administrative record, planning process, and planning documents associated with the Proposed Housing Element and find them wholly inadequate under state law. In particular, the Proposed Housing Element's constraint analysis is deficient and inconsistent with prior findings of the County's planning department. The adoption of a negative declaration in connection with the Proposed Housing Element is also inconsistent with state law and the requirements of the California Environment Quality Act (CEQA). The goals, policies, and objectives in the Proposed Housing Element will undoubtedly have a significant effect on the environment, the location, and affordability of local housing, traffic patterns, and the incorporated cities within the County. We request that the Board of Supervisors reject adoption of the Proposed Housing Element at this time and remedy the deficiencies identified by the BIACC and the California Department of Housing and Community Development, Division of Housing Policy Development ("HCD").

{1192012.DOC}



The Honorable Jeff Grover  
April 20, 2010  
Page 2 of 6

I. The County's Proposed Housing Element Fails to Adequately Discuss Constraints on the Development of Affordable Housing Within the County.

A. Measure E

State law requires each county, when updating the housing element of its general plan, to analyze "potential" and "actual" governmental constraints on the development of housing for all economic segment of the community. (Govt. Code § 65583(a)(5)). This analysis must look at, among other things, land use controls, fees, and exactions required of developers, and local processing and permit procedures. (*ibid*). As referenced on page 6 of the County's Planning Commission Memo, dated March 18, 2010, and enclosed hereto as Enclosure 2 ("Planning Commission Staff Memo"), Measure E is a thirty (30) year "land use restriction" requiring a majority vote of the County voters on any proposal to redesignate or rezone unincorporated land from an agricultural or open space use to a residential use. Accordingly, Measure E is by definition a land use control, which is a constraint on the development of housing within the County and pursuant to Government Code section 65583(a)(5) and must be analyzed as a constraint in the Proposed Housing Element.

County staff has indicated that they do not believe Measure E is a constraint on housing but, rather, designates the only location in the County where large tracts of vacant land are zoned for residential development. (see Planning Commission Staff Memo, p. 7.) This position is in direct contrast to other written, published opinions of County staff. For instance, in the Community Development Block Grant Consortium, Draft Annual Action Plan for Fiscal Year 2010-2011 (the "Action Plan"), County staff indicated that, "[d]ue to the passage of Measure E, zoning for housing development within the county unincorporated area needs the provision of a ballot measure, which greatly increases the barriers to affordable housing ..." (see Action Plan, p. 25.) A copy of the Action Plan is enclosed as Enclosure 3. The County's view of Measure E as a constraint on development, and affordable housing in particular, is developed with more specificity in the Community Development Block Grant Consortium's Analysis of Impediments, Fiscal Year 2009 (the "Analysis of Impediments"), which states explicitly that Measure E is a "constraint" on the development of affordable housing. (See Analysis of Impediments, p. 27.) A copy of the Analysis of Impediments is enclosed as

{1143547.DOC;}

The Honorable Jeff Grover  
April 20, 2010  
Page 3 of 6

Enclosure 4. The Analysis of Impediments further states that, “[c]learly, Measure E can be expected to act as a deterrent to new private housing development. In the current economic climate, these impacts may not be noticeable, but once a recovery is underway and new housing development again becomes viable, the deterrent effect could be substantial.” (See Analysis of Impediments, p. 33.) In fact, the Analysis of Impediments goes so far as to state that, “[i]t is appropriate to identify Measure E as a possible future impediment, and the effect of the measure should be analyzed in subsequent” housing impediment analyses. (*Ibid*). Both HCD and the BIACC have identified Measure E as a constraint on the development of housing within the County, and we respectfully request that the County analyze the effects of Measure E on development of housing prior to adopting the Proposed Housing Element.

**B. Measure E Exemption Process**

The Planning Commission Staff Memo appears to indicate that Measure E is not a constraint on the development of housing due to the four (4) specific exemptions to the voter approval requirements included in Measure E. This position is, however, again contrary to other published opinions and reports of the County. For instance, on page 33 of the Analysis of Impediments, the reports states, “[t]he certification, hearing and other requirements imposed before these exceptions may be utilized may, in and of themselves, act as a restraint on new affordable housing development in those unincorporated areas of the [County] that need such housing the most – the heavily minority neighborhoods around Modesto and the County’s other incorporated areas.” Therefore, it is our determination that the exemptions in Measure E are, in and of themselves, constraints on the development of housing that must also be analyzed in the Proposed Housing Element before its adoption.

**II. The Proposed Housing Element Will Have a Significant Environmental Impact on the Environment and Requires the Preparation of an Environmental Impact Report Rather Than a Negative Declaration.**

A County may only prepare a negative declaration for a project where there is no evidence that a project “may” have a significant effect on the environment. (Cal. Code Regs., § 15070.) When a County is presented with a “fair argument” that a project may have a

{1143547.DOC;}

The Honorable Jeff Grover  
April 20, 2010  
Page 4 of 6

significant effect on the environment, the County must prepare an environmental impact report even though it may also be presented with other substantial evidence that the project will not have a significant effect (Cal. Code Regs., § 15064(f)(1); *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68.)

The County last updated its general plan housing element in 2003. Since that time, the County has created a policy of preserving and encouraging commercial and retail development within the unincorporated areas of the County and residential development within the cities. This policy has had the effect of likely decreasing the availability of affordable housing within the County. The County has also taken dramatic steps to support and push forward economic development on the west side of the County, in and around Crows Landing and Interstate 5, while at the same time pushing virtually all future residential development to the eastern part of the County, in and around Salida and Highway 99. The cumulative effect of these County policies, as reflected in the Proposed Housing Element, will likely have the effect of requiring County residents to drive from the eastern to the western part of the County to find work. This increased vehicular travel will impact traffic and air quality within the County and make it more difficult for the region to meet the carbon reduction requirements of Assembly Bill 32 (Statutes of 2006, Chapter 488) and Senate Bill 375 (Statutes of 2008, Chapter 728).

Taking into account Measure E and the other land use policies included in the Proposed Housing Element, the County has seen a monumental shift in policies, constraints, and factors affecting the way housing can be built in the unincorporated area of the County. Following adoption of the County's past housing element, policy decisions have been made that are reflected in the Proposed Housing Element that directly impact how far residents will have to drive to seek employment, the affordability of new homes, and whether any new homes can feasibly be developed within the unincorporated areas of the County. These goals, policies, and objectives are reflected in, and are part of, the Proposed Housing Element and are likely to have a significant effect on the environment. We, therefore, request that the County prepare an environmental impact report for consideration prior to the adoption of the Proposed Housing Element.

{1143547.DOC}

The Honorable Jeff Grover  
April 20, 2010  
Page 5 of 6

### III. Summary

We appreciate the opportunity to comment on the Proposing Housing Element on behalf of the BIACC. As the local representative of homebuilders and associated professionals, the BIACC is in a unique position to provide meaningful comment on the impact of the Proposed Housing Element on the development of housing for all economic segments within the County. It is the BIACC's firm desire to work cooperatively with the County to meet all of the regional housing needs of the community. Accordingly, we have made the County aware of several items in the Proposed Housing Element that require further attention.

At this time, the Proposed Housing Element's constraint analysis is deficient and inconsistent with the prior findings of the County's planning department. Further, given the significant changes in goals, policies, and objectives reflected in the Proposed Housing Element, there is more than a fair argument that these changes will result in a significant environmental impact. It is our determination that the County is required to prepare an environmental impact report prior to adopting the Proposed Housing Element. The BIACC will not be appearing in person at the Board of Supervisors hearing on April 20, 2010, when this matter is discussed ("Hearing"). We, therefore, request that this letter and the Planning Commission Letter serve as the BIACC's public comment at the Hearing.

Please feel free to call me at (916) 558-6022 if you require further information about this letter or its enclosures.


{1143547.DOC}

The Honorable Jeff Grover  
April 20, 2010  
Page 6 of 6

Thank you for your consideration.

Respectfully submitted,

weintraub genshlea chediak  
a law corporation

A handwritten signature in black ink, appearing to read 'Douglas L. White', is written over the firm name. The signature is stylized and somewhat illegible.

Douglas L. White  
*Attorney at Law*

DLW/ens  
enclosures

cc: (w/enclosures)

Cathy E. Creswell, Deputy Director, Dept. of Housing and Community Development  
Supervisor William O'Brien, via email – [ObrienW@StanCounty.com](mailto:ObrienW@StanCounty.com)  
Supervisor Vito Chiesa, via email – [vito.chiesa@StanCounty.com](mailto:vito.chiesa@StanCounty.com)  
Supervisor Dick Monteith, via email – [MonteithD@StanCounty.com](mailto:MonteithD@StanCounty.com)  
Supervisor Jim DeMartini, via email – [DeMartiniJ@StanCounty.com](mailto:DeMartiniJ@StanCounty.com)

{1143547.DOC}

**ENCLOSURE 1**



BUILDING INDUSTRY ASSOCIATION  
OF CENTRAL CALIFORNIA

*Serving Mariposa, Merced, Stanislaus and Tuolumne Counties*

February 10, 2010

Stanislaus County  
Planning and Community Development Department  
1010 - 10<sup>th</sup> Street, Suite 3400  
Modesto, CA 95354

Attention: Bill Carlson, Senior Planner

RE: General Plan Amendment Application No. 2009-04,  
Housing Element Update

Dear Mr. Carlson:

As the Executive Officer of the Building Industry Association of Central California ("BIACC"), I am writing to express the concerns of the BIACC regarding the County of Stanislaus' ("County") proposed General Plan Amendment Application No. 2009-04 – Housing Element Update ("Housing Element"), and the associated Initial Study and Notice of Intent to Adopt a Negative Declaration. It is our determination that the Housing Element and Initial Study are wholly inadequate under state law and that the adoption of the Housing Element will have a significant effect on the environment, requiring preparation of an environmental impact report rather than adoption of a negative declaration. Below are our comments and analyses of these documents.

I. Housing Element

A. Failure to Explain Transfer of Housing Needs Allocation to Cities

The Housing Element fails to explain the County's initial regional housing needs allocation and the transfer of part of its regional housing obligations to cities within the County. A housing element must quantify and document a jurisdiction's existing and projected housing needs for all income levels.<sup>1</sup> Documentation and quantification of regional housing needs must include a discussion of any housing need allocation assigned to that jurisdiction, including those allocations that are later reduced.<sup>2</sup>

<sup>1</sup> Government Code § 65583(a)(1).

<sup>2</sup> Ibid.

Documentation of any reduction in a county's share of regional housing needs must also include information on the exact number of housing units transferred to cities within the county, including information on any agreement or documentation related to any such transfer.<sup>3</sup>

The Housing Element does not include any discussion, documentation or quantification of the methods by which the Stanislaus Council of Governments allocated the regional housing needs amongst the jurisdictions within the County.<sup>4</sup> There is no discussion of the County's initial regional housing needs allocation. Also missing is a discussion of how or why this allocation was reduced and information regarding which cities agreed to assume the County's housing obligation and the amount, by income category, they each assumed.<sup>5</sup> The Housing Element is defective because it fails to include this required information.

## **B. Failure to Discuss Constraints on Development**

Pursuant to Government Code section 65583(a)(5), a Housing Element must include an analysis of potential and actual governmental constraints upon the maintenance, improvement, and development of housing of all income levels within a jurisdiction. The constraints analysis in the Housing Element is deficient by, among other things, failing to fully discuss the effect and impact of the County's housing and land use policies and decisions. The following are a sampling of some of the constraints on development that should have been considered or discussed in the Housing Element.

### **1. Shift of County's Share of Housing Obligations**

The Housing Element will shift some of the County's regional housing obligations to different cities within the County.<sup>6</sup> Those housing units shifted from the County will now be required to pay both County and city development fees.<sup>7</sup> This will have the effect of increasing the cost of constructing these housing units and, in particular, making it more difficult for these homes to be constructed at an affordable level. The shift of the County's regional housing obligation to the cities is a constraint on development because it has the effect of increasing the cost of constructing part of the

---

<sup>3</sup> See Government Code § 65584.07(a)(1).

<sup>4</sup> Councils of government are authorized to determine existing and projected regional housing needs in conjunction with the Department of Housing and Community Development. See Government Code § 65584(b).

<sup>5</sup> See Stanislaus Council of Government's 2007-2014 Regional Housing Needs Allocation Plan for Stanislaus County, p. 9, regarding the regional housing needs allocation methodology and initial allocation.

<sup>6</sup> Ibid.

<sup>7</sup> Housing units built in the County are only required to pay County development impact fees, rather than both County and city fees.



region's identified housing needs. The increase in fees will also make it more difficult for the region to develop and meet its identified affordable housing needs. The effect of the shift in the County's regional housing obligation is a matter that requires discussion in the Housing Element's constraint analysis.

## **2. Lack of Residentially Zoned Land on Non-Prime Farmland**

The Housing Element fails to indicate that a significant amount of the land zoned for affordable housing and residential development is located on prime farmland and subject to the County's costly agricultural mitigation requirements.<sup>8</sup> According to the Housing Element, the County has a residential development potential of 6,359 units. Those units identified by the County for future development in the Housing Element, particularly those identified for development of very low or low income housing, are largely located on prime farmland.<sup>9</sup> The County's agricultural land mitigation policies require costly mitigation of any prime farmland taken out of production.<sup>10</sup> Such mitigation requirements will dramatically increase the cost of developing these affordable housing areas. Additionally, the mitigation requirements may in fact cause development of these areas to be infeasible if there are no reasonable locations where agricultural mitigation can be implemented.<sup>11</sup> The County's disproportionate allocation of affordable housing on prime farmland and the lack of adequate non-prime farmland alternatives for development of affordable housing will likely result in affordable housing not being built in many of the identified areas and, thereby, cause the County to fail to meet its share of regional housing needs.

## **3. Lack of Infrastructure Limits Development of Affordable Housing**

A significant amount of the areas identified in the Housing Element for future development of affordable housing cannot be developed until basic infrastructure is installed.<sup>12</sup> The cost of installing the infrastructure acts as a significant barrier to development and makes it very unlikely that these areas will ever be developed, be developed affordably, or in the way envisioned in the Housing Element. This lack of

---

<sup>8</sup> See Salida Community Plan, including Board of Supervisors Resolution No. 2007-627; Policy 2.15, Agricultural Element, Stanislaus County General Plan.

<sup>9</sup> See Salida Community Plan.

<sup>10</sup> Policy 2.15, Agricultural Element, Stanislaus County General Plan.

<sup>11</sup> Stanislaus County Farmland Mitigation Program Guidelines, Methods of Mitigation of the Agricultural Element of the Stanislaus County General Plan, requiring satisfaction of farmland mitigation requirement by direct acquisition of an agricultural conservation easement or banked mitigation credits.

<sup>12</sup> See Salida Community Plan; Housing Element, p. V-19, stating that "[p]rior to new development occurring within the Salida Community Plan, however, it will be required that the Salida Wastewater Treatment Plant be expanded or upgraded and/or a new plant constructed to provide capacity, and that an adequate supply of water is ensured."

required infrastructure acts as a limit on growth and development of affordable housing in particular. It also makes it very unlikely that the County will be able to meet its share of regional affordable housing needs.

#### **4. Indirect Source Rule**

The Housing Element fails to discuss the cost or effect of compliance with the San Joaquin Valley Air Pollution Control District's Indirect Source Rule.<sup>13</sup> The Indirect Source Rule requires developers to pay fees for emissions a project is estimated to generate both during and after construction.<sup>14</sup> The fees associated with the Indirect Source Rule make it more difficult to develop housing and, in particular, affordable housing.

The Housing Element's reliance, identification and prioritization of meeting its share of regional housing needs through development in Salida may increase the cost of compliance with Indirect Source Rule. By locating future residential development away from areas identified for future job growth, such as Crows Landing, the Housing Element will increase the indirect effects that may be attributed to a housing project (i.e. increase in vehicle emissions).<sup>15</sup> Such indirect effects may require payment of a larger Indirect Source Rule fee, make it more expensive to build a home, and less likely the County will be able to meet its regional housing needs, particularly for those families that require affordable housing. The Housing Element is therefore deficient because it fails to discuss the effect of the Indirect Source Rule, including the associated fees and costs, on the development of housing for all income levels.

#### **C. Failure to Discuss Feasibility of Removing Governmental Constraints**

Government Code section 65583(c)(3) requires the County to address and, where legally possible, remove governmental constraints to the maintenance, improvement, and development of housing for all income levels. The Housing Element fails to include any discussion regarding the feasibility of modifying or eliminating some of the governmental constraints to the development of housing.

---

<sup>13</sup> Rule 9510 of the San Joaquin Valley Air Pollution Control District's rules and regulations is known as the "Indirect Source Rule."

<sup>14</sup> Id at §§ 7.0 and 7.2.

<sup>15</sup> See Stanislaus County Board of Supervisors Resolution No. 2008-297, approving West Park Project located at the former Crows Landing Naval Air Station.

#### **D. Public Participation**

Pursuant to Government Code section 65583(c)(7), the County must engage in a diligent effort to achieve public participation of all economic segments of the community in the development and adoption of a housing element. The public participation process must be outlined and an explanation provided regarding how this input was incorporated. The proposed Housing Element fails to discuss the County's effort to achieve public participation in the Housing Element from all economic segments. It also fails to discuss how the public participation process was used to form the housing element.

#### **E. Appropriateness of Goals, Objectives and Policies**

In accordance with Government Code section 65588(a), in the Housing and Community Development's ("HCD") Housing Element Review Worksheet, HCD describes a housing element as requiring "[a] description of how the goals, objectives, policies and programs of the updated element incorporate what has been learned from the results of the previous element." The Housing Element fails to analyze the County's 2003 Housing Element's goals and objectives and fails to state what was learned from implementing the prior goals and objectives and how that knowledge shaped the Housing Element.

## **II. CEQA**

### **A. Initial Study**

In accordance with section 15063(a) of the California Code of Regulations, a public entity must conduct an initial study to determine if a project may have a significant effect on the environment.<sup>16</sup> If the public entity determines that there is not substantial evidence that a project may have a significant effect on the environment, a negative declaration can be prepared.<sup>17</sup> If, however, the public entity is presented with a fair argument that a project may have a significant effect on the environment, the public entity is required to prepare an environmental impact report even though there may also be substantial evidence that the project will not have a significant effect.<sup>18</sup>

---

<sup>16</sup> See the Guidelines for California Environmental Quality Act, California Code of Regulations, Title 14, Chapter 3 §§ 15000 – 15387 ("CEQA Guidelines"); CEQA defines a "project" as an action, which has a potential for resulting in either a direct change in the environment, or a reasonably foreseeable indirect physical change in the environment. Public Resources Code § 21065; California Code of Regulations § 15378.

<sup>17</sup> California Code of Regulations, Guidelines for California Environmental Quality Act, § 15064(f)(3).

<sup>18</sup> No Oil, Inc. v. City of Los Angeles (1974) 13 Cal.3d 68.

It is our determination that the Housing Element will have a significant effect on the environment. The County should prepare an environmental impact report and analyze the impact of the Housing Element on land use, circulation, and air quality. An environmental impact report should analyze, in particular, the Housing Element's reliance on residential growth in Salida to largely meet the County's housing needs. The County should further analyze the greenhouse gas and climate change impact of the Housing Element, its consistency with the Stanislaus Council of Governments regional transportation plan ("RTP") and the ways in which its housing and land use policies contribute to global warming. While the BIACC does not support certain climate change legislation, we do recognize that approval of the Housing Element will have a negative impact on the cities within the County by making it more difficult for the region to comply with the greenhouse gas reduction targets and requirements of Assembly Bill 32, Senate Bill 375 and other climate change legislation.<sup>19</sup>

The Housing Element relies on encouraging residential growth in Salida, in the northeastern part of the County along Highway 99, to meet approximately half of the County's regional housing needs allocation.<sup>20</sup> However, future job growth in the County is expected to be concentrated near Crows Landing, in the southwestern part of the County along Interstate 5.<sup>21</sup> By relying on residential growth in Salida, rather than evaluating opportunities for residential growth in any of the numerous other unincorporated areas closer to Crows Landing and the West Park project, the Housing Element will, in effect, increase traffic and impact air quality. Workers commuting from Salida to Crows Landing will drive approximately 50 miles per day to get to and from work, including approximately 15 miles on congested Highway 99 and approximately 40 miles on rural, two-lane roads. In contrast, if the Housing Element designated areas such as Cowan Tract, Crows Landing, Keyes, or South Ceres for additional residential growth, the potential impact on traffic and air quality would be substantially less than under the proposed Housing Element.

The County should prepare an environmental impact report to analyze the impact of residential growth in Salida as designated in the Housing Element. In addition, the County should revise the Housing Element to also encourage residential growth in areas closer to employment centers and areas of high job growth.

---

<sup>19</sup> Assembly Bill 32, Statutes of 2006, Chapter 488; Senate Bill 375, Statutes of 2008, Chapter 728.

<sup>20</sup> Housing Element, p. V-1, discussing potential accommodation of approximately 5,000 new units within the area included in the Salida Community Plan.

<sup>21</sup> See Stanislaus County Board of Supervisors Resolution No. 2008-297, approving West Park Project located at the former Crows Landing Naval Air Station.

## **B. Negative Declaration**

A public agency can prepare a negative declaration when the initial study shows that there is not substantial evidence or a fair argument that, in light of the whole record before the public agency, the project may have a significant effect on the environment.<sup>22</sup> As discussed above, there is significant evidence that the Housing Element will have an effect on land use, circulation, and air quality in the County. The Housing Element is likely to encourage an increase in vehicle carbon emissions and contribute to global warming. There is more than a fair argument that the Housing Element will have substantial impact on the environment. It is, therefore, only appropriate that the County prepare an environmental impact report to analyze these environmental issues and potential ways that these impacts may be avoided or mitigated.

## **IV. Conclusion**

The BIACC supports the County's effort to address its future housing needs. The housing element is an important part of the County's General Plan and indicates, in part, how the County will help meet the regional housing needs of all economic segments of the community. We do encourage the County to reassess its finding in the Initial Study and the high likelihood that the Housing Element may have substantial environmental impacts on the region's land use, circulation, and air quality. We also believe that the County should determine the Housing Element's consistency with the regional transportation plan and the likelihood that adoption of the plan will encourage an increase in carbon emissions and potentially contribute to global warming. We urge the County to develop an alternative land inventory that provides ample residential development opportunities that do not impact prime farmland and allow for construction of affordable homes for all economic segments of the Stanislaus community.

We look forward to working with County and providing staff with constructive comments on the Housing Element.

Sincerely,



Steve Madison  
Executive Vice President, Building Industry Association of Central California

---

<sup>22</sup> California Code of Regulations, Guidelines for California Environmental Quality Act, § 15070(a).

**ENCLOSURE 2**



March 18, 2010

MEMO TO: Stanislaus County Planning Commission  
FROM: Stanislaus County Department of Planning and Community Development  
SUBJECT: **GENERAL PLAN AMENDMENT 2007 to 2014 DRAFT HOUSING ELEMENT UPDATE**

### BACKGROUND

The current Housing Element of the Stanislaus County General Plan was adopted by the Board of Supervisors in 2003. It is one of the State-mandated elements of any general plan. As such, it must comply with State standards and also be internally consistent with other elements of the entire general plan. The Housing Element is also unique in that it is the only element that is reviewed by the state and must be updated every five years. The purpose of the Housing Element is to:

- Assess housing needs of existing and future residents;
- Propose specific goals and implementation measures to meet housing needs; and
- Comply with the requirements of state law.

The Draft Housing Element Update was prepared by Planning Department staff beginning in 2009. The preparation was guided by five (5) goals. They are:

- Identification of adequate sites that will be made available;
- Assisting in the development of housing affordable to low-income (80% or less of median) and moderate-income (80-120% of median) households;
- Addressing, and where possible, removing governmental constraints;
- Conservation of and improvement in the condition of existing affordable housing stock; and
- Promotion of housing opportunities for all persons (fair housing program).

Also included among the provisions of California Housing Element Law are requirements that:

- The County adopt, as a minimum goal, a share of the projected regional growth in low- and moderate-income households as determined by the council of governments operating within the region (Stanislaus Area Association of Government for Stanislaus County);
- Financial resources be identified that can make the construction of low- and moderate-income households feasible; and
- Existing housing affordable to low- and moderate-income households be conserved, especially federally or state subsidized housing that may convert to market-rate housing within the time frame of the Housing Element.

Citizen participation is very important in the development of a housing element. A variety of forums described below were offered to maximize participation. A survey was sent to a list of 51 housing-related service providers, City Managers of all nine incorporated cities, and community groups that represent low- and moderate-income households. A total of four community workshops advertised County-wide were offered in June 2009 throughout the County in Oakdale, Crows Landing, Salida, and at the Stanislaus County Agricultural Center in the Modesto/Ceres area. All the Municipal Advisory Committees have received notices of all public meetings as well as a Draft Housing Element in December. Also, the draft Housing Element was placed on the Stanislaus County Planning and Community Development website for public review and input. Additionally, the General Plan Update Committee was presented progress reports as the Update was prepared.

**DISCUSSION**

**Regional Housing Needs Allocation**

The Draft Housing Element Update (Exhibit G) must respond to the Regional Housing Needs Allocation (RHNA), as proposed by the State Housing and Community Development Department (HCD) and the Stanislaus Council of Governments (StanCOG).

The RHNA is a key tool for local governments to plan for anticipated growth and quantifies the anticipated need for housing within each jurisdiction. The overall housing numbers are determined by HCD based on their estimates of forecasted growth in households in the County. In 2007, HCD proposed that all of Stanislaus County would require 25,602 units for the 7½-year period from January 2007 through June 2014. StanCOG, with input from the Planning Directors from each of the nine cities and the County, distributed the required allocation among the ten jurisdictions as follows:

**HOUSING UNIT DISTRIBUTION**

Jurisdiction	No. of Housing Units
Stanislaus County	5,568
Ceres	1,819
Hughson	282
Modesto	11,130
Newman	421
Oakdale	983
Patterson	686
Riverbank	894
Turlock	3,461
Waterford	357
Total	25,602



It is important to note that the RHNA is a *planning target, not a development quota*. While state law requires cities and counties to demonstrate that their land use plans and regulations could accommodate the type and amount of housing identified in the RHNA, the law does not require that sites identified in the Housing Element as suitable for affordable housing be developed for that purpose. The law recognizes that cities and counties do not build housing, and development depends on many factors including property owner desires, interested builders, available financing, and prevailing market forces.

To determine whether the County has adequate sites with realistic capacity for development commensurate with the RHNA, an analysis of vacant and underutilized parcels was conducted. The analysis included a review of recent development trends and a thorough review of potential development sites. The most significant aspect of this analysis deals with the capacity for new lower-income units.

Based on current allowable densities, as well as planned programs and projects to be implemented during the Housing Element period, the County can accommodate this allocation. The following provides a Summary of Residential Development Potential in each of the various zoning districts within the unincorporated county.

**SUMMARY OF RESIDENTIAL DEVELOPMENT POTENTIAL**

<b>Zone</b>	<b>Number of Parcels</b>	<b>Number of Acres</b>	<b>D.U. Capacity</b>
R-A	196	217.18	194
R-1 (incl SCP-R-1)	153	929.22	3,161
R-2 (incl SCP-R-2)	61	228.53	1,422
R-3 (incl SCP-R-3)	56	75.79	1,056
A-2	34	22.5	19
SP-1	286	185.99	292
H-1	5	2.16	3
P-D	193	193.34	251
<b>TOTAL</b>	<b>984</b>	<b>1854.71</b>	<b>6,398</b>

The State further requires the County allocate specific percentages of the total 5,568 units into income categories linked to median income ("AMI"). Median income for a family of four in 2009 for Stanislaus County is \$59,600. Many state housing requirements and programs are based on "lower-income" guidelines, which consist of the very-low- and low-income categories taken together. For example, in all jurisdictions within Stanislaus County "lower-income" (below 80% of the AMI) means households with a total income of no more than \$47,680 per year, adjusted for family size.

Based on HCD guidance, Stanislaus County is required to maintain the capability to provide the following housing allocations based on income level:

**HOUSING ALLOCATION PER INCOME CATEGORY**

Income Classification	Percentage	Number of Units	Income
Very Low	23.3%	1,298	Below 50% of median (\$29,800)
Low	16.3%	910	50%-80% of median (\$29,800 - \$47,680)
Moderate	19.3%	1,073	80%-120% of median (47,680 - \$71,520)
Above Moderate	41.1%	2,287	above 120% of median (\$71,520)
Total	100%	5,568	

Source: Stanislaus Council of Governments Note: AMI (Area Median Income)

The Housing Element must show that there is capacity within its residentially-zoned land categories that could respond to development for the very low- and low-income population. This is historically determined using the districts that can be developed more densely, such as R-2, R-3 and H-1. Additionally, there are other programs that could facilitate housing opportunities for the lower income population.

Stanislaus County greatly increased its opportunities for housing affordable to lower income households with the adoption of the Salida Community Plan in 2007. The plan contains 244 acres of land designated for medium density and medium-high density residential, which has the potential of accommodating as many as 2,246 units. Unique to Stanislaus County, the Salida Community Plan was designed to allow housing product types such as small-lot single-family dwellings, duets, row-houses, townhouses, condominiums and apartments.

In addition, Stanislaus County has two other primary means to accommodate the development of housing affordable to targeted income households. One is through traditional higher density general plan and zoning designations, such as R-2, R-3, or within specific plan areas, which allow a maximum density of 14-25 units per acre.

Another traditionally significant resource for housing for lower income households is single-family residential zones within targeted income unincorporated areas of the County. Second units may be constructed by right as long as they meet the specific criteria. In addition, in single-family zones designated for agricultural uses or as urban transition, mobile homes and manufactured homes are permitted by right in lieu of any single-family permitted dwelling, which presents a more affordable housing option. Lastly, because many of the County's unincorporated communities are within the Redevelopment Project Area, added funding is specifically allocated to increase the supply of affordable housing, typically through new construction, rehabilitation, and affordability covenants.

### **Programs**

While demonstrating an adequate inventory of potential residential development sites commensurate with the RHNA is one of the most noteworthy issues related to the Housing Element. The Draft Element also proposes to continue implementing projects and programs designed to assist in the creation and strengthening of affordable housing. They are:

- First Time Home Buyer Program
- Home buyer counseling
- Density Bonus Ordinance
- Second Units
- Farmworker Housing
- Housing Rehabilitation
- Construction or rehabilitation of municipal services in unincorporated neighborhoods
- Consortium with the cities of Ceres, Turlock, Newman, Patterson and Waterford to access and use Home Investment Partnership (HOME) funds
- Community Block Grant (CDBG) and Home Investment Partnership (HOME) funds
- Land acquisition with Habitat for Humanity/Stanislaus
- Rehabilitate Farm Labor housing with Housing Authority
- Minor Home Repair Program with Housing Authority
- Homeless day and emergency shelters with Turlock

The Draft Housing Element Update proposes a number of new programs for consideration that respond to the challenges of affordable housing opportunity within the unincorporated areas of Stanislaus County. Some are:

- Promote energy conservation features in new and rehabilitated assisted affordable housing to conserve resources and lower housing costs.
- Consider additional incentives to address housing for special need groups such as seniors, persons with disabilities, and large families.
- Address the requirements of new legislation regarding emergency shelters, transitional and supportive housing, as well as flood hazards and management.
- Establish minimum residential densities.
- In-fill development.

The Housing Element update process requires the jurisdiction to solicit comments from the general public during a 30-day period, as well as a 60-day review period for the State Housing and Community Development Department.

The remaining steps to take in the adoption process are to:

- Submit the Planning Commission recommendation to the Board of Supervisors; and
- Submit the locally-adopted Housing Element to the State Housing and Community Development Department for certification.

### **HCD Initial Review and Response**

On February 1, 2010, Staff received a letter from HCD dated January 29, 2010 (Exhibit A). The letter addressed the "Draft Housing Element" delivered to them in December 2009. They addressed four main topics: Housing Needs, Resources, and Constraints; Housing Programs; Quantified Objectives; and Public Participation.

Within those general topics, HCD primarily requested additional data and analysis related to the various land and housing inventories provided and clarification regarding the implementation of existing and planned programs and processes. HCD further requested clarification regarding Measure E (the 30-year Land Use Restriction Initiative passed by voters in 2008) and regarding implementation of the Salida Community Plan.

Staff has responded to HCD's comments and incorporated the corrections, further analysis, and discussion within the revised "Draft Housing Element" under the appropriate sections.

On February 2, 2010, HCD sent a copy of their December 17, 2007, letter which commented on the 2007 Agricultural Element in which they expressed concerns about the new Agricultural Land Mitigation Policy and how it would be a constraint on future housing. Policy 2.15 of the Agricultural Element requires mitigation for converting agriculturally-designated land to a residential land use designation. The Policy requires the replacement of agricultural land at a 1:1 ratio with agricultural land of equal quality located in Stanislaus County. This policy mirrors a recently approved voter initiative (Salida NOW, August 2007), which was written by housing developers and calls for the same 1:1 ratio for replacing agricultural land with residential. Based on that initiative, Staff disagrees with HCD that the Agricultural Land Mitigation Policy is a constraint to housing. This issue is currently the subject of a lawsuit brought by the Building Industry Association of Central California and has yet to be resolved through the courts.

### **Building Industry Association**

On February 10, 2010, Staff received a letter from the Building Industry Association of Central California (BIAOC). They addressed concerns over the County's share of housing, constraints on development, lack of residential zoning on non-prime farmland, lack of infrastructure limits of affordable housing, and removing governmental constraints. They requested an Environmental Impact Report for the Housing Element in lieu of a Negative Declaration. Staff appreciates the concern the BIA has on having a variety of housing, including affordable dwelling units. Most of their concerns are with voters initiative "Measure E", or in relation to the Salida Community Plan Initiative that was adopted by the Board in 2007.

The voters of Stanislaus County approved a thirty-year (December 31, 2038) land use restriction initiative (Measure E) on February 5, 2008, which added a goal and policy to the Stanislaus County General Plan. The initiative requires a majority vote of the County voters on any proposal to re-designate or rezone unincorporated land from an agricultural or open space use to a residential use.

Measure E included the following four specific exemptions from the voter approval requirement that recognize and provide protections for the County's housing needs: 1) a residential development on land designated for agriculture or open space if the Board of Supervisors finds, and HCD certifies in writing, that (a) the approval is necessary to meet the County's legal fair share housing requirement, and (b) there is no other land in the County or cities in the County already designated for urban use that can accommodate the County's legal fair share housing requirement. The Board is restricted from redesignating more than 10 acres per year for residential use under this exemption; 2) additional acreage may be designated for residential use if the Board finds, and HCD certifies, that the additional acreage is necessary to meet the Board's legal fair share obligation

based on maximum multi-family densities, and that the housing units are permanently affordable to persons or families of moderate, low and very-low income; 3) any development project that has obtained a vested right pursuant to state law prior to the effective date of Measure E (February 5, 2008); and 4) any development project consisting entirely of farm worker housing.

The Board of Supervisors also approved the Salida NOW Initiative on August 7, 2007, which allows for 5,000 residential units, which is the bulk of the County's 5,568 housing requirements. The BIA seemed concerned that the Salida Plan in itself was a constraint to housing, and that the Housing Element should not rely on vacant lands within Salida as part of the inventory. They also indicated that the County should designate other areas throughout the County for additional residential development.

The Salida NOW Initiative was sponsored by, and written for, housing developers and was specifically designed to meet the needs of the housing industry. The conditions and development standards within the Initiative and the related Development Agreement were defined by the authors of the Initiative and cannot be changed without a vote of the electorate. Staff does not concur that the Initiative is a constraint to housing, but rather the Initiative created the only location in the County where large tracts of vacant land are zoned for residential development.

Because of Measure E, it is unlikely that similar large tracts of land for residential development will be created in the unincorporated county in the future without a vote of the electorate.

Staff has evaluated the potential for additional residential development within the existing communities and has identified vacant and underutilized properties that are either urban properties zoned agriculture or existing residentially-zoned properties. Staff looked at these properties within the County islands or in the unincorporated communities and has found approximately 6,398 realistic housing units which could be built within the required time frame.

Many of the issues and comments within the BIA letter were similar to those in the response from HCD and have been addressed in the revised Draft Housing Element. The revised Draft Housing Element responds to comments received from both the BIA and HCD, complies with all requirements of State Law, provides for a variety of housing types that can be available for all income levels including very-low income, and includes various programs and measures designed to reduce constraints to residential development and to the greatest extent possible and feasible to provide incentives for special needs groups.

Staff believes that the prepared Housing Element meets all the requirements of State Law regardless of the existence of Measure E. Further, the Salida NOW initiative provides for a variety of housing types and encourages new residential development.

### **ENVIRONMENTAL REVIEW**

Pursuant to the California Environmental Quality Act (CEQA), the proposed project was circulated for review and comment. Based on the comments received and Initial Study prepared, no significant effects on the environment as a result of this project were identified. The proposed Negative Declaration declares the proposed project will not have a significant effect on the environment.

The California Department of Fish and Game (CDFG) has determined that for purposes of the assessment of CEQA filing fees, pursuant to Fish and Game Code Section 711.4(c), this project has no potential effect on fish, wildlife and habitat and the project as described does not require payment of a CEQA filing fee.

### **RECOMMENDATION**

The recommendation made herein is to adopt a Negative Declaration (Exhibit E) and recommend adoption of the General Plan Amendment 2007 to 2014 Draft Housing Element Update to the Stanislaus County Board of Supervisors.

Based on the foregoing discussion, and the ongoing discussion, staff recommends the Planning Commission recommend the Board of Supervisors take the following actions regarding this project:

1. Adopt the Negative Declaration pursuant to CEQA Guidelines Section 15074(b), by finding that on the basis of the whole record, including the Initial Study and any comments received, that there is no substantial evidence the project will have a significant effect on the environment and that the Negative Declaration reflects Stanislaus County's independent judgement and analysis.
2. Order the filing of a Notice of Determination with the Stanislaus County Clerk-Recorder's Office pursuant to Public Resources Code Section 21152 and CEQA Guidelines Section 15075.
3. Find that:
  - a. The General Plan amendment will maintain a logical land use pattern without detriment to existing and planned land uses;
  - b. The County and other affected government agencies will be able to maintain levels of service consistent with the ability of the government agencies to provide a reasonable level of service; and
  - c. The project is consistent with the overall Goals and Policies of the Stanislaus County General Plan.
4. Approve General Plan Amendment 2007 to 2014 Draft Housing Element Update.

\*\*\*\*\*

Report written by: Bill Carlson, Senior Planner  
Report reviewed by: Kirk Ford, Director

Attachments:

Exhibit A -	Letter from Department of Housing and Community Development dated January 29, 2010
Exhibit B -	Letter from Department of Housing and Community Development dated December 17, 2007
Exhibit C -	Letter from Building Industry Association of Central California dated February 10, 2010
Exhibit D -	Initial Study
Exhibit E -	Negative Declaration
Exhibit F -	Environmental Review Referrals
Exhibit G -	Draft 2007-2014 Housing Element Update

**ENCLOSURE 3**

# COMMUNITY DEVELOPMENT BLOCK GRANT CONSORTIUM



## **Annual Action Plan** *Fiscal Year 2010-2011* **DRAFT**

*Prepared by the Stanislaus County  
Planning and Community Development Department  
1010 10<sup>th</sup> Street, Suite 3400  
Modesto CA, 95354  
209.525.6330*



## **Stanislaus County CDBG Consortium**

---

### **Neighborhood Stabilization Program (NSP)**

In an effort to maximize the overabundance of vacant single-family properties in the County as a potential resource for affordable housing for moderate, low and very-low income households, the county has been participating in the Neighborhood Stabilization Program (NSP). NSP connects first time homebuyers to Down Payment Assistance (DPA) and affordable single family homes within the Consortium cities and unincorporated areas of the county. In order to offset a shortfall of available DPA funds, this AAP will incorporate a request to utilize NSP1 program income to serve program eligible participants in their pursuit of their first home.

### **Homeless Prevention & Rapid Re-Housing Program (HPRP)**

The Homeless Prevention & Rapid Re-Housing Program (HPRP) provides Consortium residents who are experiencing homelessness or are at risk for homelessness with an opportunity to attain a jobs and housing balance through a combination of case management & affordable rental housing search & placement. This program places individuals and families in both single family and multi-family rental units.

### **Multi-Family Housing Development**

Since 2005 there have been two high density affordable housing projects for seniors, either approved or in the process of construction. One is located within the City of Oakdale and one is located within the City of Patterson. As economic conditions improve and growth returns, the need for affordable multi-family rental units will likely resurface.

### **Zoning Policies**

The 2009 AI review of zoning regulations in the Consortium Cities and County showed overall compliance. The City of Patterson has adopted an inclusionary zoning provision and four out of the five Consortium cities have adopted density bonus ordinances.

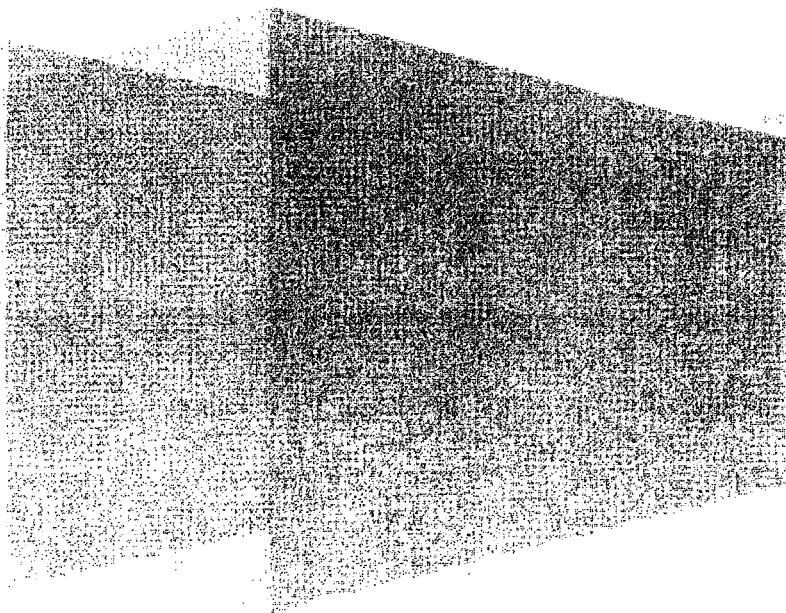
The amount of land zoned for residential development is minimal within Stanislaus County. There are some areas that are vacant, but lack the sewer and water infrastructure that is necessary for any type of dense development to occur. Affordable housing development is encouraged to occur within the cities of Stanislaus County as they have the infrastructure available to support the development of housing. Due to the passage of Measure E, zoning for housing development within the county unincorporated area needs the provision of a ballot measure, which greatly increases barriers to affordable housing as outlined in our most recent Analysis for Impediments. NIMBYism (Not in My Back Yard), is a complex affordable housing barrier which continues to act as an obstacle to affordable multi-family housing development.

### **The Foreclosure Crisis**

The changed economic circumstances confronting the County, especially as those affecting homeownership and rental housing markets, must be viewed as potential threats to fair housing choice. Clearly, vacancy rates in single-family dwellings have been rising rapidly throughout the County as more and more homes have gone into foreclosure or been abandoned, while the number of properties teetering on the verge of delinquency and default remains high and continues to grow. The Consortium member territories have collaborated with the SCHA, mortgage lenders, Habitat for Humanity and first time home buyers to coordinate implementation of the NSP program. In addition, County staff will continue to stay involved in foreclosure related seminars and workshops to assist households in danger of foreclosure through the No Homeowner Left Behind (NHLB) Central Valley initiative. In Fiscal Year 2009-2010, the No Homeowner Left Behind collaborative was expanded from Stanislaus County to Merced County and staff continues to collaborate

**ENCLOSURE 4**

**ANALYSIS OF  
IMPEDIMENTS  
Stanislaus County  
CDBG Consortium  
FY 2009**



**09**

figures, the City of Waterford stated “we have a lot of vacant houses at this time.”<sup>36</sup> If, as it is reasonable to assume, the same or similar vacancy levels are occurring throughout the Consortium, then the County is faced with both a housing crisis and a potential opportunity.

The downside, of course, is that when homeowners are either abandoning their properties or losing them to foreclosure, the prospect of additional households in need of affordable rental housing, or even facing possible homelessness, will increase. To the extent this occurs, and the former homeowners remain in the County, the strain on the County’s limited housing resources will be heightened. The current downturn may also result in an increase in a particular type of predatory housing practice, in which renters in single-family homes, uninformed by their owner or landlord of an impending default, unexpectedly find themselves facing eviction when the property goes into foreclosure. Project Sentinel has received or heard about an increasing number of complaints of this type throughout the state in the past year.

An opportunity, however, also appears to lie in the depressed value of many of the single-family properties now vacant within the County. These properties could be purchased or leased by the County, working in conjunction with the SCHAs or private nonprofits, and then utilized for occupancy, either as owners or as renters, by moderate, low and perhaps even very low-income households. To their credit, both the County and the SCHAs appear not only to be aware of this opportunity, but to be actively planning and working to take advantage of it using recently applied for Neighborhood Stabilization Program funds, support from the Federal Home Loan Bank’s WISH Program, and existing housing related resources.<sup>37</sup>

#### ***D. INSUFFICIENT AFFORDABLE RENTAL HOUSING AS A FAIR HOUSING IMPEDIMENT***

As the preceding sections make clear, the Consortium continues to confront an impediment to fair housing choice in the gap between the need for very low income affordable rental housing and its availability. However, housing market circumstances have clearly changed. The likelihood of significant new affordable multi-family housing development in the near future appears small. The present glut abundance of vacant single-family properties throughout the County, the absence of private developer interest in new housing construction of any kind, the continuing tight credit market, and the constraints imposed on county planners by “Measure E” (see discussion in Section VI.A.2) all weigh heavily against new construction in the short term. In light of these facts, maximum creativity, coordination of all available resources, and inter-jurisdictional planning will be essential if this impediment is to be addressed.

Low and very-low income families could benefit from the current availability of single-family homes by increasing the acceptance of Housing Choice vouchers in the Consortium area. As foreclosed homes are purchased by real estate investors, increased participation in Housing Choice programs could make many of these homes available to very low-income families. One way in which other communities have addressed shortages in landlord acceptance of Housing Choice vouchers has been to adopt ordinances requiring landlords to accept them. Such ordinances make it unlawful for any owner or manager of rental housing to discriminate against an existing tenant on the basis on that tenant’s use of a Housing Choice voucher. It would also be a violation for a property owner or manager to refuse to accept a Housing Choice voucher for which an existing tenant qualifies, or to terminate the tenancy of an existing tenant based on the

<sup>36</sup> Source: City of Waterford Response to Project Sentinel Question C.8.

<sup>37</sup> Source: SCHAs Response to Project Sentinel Question B.8.

Nonetheless, as mentioned elsewhere in this 2009 AI Update, the limited availability of low-income housing remains, an impediment, and Consortium jurisdictions are encouraged to review existing ordinances (i.e., Waterford's secondary unit ordinance) or consider the adoption of new ordinances and priorities that maximize the availability and development of affordable single-family and multi-family housing.

## 1. Secondary Units

After declaring what it calls "second units" a valuable form of housing in California, the state legislature revised the state's zoning statutes to encourage the development of these accessory dwellings. The 2003 law allows local governments to enact zoning ordinances that mirror state law, but if the locality fails to act, then local governments must use state-established criteria to approve or deny secondary unit applications. The statute exempts secondary units from local growth controls and state environmental reviews.

While the state wishes to encourage second dwelling units, it recognizes that certain limits should apply, so the statute does place some restrictions on these units. The law also allows localities to establish certain restrictions, so long as they are not "so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create second units..."<sup>43</sup> The statute also allows local governments to prohibit secondary unit development in certain zones, but only if they adopt formal written findings that such development will have an adverse impact on the health, safety, and welfare of the community. The local body should also try to mitigate any adverse impacts prior to the adoption of the findings.

Decisions regarding second units are to be undertaken "ministerially." While the statute gives local governments latitude in developing quantifiable standards against which the community is to consider these proposals, such review is not subject to discretionary decision-making. The statute compares the decision-making process for secondary units to the process for issuing automobile, dog, or marriage licenses.

All the Consortium jurisdictions except Ceres expressly provide for secondary housing units. Waterford, however, requires: "if there is an existing unit on the property, that unit must be brought into conformance with the Housing Code prior to occupancy of the second unit." This is so whether the unit is attached or detached, and the code further limits the construction of detached secondary units to "large or deep lots."<sup>44</sup> If this requirement is more restrictive than state law, it would appear to constitute an impermissible burden.

## 2. Measure "E"

Measure "E" was placed on the County ballot as an initiative in 2008 and passed with overwhelming voter support. The ordinance essentially restricts county planning and zoning officials from rezoning any unincorporated areas of the County presently zoned "agricultural" or "open space" for residential use, without a majority vote of County residents in a general or special election. The measure was promoted as a means of directing future residential development into the County's incorporated cities on the premise that those jurisdictions already have the infrastructure and social services (fire, police, etc.) to accommodate new residential

<sup>43</sup> Source: California Government Code section 65852.150.

<sup>44</sup> Source: Waterford Municipal Code section 17.21.120.

development, and as a means of preserving the County's diminishing agricultural and open space character.

The measure does provide limited exceptions to the voter approval requirement: (1) the County may rezone up to 10 acres per year for residential use in order to comply with state mandated "fair share" (fair housing) requirements, but only after notice and hearing requirements are complied with and a showing is made that no alternative residentially zoned sites are available; and (2) an unspecified amount of land may be rezoned without voter approval to meet the County's affordable housing requirements under state law, but only insofar as any such units are designated as "permanently" preserved as affordable, as certified in writing by the County.

It is difficult to assess the full extent to which Measure "E" may depress new affordable housing opportunities within the Consortium area. The exceptions in the law do appear to leave some room for County-sponsored projects designated as, and designed for, very low-, low-, and moderate-income households. Nevertheless, the certification, hearing, and other requirements imposed before these exceptions may be utilized may, in and of themselves, act as a restraint on new affordable housing development in those unincorporated areas of the Consortium that need such housing the most—the heavily minority neighborhoods around Modesto and the County's other incorporated cities. Clearly, Measure "E" can be expected to act as a deterrent to new private housing development. In the current economic climate these impacts may not be noticeable, but once a recovery is underway and new housing development again becomes viable, the deterrent effect could be substantial. Measure "E" is effective for a 30-year period. At the very least, the law should serve to focus the attention of the Consortium's participating jurisdictions on ways to increase affordable housing within the five incorporated cities.

It is appropriate to identify Measure "E" as a possible future impediment, and the effects of the measure should be analyzed in subsequent AIs.

### 3. Reasonable Accommodation Policies

Fair housing laws and subsequent federal and state legislation require all cities and counties to further housing opportunities by identifying and removing constraints to the development of housing for individuals with disabilities, including local land use and zoning barriers, and to also provide reasonable accommodations as one method of advancing equal access to housing. These fair housing laws require that cities and counties provide flexibility or even waive certain requirements when it is necessary to eliminate barriers to housing opportunities for people with disabilities. An example of such a request might be to place a ramp in a front yard to provide access from the street to the front door.

The California Attorney General, in a letter to the City of Los Angeles in May 2001, stated that local governments have an affirmative duty under fair housing laws to provide reasonable accommodations, and "[i]t is becoming increasingly important that a process be made available for handling such requests that operates promptly and efficiently." He advised jurisdictions not to use existing variance or conditional use permit processes because they do not provide the correct standard for making fair housing determinations and because the public process used in making entitlement determinations fosters opposition to much needed housing for individuals with disabilities. In response to the attorney general's letter, many cities throughout the state are adopting fair housing reasonable accommodations procedures as one way of addressing barriers in land use and zoning regulations and procedures.

**weintraub** genshlea chediak BOARD OF SUPERVISORS  
LAW CORPORATION

*Fax rec'd*

*4-20-10  
6:35pm*

2010 APR 20 P 4: 34

400 Capitol Mall, Eleventh Floor  
Sacramento, CA 95814  
916.558.6000 : 916.446.1611 FAX  
: www.weintraub.com

**Facsimile Transmission Cover Sheet**

Date: April 20, 2010 No. of Pages: 32  
 (including this page)

To: Board of Supervisors Fax: 209.525.4410

From: Douglas L. White Fax: 916.558.6022

Re: Housing Element, General Plan Amendment No. 2009-04

Comments/Notes: Letter re BIACC's concerns re Stanislaus County's proposed adoption of the 2009-2014 Housing Element

If you do not receive all of these pages, please contact Liz Sears at 916.558.6069.

Original will not follow  Original will follow by:

Regular mail  
 FedEx  
 Hand delivery  
 Other: Email

The information contained in this document is privileged and confidential and is solely intended for the above-named individual or entity. If you are not the intended receiver, recipient or an employee responsible for delivering this document, you should be aware that any distribution, copying or communication of this document is strictly prohibited. If you have received this communication in error, please notify us immediately at the telephone number listed above.

**GENERAL PLAN AMENDMENT  
2007 to 2014 DRAFT HOUSING  
ELEMENT UPDATE**

**4/20/10 PowerPoint Presentation**



# GENERAL PLAN AMENDMENT

- It is a State-mandated element.
- Must comply with State standards and also be consistent with other elements.
- The Housing Element is also unique in that it is the only element that is reviewed by the state.

# Purpose of the Housing Element

- Assess housing needs of existing and future residents;
- Propose specific goals and implementation measures to meet housing needs; and
- Comply with the requirements of state law.

# Five Goals

- Identify the availability of adequate sites;
- Assist in development of affordable housing to low-income and moderate-income;
- Address, and where possible, remove governmental constraints;

## Goals con't

- Assess the condition of affordable housing stock; and
- Promote housing opportunities for all persons (fair housing program).

# Housing Element Law Requirements

- Adopt a share of the projected regional growth for low- and moderate-income households
- Identify available sites for construction of low- and moderate-income households
- Conserve existing housing affordable to low- and moderate-income households

# Participation

- Survey to housing-related service providers, all incorporated cities, and community groups that represent low and moderate-income households.
- Four community workshops throughout the County.
- All Municipal Advisory Committees received copy Draft Housing Element in December.
- Stanislaus County's website for public review.

# Regional Housing Needs Allocation

- RHNA is a key tool for local governments to anticipate growth and housing needs for all income levels.
- The overall housing numbers are determined by HCD based on their estimates of growth.
- In 2007, HCD mandated that all of Stanislaus County (incorporated and unincorporated) accommodate 25,602 residential units

# HOUSING UNIT DISTRIBUTION

Jurisdiction	No. of Housing Units
Stanislaus County	5,568
Ceres	1,819
Hughson	282
Modesto	11,130
Newman	421
Oakdale	983
Patterson	686
Riverbank	894
Turlock	3,461
Waterford	357
Total	25,602



# GENERAL STANDARDS – OUTSIDE SOI

- To determine whether the County has adequate sites with realistic capacity for development commensurate with the RHNA, an analysis of vacant and underutilized parcels was conducted.
- Based on current allowable densities, the County can meet and exceed this allocation.

# RESIDENTIAL DEVELOPMENT POTENTIAL

Zone	Parcels	Acres	D.U. Capacity
R-A	196	217.18	194
R-1/ SCP	153	929.22	3,161
R-2/SCP	61	228.53	1,422
R-3/SCP	56	75.79	1,056
A-2	34	22.5	19
SP-1	286	185.99	292
H-1	5	2.16	3
P-D	193	193.34	251
TOTAL	984	1854.71	6,398

# MEDIAN INCOME

- The State requires that the County distribute the RHNA allocation to meet the needs of all income groups
- Median income for a family four is \$59,600.
- Many state housing requirements and programs are based on “lower-income” guidelines, which consist of the very-low- and low-income categories taken together.

# HOUSING ALLOCATION PER INCOME

• Very Low (below 50%)	23.3%	1,298
• Low (50%-80%)	16.3%	910
• Moderate (80%-120%)	19.3%	1,073
• Above Mod. (+120%)	41.1%	2,287
• Total	100%	5,568

# EXISTING PROGRAMS

- First Time Home Buyer Program
- Second Units
- Construction or rehabilitation of municipal services in unincorporated neighborhoods
- Consortium with the cities of Ceres, Turlock, Newman, Patterson and Waterford to access and use Home Investment Partnership (HOME) funds
- Community Block Grant (CDBG) and Home Investment Partnership (HOME) funds

# NEW PROGRAMS

- Promote energy conservation features in new and rehabilitated assisted affordable housing.
- Provide additional incentives for special need groups such as seniors and persons with disabilities.
- Address new legislation regarding emergency shelters, transitional and supportive housing.
- Establish minimum residential densities.

# HCD INITIAL REVIEW AND RESPONSE

- Staff received a letter from HCD in response to the draft Housing Element.
- They addressed four main topics: Housing Needs, Resources, and Constraints; Housing Programs; Quantified Objectives; and Public Participation.

# HCD's COMMENTS

- Staff has responded to HCD's comments and incorporated the corrections, further analysis, and discussion within the revised "Draft Housing Element" under the appropriate sections.



# COMMENTS RECEIVED

- One letter was received from the BIA. Many of their issues and comments were similar to those received from HCD, which have since been addressed in the current draft.
- Staff believes that the prepared Element meets all the requirements of State Law.

# ENVIRONMENTAL REVIEW

- Pursuant to the California Environmental Quality Act (CEQA), the proposed project was circulated for review and comment.
- The proposed Negative Declaration declares the proposed project will not have a significant effect on the environment.

# RECOMMENDATION

On March 18, 2010, The Planning Commission on a 8-0 vote recommended to the Board of Supervisors to approve General Plan Amendment Application No. 2009-14 Housing Element Update



# Additional HCD's Comments

- Subsequent to the Planning Commission hearing, staff received additional comments from HCD's requesting additional discussion regarding the Salida Community Plan and Fees for the Air Pollution Control District. These have been insert in revised "Draft Housing Element" under the appropriate sections.