

Item # 49
6-6-17

LEAGUE OF WOMEN VOTERS OF FRESNO
1345 E. Bulldog Lane, Ste 4, Fresno 93710 559 226-VOTE (8683)

Statement to the Fresno County Board of Supervisors
June 6, 2017

Immediately following the adoption of the Fresno County General Plan in 2000, League prepared a model, a Pilot Indicator Project to show the County how to begin a reporting process that would identify, locate and organize quantitative data (indictors) for the purposes of the annual review and the Annual Progress Report. Our project report took 2 years to prepare and was done under the supervision of a League member who had been a former County Planning director and established the Department of Planning and Urban Design at CSUF.

Not all the policies in the GP require quantitative data relevant to a time in order to monitor the implementation programs of the General Plan, but key policies and programs in the GP do need quantitative data relevant to a time in order to provide useful information to your Supervisorial Board for evaluating progress in achieving important county goals to preserve farm land and for the County's economic development.

The Pilot Indicator Project showed where and how data could be accumulated, mapped and graphically displayed to immediately "indicate" how Ag Land variances and parcel splits preceded Ag Land conversion or compromised productive agricultural use. An annual report over time could show loss of farm land compared to preceding years and provide information to decision makers for their evaluation of the effectiveness of General Plan policies and programs designed to achieve our General Plans goals of preserving farm land and directing growth to existing communities.

The second example of the Pilot Indicator Project showed how data could be accumulated and reported to provide information on job creation, diversity in economic base, improvement in labor force preparedness over time compared to preceding years in order to evaluate the effectiveness of General Plan Policies and programs for achieving economic prosperity

The Pilot Indicator Project was presented to the Planning Commission, who recommended its model program to the Board of Supervisors. The Board unanimously directed Staff in 2003 to implement the program. However, the Indicator Program was never funded. APR's were not even prepared for the Board of Supervisors for 10 years.

Our criticism of recent APR's is that they do not compare relevant data to any base line and offer no information of the "Progress", forward or backward of our General Plan to its goals and vision. We have provided specifics, as well as comments on the accuracy and completeness of the 2016 APR in the attached documents. We are particularly concerned that the failure to implement certain policies to mitigate potential and severe environmental impacts to ground water has resulted in the significant

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problems we have today with ground water overdraft and land subsidence and addressing those impacts has been delegated to future groundwater management plan which is not addressing our current problems.

If you accept this APR today, please do so with the caveat that your Board will expect future APR's to be a genuine "progress" report which provides information necessary for you Board to evaluate how effective your GP policies are. And, please pledge to provide the resources to your staff so they can do the job they are so capable of doing.



Item # 49
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Fresno County Board of Supervisors
2281 Tulare Street,
Fresno, CA 93721

June 6, 2017

Hand-delivered & Sent Via Email

Re: Fresno County 2016 General Plan and Housing Element Annual Progress Report

Dear Supervisors,

We are writing to provide comments with respect to the County's Draft Annual Progress Report for the Housing Element of the General Plan ("APR"), set out in Appendix 2A to the Draft 2016 General Plan Annual Progress Report. Thank you for the opportunity to provide you with comments.

Leadership Counsel works closely with residents in disadvantaged unincorporated communities in Fresno County and is acutely aware of the severe lack of safe, affordable housing options and basic infrastructure and services, such as sewer and clean drinking water, that impacts residents and communities across the County. We worked in depth to ensure that the County's 2015-2023 Housing Element includes strong programs that comply with the City's duties to facilitate the development and maintenance of safe and affordable housing and a quality living environment for all residents. We therefore have a strong interest in ensuring that the County effectively and timely implements those programs in a way that results in real benefits for residents.

Legal Standard

Government Code Section 65400 requires the County Board of Supervisor's to adopt and provide to the State Department of Housing and Community Development ("HCD") an annual report by April 1st of year which describes the status of the Housing Element, the County's progress in its implementation, progress in meeting its share of the regional housing needs, and its efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Government Code Section 65583. The APR "shall include a section that describes the actions taken by the local government towards completion of the programs and status of the local government's compliance with the deadlines in its housing element." § 65400(a)(2)(B).

As explained in detail below, the Draft APR falls short of the standard established by Section 65400, because it fails to provide the information necessary for readers to determine the status of the County's progress towards implementation of and compliance with deadlines contained within the Housing Element with respect to most of the programs contained in the Housing Element. With respect to the many of the commitments contained within the Housing Element's programs, the APR provides no information at all. This clearly fails to satisfy the County's duties under Section 65400. In addition, the absence of any information whatsoever about the

County's efforts to implement various programs and commitments in its Housing Element indicates that the County has in fact failed to make any efforts to implement those programs. The County is required by law to implement its Housing Element and failure to do so could subject the County to legal action. Gov. Code § 65583(h).

The Board must direct staff to revise the Draft APR to comply with the standard set by Section 65400 and return to the Board for approval of the revised draft and to immediately take action to implement the Housing Element's programs in accordance with the deadlines established for each of its programmatic commitments.

In addition, based on our review of the APR, engagement with other county planning processes, and information provided to us by residents, stakeholders, and staff, we are concerned that the County has failed to comply with and has taken action inconsistent with its obligations under other provisions of the Housing Element Statute as well as other several state laws, including its duties (1) its duty to maintain an adequate inventory of sites for affordable housing (Gov. Code § 65863(a)&(b)); (2) its duty to conduct an analysis of the infrastructure needs of disadvantaged unincorporated communities no later than its adoption of its 5th Cycle Housing Element (Gov. Code § 65302.10.(a)); and (3) to act consistently with its General Plan (Gov. Code § 65863(a)&(b)); *Neighborhood Action Group v. County of Calaveras* (1984), 156 Cal. App. 3d 1176, 1184. We discuss our concerns with respect to the County's potential violation of state laws in more depth below and ask that the County immediately demonstrate its compliance with these laws or the steps it is taking to achieve compliance as expeditiously as possible.

* * * * *

As discussed above, the APR fails to provide adequate detail with respect to the actions the County has or has not taken to implement the programs in its Housing Element and to comply with several other related provisions of state law. We set forth below the APR's inadequacies as they relate to the Housing Element's individual programs.

Program 1: Regional Collaboration on Housing Opportunities

With respect to the implementation status of Program 1, the APR simply copies and pastes language from the program itself without providing any information about specific actions the County has taken with respect to certain program commitments. For other program commitments included in Program 1, the APR provides no response at all or includes general statements about actions the County *will* take in the future.

For example, the Draft states that the Countywide Housing Element Technical Committee ("Committee") "will meet with the California Department of Housing and Community Development ("HCD") in the near future," but the Element requires the Committee to meet annually with HCD and the APR fails confirm whether the Committee complied with this requirement in 2016 or not. Likewise, the Draft states that the Committee "will seek opportunity" to partner with other jurisdictions to explore options to increase the availability of farmworker housing but says nothing of any steps the County took in 2016 to do so nor when it will take action to seek these opportunities.

The APR also does not identify any efforts the County has made to seek funding or technical assistance from State agencies for implementation of the Housing Element, steps the County has taken to advocate on behalf of the Fresno County region for more grant funding for affordable housing and infrastructure improvements as required, or whether the Committee satisfied Program 1's requirement that it participate in biannual meetings ""to evaluate successes in implementation of programs and to identify gaps and additional needs."

In addition, this program requires the County to participate in the Countywide Housing Element Technical Committee to collaborate on housing program implementation and SB 244 implementation, which required the County to analyze and identify funding sources to mitigate infrastructure deficiencies by December 2015. The APR states only that the Committee has met to "discuss" these matters but states nothing regarding steps the County has taken or will take to *collaborate* to implement its Housing Element and conduct its SB 244 analysis as required. Although the County was required to adopt its SB 244 analysis over 15 months ago, the County has failed to do so or even release a draft analysis and has not provided the public with any information regarding its projected timeline for completion of the analysis.

The County must revise the Draft APR to provide specific information about the steps the County has taken to implement each of the commitments included in Program 1. For commitments that the County has not taken any steps to implement yet, the revised draft APR must specify as much and should identify the steps the County will take to come into compliance with the Housing Element's requirements.

Program 2: Review Annexation Standards in Memorandum of Understanding

The Draft APR states that the County "continues to work" with cities to revise the standards for annexation in the City-County Memorandum of Understanding but provides no specifics regarding any actions the County has taken to this end and whether they have resulted in progress towards the goal of the program – revision of the MOU in a manner that expands housing opportunities to better enable jurisdictions to meet their RHNA. A revised Draft APR must state what steps the County has taken to implement this program and, if no action has been taken, state that.

Program 3: Adequate Sites Program

The Draft APR provides no information about whether the County has taken any steps to implement actions 1, 3, 4, 5, 7, or 8 included in Program 3 and does not state whether it updated the County's inventory of residential land resources to accommodate its RHNA in 2016 pursuant to action 2.

In addition, we are concerned that, through action and inaction, the County has failed to comply with its commitment in Program 3 to "ensure that there are adequate sites available to meet its ["RHNA"] of 2,722 units." Many sites identified in Housing Element's sites inventory lack water and wastewater infrastructure necessary to support housing, undermining the adequacy of the site to support the residential housing capacity projected in the element. To our knowledge, the County has not taken any steps to remedy this deficiency and the relevant APR sections provide no information of steps the County has taken to do so. See APR Response to Housing Element Program 6.

Also, the Fresno County Local Agency Management Plan (LAMP), adopted by the Board of Supervisors in December 2016, includes restrictions on the location and replacement of onsite wastewater treatment

systems that undermine residential development capacity of Housing Element sites located on small and medium sized lots not served by community wastewater systems. Specifically, the LAMP prohibits the location of new or replacement septic systems within two acres of other septic systems and requires a minimum 50 foot setback between septic systems and adjacent lot lines. Most residential parcels in unincorporated Fresno County are significantly smaller than 2 acres and could not accommodate a 50 foot setback between a septic system and adjacent lot line. The Final APR must analyze whether the LAMP's policies would prevent the attainment of wastewater services on any sites included in the Housing Element Sites Inventory meet the RHNA. If it does, the County must immediately modify the LAMP and the Zoning Ordinance to ensure that sites included in the Housing Element and in existing communities may obtain wastewater services necessary to support housing. Alternatively, the County must remove the impacted sites from its Sites Inventory and identify adequate alternative sites as necessary to accommodate the RHNA. Gov. Code § 65863.

The application of the LAMP threatens to result in a disparate negative impact on existing disadvantaged unincorporated communities with small lot sizes and significant amounts of vacant and dilapidated housing and that are disproportionately comprised of Latino residents, residents of color, immigrants, and residents without English language proficiency compared to other areas of the County and therefore threatens to violate state and federal civil rights and housing laws.

The APR must examine the impact of the LAMP on sites included in the Housing Element Sites Inventory and existing communities and identify action steps tied to clear timelines to achieve compliance with the Housing Element Law and state and federal civil rights laws.

Program 4: Monitoring of Residential Capacity (No Net Loss)

Under this program, Fresno County committed to doing several things which the APR does not mention. First, it must report on whether it has developed and implemented a formal ongoing project-by-project evaluation procedure to ensure that no residential capacity is lost for low-income households pursuant to its deadline to do so by 2016. Second, it committed to annually monitoring "the effectiveness of non-residential zones to facilitate residential development." Third, it must ensure that any sites rezoned to replenish a shortfall in the inventory are of specific minimum size and density and are rezoned within two years. With respect to Program 4, the APR only states, "The County continues to monitor its inventory of vacant sites available for residential developments to ensure sufficient lands are available to accommodate the county's share of the fifth-cycle RHNA allocation." The APR says nothing with respect to the steps the County has taken or failed to take to implement any of these commitments.

The County must implement the commitments contained in Programs 3 and 4 to monitor and evaluate the adequacy of sites to satisfy its RHNA and then determine whether rezoning is required pursuant to the third bullet point of Program 4 and implement the rezoning, as necessary. As mentioned above, the County's analysis of the adequacy of its sites must take into account the effect of the County's adoption of the LAMP on the infrastructure and service capacity of sites identified in the Housing Element Sites Inventory and any other factors which impact the feasibility of development on those sites at the densities projected in the Sites Inventory. The analysis should also consider the feasibility of development on small sites (less than one acre in size) and large sites (over ten acres in size) included in the inventory, taking into account the absence of any requests for lot consolidations to facilitate residential development on these sites (APR, Program 5).

Program 5: Lot Consolidation and Lot Splits

The APR reports that it “continues to facilitate” lot consolidations and splits and that there were no residential development projects requiring such action in 2016, but it does not provide any information whatsoever about how the County is facilitating lot consolidations or splits. Furthermore, the APR does nothing to “evaluate if County efforts are effective in facilitating lot consolidation of small sites for residential development,” as required by Program 5. The mere statement that, “There were no residential development projects requiring lot consolidation or lot split process” does not constitute an evaluation of the effectiveness of the County’s efforts to facilitate consolidations or splits. The lack of any residential development projects requiring lot consolidations points to the potential need for improved County procedures to facilitate lot consolidation on small sites contained in the Housing Element Inventory, absent information demonstrating development at the densities projected in the Housing Element on those sites. Finally, the APR does not state what, if any, steps the County has taken to “encourage the use of master plans/specific plans to provide a cohesive development strategy for large lots” (fourth bullet point).

Program 6: Coordination of Infrastructure and Services

Program 6 identifies six series of actions the County must take to support and facilitate the provision of infrastructure and services in unincorporated communities. These include providing assistance, including with funding applications, to CSDs for infrastructure improvements; annually funding and pursuing community plan updates to promote development with active transportation in existing communities; and assessing development trends, needs for infrastructure and services in unincorporated communities. The APR provides only the vague response that, the “County continues to coordinate with water and sewer service providers to assess development trends, needs for infrastructure and services.” The response is not only substantively lacking with respect to the one bullet point which it aims to address, but is completely non-responsive to five of the six commitments included in program 6.

Program 7: Affordable Housing Incentives

While Draft APR provides some information about the County’s efforts to provide loan funds as gap financing to eligible affordable housing developers through HOME loans, it did not report on any other requirements under this program. The Draft APR however does nothing to address the County’s efforts, or lack thereof, to “meet, at least annually,...with other agencies...to discuss and pursue viable opportunities for providing affordable housing.” Furthermore, it does not report any action taken pursuant to its obligation to monitor HCD’s and HUD’s websites for Notices of Funding Ability.

Program 8: Farmworker Housing

As for other programs, the Draft APR does not adequately report on the County’s progress in implementing Program 8. While it alludes to continued efforts to partner with other agencies to “discuss opportunities for farmworker housing,” it did not speak to the County’s efforts to implement the program’s specific requirements, namely: to help other agencies and housing developers such as Fresno Housing Authority and Self-Help Enterprises to apply for funding for farmworker housing and to meet at least annually in furtherance of this end; to monitor the status of farmworker housing as part of its annual report to HCD; and to make changes to enhance opportunities and incentives for farmworker

housing development, among other obligations. The County must revise the Draft APR to explain its actions with respect to its commitments under this program, or state that it has not made any progress and explain why.

Program 10: Zoning Ordinance Amendments

Under this program, Fresno County must conduct several changes to its Zoning Ordinance, including an update of the density bonus, conditional use permitting, allowable density for certain types of zones, and single-resident occupancy homes, and must consider requiring discretionary permitting for new agricultural uses and farm labor housing in residential zones. However, the County has only included a reference to certain amendments it made to the Zoning Ordinance *before* the Housing Element was adopted, as well as a general reference to its current process of reforming several other elements of the Zoning Ordinance. This current reform process as described in the APR does not include a review of its considerations regarding a discretionary permit requirement for new agricultural uses and farm labor housing in residential zones. The County must provide further details about the current state of this review. Fresno County must also report on its actions to evaluate agricultural uses and farm labor housing in residential zones, or otherwise state why it has not done so.

Review and amendment of the County's Zoning Ordinance is necessary because it does not currently comply with the state laws listed in Program 10. In particular, we are concerned that the Zoning Ordinance continues to fail to comply with the requirement of the Health and Safety Code Section 17021.6 to allow the development of farm worker housing on the same terms as agriculture, due to the Zoning Ordinance's restriction of farmworker housing on residential zoned land to parcels 20 acres or more in size where no similar restriction exists for agriculture, which is allowed by right. We recently received a complaint from a property owner who was denied permits to develop farmworker housing on residential-zoned land where agriculture is allowed by right, due to the failure of the parcel to meet the 20 acre size requirement. We will supplement this letter with a further letter on this matter shortly.

Program 13: Rental Rehabilitation Program (RRP)

The Draft APR states that it has provided zero out of the four RRP loans required to be given to rental housing units during the planning period, and explains why one attempted RRP loan was unsuccessful. However, it must provide more explanation about how it "continues to market" the RRP program to eligible rental property owners, what entities are targeted, how it reaches these property owners, and so on.

Program 14: Code Enforcement

The APR's reporting on this item is vague, and Leadership Counsel is concerned that enforcement could be inadequate given our knowledge that the County has only one part-time staff code enforcement staff. In addition, while the APR states that the County "will respond to complaints," we have requested that the County look into possible zoning violations in certain unincorporated communities where residents with whom we work have notified us of violations, but the County has refused to act unless we repeat these requests multiple times. The County must describe in more detail its efforts to enforce zoning and building codes and the extent to which it does not address violations, either proactively or responsibly, or respond to complaints.

Program 15: Homebuyer Assistance Program

This program establishes an objective of providing 11 homeowners with HAP loan assistance, and the APR reports that zero loans have been provided. The Draft APR explains that a previously envisioned development project to which the County would supply the loans was cancelled, but says nothing about what it is doing to continue to market HAP to eligible first time homebuyers. The County must provide more details about how it is currently marketing these loans to first time homebuyers, what has been done to determine availability of more programs eligible for these loans, and how it is working with lenders and the real estate community to ensure adequate dissemination of information about the program.

Programs 16, 17 and 18

The reporting under these programs lacks specificity, and simply restates the language of the program. The County must provide more details about its actions taken to comply with the deliverables under these programs.

Program 19: Fair Housing

This program requires Fresno County to conduct outreach and educational workshops annually and ongoing workshops for lenders and the community at large; provide information and written materials in English and Spanish at County libraries, Community Services Districts, public counters, and on the County's website by 2016; refer housing complaints to appropriate housing agencies; and conduct Fair Housing Assessments every five years.

The APR states that it conducted certain educational workshops for certain stakeholders and the County at large, but does not report on the audience size or composition or in any way demonstrate the efforts the County made to comply with the program requirement to conduct outreach and education annually for "lenders, real estate professionals, housing providers, community stakeholders, and the community at large." Furthermore, the APR does not state whether the written materials and information have been provided in both English and Spanish or whether the materials were provided at County libraries, Community Services Districts, or on the County's website, as required by the Program.

In addition, the County states that it received no fair housing complaints, but does not describe any steps the County took to make residents aware of their right to make complaints or the process to do so. It is unlikely that no fair housing violations occurred in Fresno County in 2016; thus, we can assume that residents experiencing fair housing violations have not successfully lodged complaints with the County. The County should assess potential barriers to reporting fair housing complaints impacting residents and the options available to mitigate those barriers and to encourage and facilitate reporting and resolution of claims.

Lastly, Leadership Counsel's work with communities in Fresno County shows a striking disparity in adequacy of basic infrastructure, services, transit services and quality affordable housing, park and open space and other essential public and private amenities for low-income communities of color in the County. The Housing Element requires the Analysis of Impediments to Fair Housing to be updated every 5 years and states that the 2010 AI was reviewed in 2015 and found adequate. To our knowledge, the 2010 AI was never reviewed by the Board of Supervisors and thus, the statement contained in the report that that the AI was reviewed is misleading. In addition, an AI must be updated every 3 to 5 years, in

order to account for changes in data impacting the analysis and to assess the effectiveness of the policies, objectives, and programs contained therein and the County's efforts to implement them. Thus, the County staff's review of a prior AI is not sufficient to support the certifications that the County must make as a recipient of federal block grants that it has complied with the requirement to conduct the AI. The County must conduct a new AI immediately as well as an Assessment of Fair Housing by October 2019. Further, the County must demonstrate its actions to implement the current AI.

Quantified Objectives

The Housing Element sets out a table on page 2A-19 with a summary of the quantified Housing Element objectives for the years 2015 through 2023. Pages six through nine of Appendix B of the APR contain some of the categories of quantities in the quantifiable objectives but fail to include any unit count for various categories. For example, new Construction is only analyzed for Moderate Income and Above Moderate Income households, and Rehabilitation is only analyzed for Extremely Low, Very Low Income and Low Income. The categories of Homebuyer Assistance and Conservation lack any quantitative analysis. Fresno County must conduct this quantitative analysis -- even if the total unit count is zero for certain categories -- in order to show its progress on these quantified objectives, and explain how it is progressing towards all of these quantitative goals.

Furthermore, it is important to note the numbers reported show an bias towards development of housing for moderate and above-moderate income levels and a failure to facilitate development to accommodate the County's lower-income RHNA: Table A, provided in the APR indicates that **0 lower income**, 63 moderate income and 38 above moderate income units were constructed but the report does not provide any of the required information about the units constructed, such as the APN, tenure, or information about the County's calculation of moderate income housing affordability levels. These numbers should inform the County's analysis of the adequacy of its sites to meet its lower-income RHNA as well as its efforts to implement the Housing Element's programs.

As stated above, the Draft APR lacks sufficient detail and shows a wholly inadequate effort towards implementing the Housing Element programs. Fresno County must revise the Draft APR to state clearly the efforts it has made to implement its programs and satisfy the deadlines contained in the Housing Element. If Fresno County finds that it has not performed its obligations under Housing Element programs, it must state why it has been unable to do so.

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Please contact me at my office at (559) 369-2790 or email me at amonaco@leadershipcounsel.org to find a time to discuss this matter in person. We look forward to speaking with you about our concerns and recommendations with respect to the County's compliance with its duties under state law to plan for and facilitate the development of affordable housing to meet the needs of all Fresno residents.

Sincerely,

Amanda Monaco
Policy Advocate
Leadership Counsel for Justice and Accountability

Fresno County Supervisors

June 6, 2017

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