September 13, 2023

Cynthia Roberts, Foreperson
Civil Grand Jury
Contra Costa County
725 Court Street
P.O. Box 431
Martinez, CA 94553-0091
ctadmin@contracosta.courts.ca.gov
Via U.S. Mail and Email

RE: Response to Contra Costa Grand Jury Report No. 2306, "A Plan Without A Home"

Dear Foreperson Roberts:

In accordance with your request and Section 933.05 of the California Penal Code, the City of El Cerrito is submitting responses to Grand Jury Findings F1 – F13 and Grand Jury Recommendations R1 – R10 in the subject Grand Jury Report.

The City of El Cerrito wishes to note that it has been successful in addressing the need for affordable housing within our community. El Cerrito has been designated as a Prohousing jurisdiction by the State of California, one of only 27 jurisdictions in the State to be so designated, and the only jurisdiction within Contra Costa County. Further, the City of El Cerrito's Housing Element was approved by the Department of Housing and Community Development (HCD) on August 22, 2023, one of five agencies out of the 20 jurisdictions within Contra Costa County that are in compliance as of the date of this letter.

Grand Jury Findings
Please note that the City of El Cerrito's responses are based on our own experience and cannot address the practices of other agencies.

"F1. Within existing city or County infrastructure there is no clear owner who is responsible for achieving RHNA permitting targets."

Response: The City disagrees with this finding. The City's Community Development Department is tasked with specific responsibilities for overseeing the implementation of the Housing Element commitments and facilitating the permitting process to meet RHNA targets. State Housing Law only requires that jurisdictions plan to address barriers to development, accommodate all types of housing based on the RHNA allocations, and report their progress towards RHNA. The Community Development Department is responsible for preparing the Annual Progress Report (APR) as required by State Housing Law. These reports are annually presented before the City Council prior to submission to HCD. Furthermore, the City's Housing Element identifies the Department as responsible for carrying out the Housing Element's Plans and Programs.

"F2. City and County officials see no direct path to meet state-mandated regional housing (RHNA) targets."

Response: The City disagrees with this finding. There are multiple paths to meet the state-mandated regional housing needs allocation RHNA targets. First, at a policy level, the City must identify adequate sites to meet the RHNA targets through the Housing Element. In addition, the Housing Element includes strategies and programs to encourage housing development in accordance with State Law. The State will not certify a Housing Element that does not accommodate RHNA targets. Second, at an implementation or production level, the City can create pathways for others to construct housing, as an example the City adopted its San Pablo Avenue Specific Plan in 2014 that created a form-based code, streamlined regulations, and serves to attract private investment. The City primarily relies on applicants and the development community, including affordable housing developers to partner with, to propose and construct units.

The City of El Cerrito has consistently met our RHNA targets and has been designated a Prohousing city by the State of California.

"F3. There are currently no measurable penalties if a city or a County does not achieve RHNA targets in an approved housing element plan."

Response: The City partially disagrees with this finding. While there are no legal or financial penalties if the City does not achieve RHNA targets, there are penalties for not accommodating RHNA in a Housing Element and the consequences for not issuing adequate permits can be considered punitive. In addition, jurisdictions are subject to penalties if they do not adopt a Housing Element that is certified by the State, including designating adequate sites to accommodate the RHNA targets. For example, the agency may be subject to litigation from individuals, housing rights' organizations, developers, and/or HCD. Depending on court decisions, local control may further diminish beyond that prescribed in State law, including, for example, suspending the agency's authority to issue building permits or approve certain land use permits; and may also be subject to court-issued fines, court receivership, and streamlined approval processes that remove local discretion. Regardless of the reasons for lack of building permit activities, if agencies do not issue building permits that meet the RHNA targets, developers may choose to use a ministerial process for housing projects that meet specified criteria (SB 35). In addition, a developer could choose to construct housing on sites that have not been designated for housing.

"F4. Data published by ABAG shows that Contra Costa County and most of its cities have missed their current RHNA targets for very low- and low-income housing allocations. The allocation requirements continue to increase (16x for very low-income and 4x for low-income residents)."

Response: The City partially disagrees with this finding. Many cities and the County as a whole missed their RHNA targets for very low and low-income housing, and the RHNA Allocation for very low- and low-income housing has continued to increase. However, the increase in RHNA allocation is not to the extent mentioned in this report. RHNA numbers from the past 3 cycles indicate that the current (6th) cycle has had the largest increase of 2.5 times from the previous cycle in very low- and low-income housing requirements.

"F5. Many obstacles hinder the development of AH at the local level, specifically for very low and low-income housing, including:

a. Limited availability of land;

b. Restrictive zoning policies specific to AH development;
c. Limited developer interest to bring projects forward;
d. Limited available funding;
e. Lack of community support;
f. NIMBY opposition & city council response to NIMBY opposition."

Response: The City partially disagrees with this finding. Though the above list of obstacles can hinder the development of affordable housing, the City has addressed each item in our Housing Element programs, policies, and actions to the extent feasible and considered acceptable to HCD. The City's Housing Element was approved by HCD on August 22, 2023.

"F6. Zoning changes are generally addressed only when a project is presented for development. Zoning obstacles include:

a. Housing element plans that offer poor land choices for AH development;
b. Restrictive height and high-density zoning policies;
c. Lack of inclusionary housing ordinance(s) in many cities.

Response: The City disagrees with this finding. In 2014, the City adopted the San Pablo Avenue Specific Plan, which was updated in 2022, to create an achievable development plan for the San Pablo Avenue corridor that promotes the City's goals and values. The Environmental Impact Report (EIR) for the San Pablo Avenue Specific Plan (2014) analyzed a development capacity of 1,706 new housing units and 243,112 square feet of new commercial space. As of 2022, over 1,500 housing units and over 122,000 square footage of commercial space had been entitled. The 2022 update to the San Pablo Avenue Specific Plan incorporates community feedback received throughout the implementation of the Specific Plan as well as during several public meetings held during 2019-2022, and responds to changes in State legislation and other conditions since the Specific Plan's adoption in 2014. The 2022 San Pablo Avenue Specific Plan update and Supplemental Environmental Impact Report (SEIR) allow the continued development of the San Pablo Avenue vision by providing capacity for an additional 2,500 new housing units and 100,000 square feet of commercial. Further, the City Council approved a robust Affordable Housing Strategy in 2017, adopted an inclusionary housing ordinance in 2018, and as previously noted the City's Housing Element was approved by HCD on August 22, 2023.

"F7. Penalties directed at cities and the County (financial, loss of control over local planning) are tied to not meeting state deadlines for Housing Element plan approval."

Response: The City agrees with this finding.

"F8. Builder's Remedy and SB35 projects do not address ingrained local obstacles identified in this report that prevent the completion of approved AH projects."

Response: The City agrees with this finding, but also acknowledges that the streamlined, ministerial processes created by SB 35 are, at least in part, intended to respond to some of the obstacles to development of affordable housing.

”F9. When local Redevelopment Agencies (RDA’s) were discontinued by the state in 2012, the County and cities did not address the loss of funding for affordable housing or find alternative funding to support affordable housing projects until voters passed Measure X in November 2020. Projects that target very low- and low-income residents were particularly impacted.”

Response: The City partially agrees with this finding, noting that Measure X is a general tax and was not passed for the specific purpose of addressing affordable housing in the County, meaning that the allocations of funding from Measure X are subject to the approval of the Board of Supervisors. The City Council implemented a new local funding source in 2018 through the adoption of the Inclusionary Housing Ordinance, allowing market-rate developers to contribute to the City’s affordable housing fund in lieu of providing affordable units on-site.

“F10. Measure X housing funds are not fully dedicated to building AH for very low- and low-income residents.”

Response: The City agrees with this finding.

“F11. Local funding provided by bonds like Measure X Housing Fund is a critical component of a developer’s overall ability to raise funds for an AH development.”

Response: The City disagrees with this finding. While local funding provided by bonds like Measure X Housing Fund can be a beneficial component, it is not a critical factor in a developer's overall ability to raise funds for an AH development. Developers often require multiple sources of funding, or “stacking” strategies available to them, including federal and state grants, tax credits, private investments, and partnerships with nonprofit organizations. While local funding can certainly enhance a project's financial viability and facilitate its development, affordable housing projects cannot move forward successfully without a combination of various funding sources and partnerships that fill the funding gap between market rate and affordable housing feasibility. The critical aspect lies in the ability of developers to strategically leverage and combine these funding options to meet the financial requirements of the project and ensure its feasibility.

“F12. Cities that proactively engage citizens, address zoning obstacles, make reasonable zoning concessions, work collaboratively with developers, provide local funding support, and are united in addressing NIMBY opposition, have been successful in attracting AH projects.”

Response: The City partially disagrees with this finding. The City of El Cerrito agrees that proactive strategies can help attract affordable housing developers and mitigate the barriers to housing production; however, proactive strategies alone do not result in affordable housing projects being constructed. For example, while the City has and continues to engage in all of the above, a variety of other obstacles towards affordable housing development exist beyond a local jurisdiction’s control. This includes the gap in financing between constructing market-rate versus affordable housing, land costs, the land-to-building ratio when a property contains an underutilized building, the cost to upgrade or renovate an existing nonresidential building to accommodate housing, infrastructure costs (on- and off-site), fees for public utilities (particularly for non-municipal utilities), etc.

"F13. The latest RHNA targets for cities and unincorporated Contra Costa County show a significant increase in the number of units that are expected to be permitted for very low and low-income housing."

Response: The City partially disagrees with this finding. It is true that RHNA Allocation for very low- and low-income housing has continued to increase. However, the increase in RHNA allocation is not to the extent mentioned in this report. RHNA numbers from the past 3 cycles indicate that the current (6th) cycle has had the largest increase of 2.5 times from the previous cycle in very low- and low-income housing requirements.

Grand Jury Recommendations

"R1. Each city and the County should consider assigning a staff position with clear leadership, ownership and accountability to achieve allocated RHNA targets. The individual in this position would be responsible for establishing and promoting an operational plan to achieve the RHNA goals set forth in the housing element plan."

Response: This recommendation has been implemented. California's Housing Element Law acknowledges that in order for the private market to adequately address the housing needs and demands of Californians, local governments must adopt plans and regulatory systems that provide opportunities for (and do not unduly constrain) housing development. The City is not responsible for the development and construction of housing to achieve the allocated RHNA targets. Instead, we are responsible for the effective implementation of our Housing Element and associated programs to address any existing constraints to housing and for tracking and reporting our jurisdiction's progress toward achieving our RHNA. The City's Community Development Department is assigned with the responsibility of the above tasks. In addition, the City Council approved a full-time staff position in 2018 to oversee the implementation of the City's Affordable Housing Strategy to support the production of new affordable housing units as identified through RHNA.

"R2. Each city and the County should report AH progress and lack of progress using data across all four measured income groups. Special attention should be paid to tracking the housing needs of residents categorized as very low- and low-income. Cities and the County should communicate their progress, biannually, against RHNA targets at council and supervisor meetings."

Response: This recommendation has been implemented. State Law (§65400) requires the City to prepare an annual progress report (APR) on our jurisdiction's status and progress in implementing our Housing Element using forms and definitions adopted by HCD. Government Code §65400 also requires the City to provide this report to the City Council, HCD, and OPR by April 1 of each year (covering the previous calendar year) for its review and acceptance, usually as a consent or discussion item on a regular meeting agenda. Biannual reporting would divert staff time from other housing programs.

"R3. Each city and the County should consider creating a dedicated AH commission comprised of a multi-disciplinary team of diverse citizens and led by a current, nonelected, city expert in planning. Each commission would be charged with providing a community voice in the process and helping to identify and address obstacles that hinder the development of affordable housing projects in their community."

Response: This recommendation will not be implemented. The City already has a Planning Commission that provides recommendations on policy changes, reviews development projects, provides a community voice, and makes recommendations on changing zoning regulations. In 2017, the City Council adopted the Affordable Housing Strategy after convening a technical advisory group alongside a robust community engagement process to identify policies and programs that address El Cerrito's affordable housing needs. Given our limited resources, the City does not have capacity to create a new commission.

"R4. Each city and the County should consider reviewing existing processes and identifying changes that would address or resolve the specific obstacles identified in this report that hinder achieving RHNA allocation targets for very low- and low-income housing in their community."

Response: This recommendation has been implemented. As required by State Law, the City has reviewed existing processes and identified programs to address any potential constraints to development through the Housing Element's Constraints and Zoning Analysis Section.

"R5. Each city and the County should consider developing a public dashboard to report progress against RHNA targets."

Response: This recommendation has been implemented. The City must prepare an annual progress report on our status and progress in implementing our Housing Element using forms and definitions adopted by HCD. HCD compiles and showcases all APRs through their interactive digital data dashboard with downloadable data sets.

"R6. Each city and the County should consider, in their individual Housing Element plans, putting forth land zoned "suitable for residential use," without development obstacles, and located strategically close to existing services, for AH purposes."

Response: This recommendation has been implemented. As required by State Law, jurisdictions are required to prepare a sites inventory identifying land suitable and available for residential development to meet the locality's regional housing needs by income level.

"R7. Each city and the County should consider reviewing their zoning policies to identify restrictive zoning policies unique to their jurisdiction that impede AH projects and consider making zoning changes in light of that review that will support AH in their community."

Response: This recommendation has been implemented. Through the Housing Element process, as well as the San Pablo Avenue Specific Plan update, the City has reviewed our zoning policies and identified potential affordable housing development constraints unique to our jurisdiction. The Housing Element Program Section outlines forthcoming changes to zoning policies with specified timeframes to address the identified constraints.

"R8. Cities should consider adopting an inclusionary housing ordinance as part of their standard development policy by the end of 2023 (if not already in place)."

Response: This recommendation has been implemented. The City approved an inclusionary housing ordinance in 2018.

"R9. Each city and the County should consider how to prioritize the implementation of housing projects that promote development of very low- and low-income housing."

Response: This recommendation has been implemented. In 2014, the City adopted the San Pablo Avenue Specific Plan, which was updated in 2022, along with an Environmental Impact Report (EIR) to create an achievable development plan for the San Pablo Avenue corridor that promotes the City's goals and values. The Plan created a form-based code, streamlined regulations, and serves to attract private investment. Further, the City Council approved a robust Affordable Housing Strategy in 2017, adopted an inclusionary housing ordinance in 2018, and the City's Housing Element was approved by HCD on August 22, 2023.

"R10. Each city and the County should consider prioritizing Measure X funding requests that support projects that address RHNA targets for very low- and low-income residents. Each city and County should consider reporting regularly to their residents on the use of Measure X funds for such purposes."

Response: This recommendation will not be implemented. Measure X is a countywide 20-year, ½ cent sales tax approved by Contra Costa County voters on November 3, 2020 "to keep Contra Costa's regional hospital open and staffed; fund community health centers, emergency response; support crucial safety-net services; invest in early childhood services; protect vulnerable populations; and for other essential county services." Under the Measure X Program Allocation Summary, only $10 million dollars (about 13% of FY 2022-23 funding and about 4.5% of total funding) were allocated to a Local Housing Trust Fund; for FY 2023-24, $12 million dollars were allocated. The Measure X Housing Funds are to be dispersed by the Department of Conservation and Development (DCD) and the Health Services' Health, Housing and Homeless (HSD-H3) Services and the Housing Authority of the County of Contra Costa. The use of Measure X funds for housing is reported by the County.

The City of El Cerrito thanks the Contra Costa County Civil Grand Jury for the opportunity to review its findings and respond to recommendations. Please do not hesitate to let me know if you have any questions or require additional information concerning the above responses. You can reach me directly at (510) 215-4301 or by email at kpinkos@ci.el-cerrito.ca.us.

Sincerely,

Karen Pinkos
City Manager
City of El Cerrito

cc: El Cerrito City Council