

Affirmatively Furthering Fair Housing Requires Close Proximity to Transit

Executive Summary

San Diego's proposed Sustainable Development Areas (SDAs) violate fair housing rules for several reasons:

- SDAs encourage the siting of affordable housing projects more than ½ mile from transit, placing a significant burden on transit-dependent residents.
- SDAs are attached to affordable housing density bonuses based on proximity to transit, even though the Major Transit Stops map used to generate SDAs includes transit routes that may not exist until 2035, if ever.
- Compounding the allowance of speculative, non-existent transit stops in the SDA, San Diego allows exceedingly short affordability deeds of 10-15 years on Bonus ADUs built in transit areas, so that in many cases the deeds will have expired before the associated transit route even exists.

To satisfy Fair Housing guidelines, San Diego should revise SDAs to limit the distance from transit to ½ mile walking distance and only include existing or funded transit stops in the Regional Transportation Improvement Plan, as allowed and proscribed in SB 743.

Transit-Oriented Development and Fair Housing

Research shows, and federal program guidelines reflect, that the average person is typically willing to walk a quarter-mile to access bus service and a half-mile for rail. This highlights an important truth about transportation: **Distance is often the greatest barrier to access.**

Building so-called "transit-oriented development" up to one mile from transit, as SDAs would encourage, might actually "impede fair housing choice" according to San Diego's Housing Element 2021-2029 Assessment of Fair Housing:

*"Access to public transit is of paramount importance to households affected by low incomes and rising housing prices. Public transit should strive to link lower income persons, who are often transit dependent, to major employers where job opportunities exist. Access to employment via public transportation can reduce welfare usage and increase housing mobility, which enables residents to locate housing outside of traditionally low-income neighborhoods. **The lack of a relationship between public transit, employment opportunities, and affordable housing may impede fair housing choice.** Persons who depend on public transit may have limited choices regarding places to live. In addition, seniors and disabled persons also often rely on public transit to visit doctors, go shopping, or attend activities at community facilities. Public transit that provides a link between job opportunities, public services, and affordable housing helps*

to ensure that transit-dependent residents have adequate opportunity to access housing, services, and jobs.”

The San Diego Regional Analysis of Impediments of Fair Housing notes that:

“Having access to quality jobs and effective public transportation helps facilitate a good quality of life and improved life outcomes. Unfortunately, research has shown that racial and ethnic minorities, individuals with disabilities, and other protected classes often have restricted access to these vital amenities.”

While “the City of San Diego continues to take action to address barriers to opportunity by amending community plans to increase density along transit corridors and near job centers;... working with SANDAG to plan and implement transit improvements that connect people to well-paying job,” the introduction of SDAs would work against these laudable efforts by encouraging increased density and affordable housing **farther away from transit - up to one mile away.**

- Yet SANDAG research tells us
 - 97% of passengers walk to transit
 - 92% of them walk ½ mile or less

Beyond ½ mile, housing is no longer considered transit-oriented development – not by HCD or essentially any other government or professional transportation organization.

Locating dense and affordable housing beyond one-half mile from transit presents real challenges for low-income households, communities of concern and people with disabilities.

In fact, limited access to public transit may counteract some of the benefits of affordable housing, according to the 2020 San Diego Regional Analysis of Impediments to Fair Housing.

SANDAG’s Social Equity Analysis for Draft San Diego Forward: The 2021 Regional Plan indicates:

- 11.8 percent of low-income residents,
- 10.4% of minorities, and
- 8.0% of seniors in the region live within 0.5 miles of high-quality transit.

To address these inequities, SANDAG’s Draft 2021 Regional Plan calls for **improved transit access** in areas with low-income and minority residents – **that would be closer transit access for more low-income and minority residents, not an SDA a mile from transit.**

Transit is more affordable than other long-distance transit modes, and low-income households are generally more likely to use it. San Diego’s 2022 Metropolitan Transit System Customer Satisfaction Survey Results⁵ confirm these assumptions:

- 84% of its riders earn < \$50K/year
 - 55% earn < \$20K/year

- 76% are people of color
- 14% are 65+
- 12% of its riders are disabled

It is fair to say that the people using transit are the people most in need of affordable housing opportunities. San Diego's 6th Cycle Housing Element identifies housing capacity to affirmatively further fair housing opportunities for all San Diegans. It does so primarily on sites located near transit and in walkable areas (HE-15), consistent with the General Plan and Climate Action Plan. Policy HE-I.4 calls for emphasizing **the need for affordable housing options for seniors and people with disabilities and/or special needs near transit**, healthcare services, shopping areas, and other amenities.

The forthcoming Environmental Justice Element of the General Plan is supposed to guide the City's future planning and development actions to ensure fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. This appears contrary to increasing the distance to transit with one mile SDAs making lower income, minority, and disabled residents and seniors live further from the transit they rely upon for job opportunities, public services, shopping, medical care, etc.

As proposed, SDAs will create access challenges for the people who most need affordable housing options, employment opportunities, and access to transit. To quote San Diego's own recent Assessment of Fair Housing:

"The lack of a relationship between public transit, employment opportunities, and affordable housing may impede fair housing choice."

SAN DIEGO FAIR HOUSING ASSESSMENT AND GUIDELINES

San Diego Housing Element 2021-2029 Appendix HE-A – Assessment of Fair Housing
[Transportation and Employment](#)

As noted in the SDAI, "Having access to quality jobs and effective public transportation helps facilitate a good quality of life and improved life outcomes. Unfortunately, research has shown that racial and ethnic minorities, individuals with disabilities, and other protected classes often have restricted access to these vital amenities.

"Access to public transit is of paramount importance to households affected by low incomes and rising housing prices. Public transit should strive to link lower income persons, who are often transit dependent, to major employers where job opportunities exist. Access to employment via public transportation can reduce welfare usage and increase housing mobility, which enables residents to locate housing outside of traditionally low-income neighborhoods. The lack of a relationship between public transit, employment opportunities, and affordable housing may impede fair housing choice. Persons who depend on public transit may have limited choices

regarding places to live. In addition, seniors and disabled persons also often rely on public transit to visit doctors, go shopping, or attend activities at community facilities. Public transit that provides a link between job opportunities, public services, and affordable housing helps to ensure that transit-dependent residents have adequate opportunity to access housing, services, and jobs.”

Regional Patterns and Trends

According to SANDAG’s Social Equity Analysis for Draft San Diego Forward: The 2021 Regional Plan (Regional Plan):

- 11.8 percent of low-income residents,
- 10.4% of minorities, and
- 8.0% of seniors in the region live within 0.5 miles of high-quality transit.

In order to address these inequities, SANDAG’s Draft 2021 Regional Plan calls for improved transit access in areas with low-income and minority residents and improved commute times by providing transit access to employment centers.

The best way to increase housing needs for seniors: locate senior housing where services are within walking distance; offer more affordable senior housing

What is the best strategy to produce more housing: allow buildings with more housing units; ... increase housing supply near transit; increase housing near jobs and schools.

The City of San Diego continues to take action to address barriers to opportunity by amending community plans to increase density along transit corridor and near job centers; incentivizing the construction of accessory dwelling units and deed-restricted affordable dwelling units throughout the City to improve access to quality schools; **working with SANDAG to plan and implement transit improvements that connect people to well-paying jobs**; implementation of the Climate Action Plan to reduce greenhouse gas emissions and other pollutants; and preparation of the Environmental Justice Element of the General Plan which will guide the City’s future planning and development actions to ensure fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

Below is a summary of some of the questions asked in the online survey and the top two responses to those questions:

- “What do you think is the best strategy to produce more housing?” (Table F-13)
 - “Improve City processes” (28%) and “Increase housing supply near transit” (22%).
- I believe it’s a mistake to underestimate the need for private vehicles and parking for them. Some disabled people, such as myself, are not able to walk far or use public

transportation due to inability to sit or stand.

Potential sites for housing and lower income housing have been identified throughout the City based predominantly on existing community plans and zoning. The General Plan's City of Villages strategy, which aims focus growth into mixed-use activity centers that are pedestrian-friendly, centers of community, and linked to the regional transit system, and the Climate Action Plan (CAP), which aims to substantially reduce the City's greenhouse gas emissions, have guided and continue to guide updates to the City's community plans. **To meet the needs of the City and its citizens while implementing the General Plan and CAP, community plan updates aim to identify opportunities for transit- and active transportation-oriented housing and housing densities near existing and planned transit service, areas with supportive infrastructure and public facilities, and employment areas.**

The maps of suitable sites compared to fair housing-related information are also briefly described below. Due to the importance of locating housing capacity in proximity to transit to implementing the General Plan and meeting the goals of the Climate Action Plan, each map shows transit priority areas in relation to the adequate sites and fair housing-related information.

Table A-34: Adequate Sites & Fair Housing Considerations

	All Areas	Minority Concentration Areas	Poverty Concentration Areas	RECAPs	CTCAC High & Highest Resource Areas	Displacement Risk Areas
Total Sites	11,804	3,573	6,858	768	5,722	4,285
Sites (% Total)	--	30.2%	58.1%	6.5%	48.5%	36.3%
Total Net Potential Units	174,673	59,006	88,997	9,121	86,592	37,905
Net Potential Units (% Total)	--	33.8%	50.1%	5.2%	49.6%	21.7%
Above Moderate & Moderate Income Sites	11,804	3,573	6,858	768	5,722	4,285
Above Moderate & Moderate Income Sites (% Total)	100%	30.2%	58.1%	6.5%	48.5%	36.3%
Above Moderate & Moderate Income Net Potential Units	174,673	59,006	88,997	9,121	86,592	37,905
Above Moderate & Moderate Income Net Potential Units (% Total)	100%	33.8%	50.1%	5.2%	49.6%	21.7%
Lower Income Suitable Sites ¹	1,036	437	595	43	375	213
Lower-Income Suitable Sites ¹ (% Total)	8.8%	42.2%	57.4%	4.2%	36.2%	20.6%
Lower Income Net Potential Units ²	72,191	29,848	37,975	3,959	30,490	13,291

Lower Income Net Potential Units ² (% Total)	41.3%	41.3%	52.6%	5.5%	42.2%	18.4%
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¹ Sites meeting Government Code Section 65583.2 criteria for sites suitable for lower income development. See “Suitability of Sites for Lower Income Housing” section above for additional information.

² Potential housing units on sites meeting Government Code Section 65583.2 criteria for sites suitable for lower income development. See “Suitability of Sites for Lower Income Housing” section above for additional information.

The City is currently in the process of updating the community plans for the Clairemont Mesa, Mira Mesa, and University communities, all of which are high resource areas with larger parcel sizes, to identify more opportunities for **transit-supportive housing densities near existing and planned transit routes**.

The adequate sites inventory has identified developable housing capacity primarily in urban communities and in suburban communities that include employment centers and/or are connected to the existing or planned high-quality transit routes.

LOCAL DATA AND KNOWLEDGE

During the outreach conducted for the Housing Element and other engagement with residents in underserved communities, the following concerns that relate to the adequate sites inventory were expressed.

- Senior housing that is located where services are within walking distance
- More housing near transit

These community plan updates, which will include rezoning of sites, will identify more opportunities for transit-supportive housing densities near existing and planned transit routes.

Once the Regional Plan is adopted, which will occur during the 6th Cycle, the City can identify additional opportunities for transit-oriented land use and zoning changes and housing densities that will support housing for all income ranges in high opportunity areas and areas with income and racial/ethnic diversity.

SD Housing Element 2021-2029 Appendix HE-A – Assessment of Fair Housing

1. Public Transit

Access to public transit is of paramount importance to households affected by low incomes and rising housing prices. Public transit should strive to link lower income persons, who are often transit dependent, to major employers where job opportunities exist. Access to employment via

public transportation can reduce welfare usage and increase housing mobility, which enables residents to locate housing outside of traditionally low-income neighborhoods. **The lack of a relationship between public transit, employment opportunities, and affordable housing may impede fair housing choice.** Persons who depend on public transit may have limited choices regarding places to live. In addition, seniors and disabled persons also often rely on public transit to visit doctors, go shopping, or attend activities at community facilities. **Public transit that provides a link between job opportunities, public services, and affordable housing helps to ensure that transit-dependent residents have adequate opportunity to access housing, services, and jobs.**

3. Affordable Housing and Public Transit

Limited access to public transit may counteract some of the benefits of affordable housing. Current research indicates a strong connection between housing and transportation costs. Housing market patterns in parts of California with job-rich city centers are pushing lower-income families to the outskirts of urban areas, where no transit is available to connect them with jobs and services. In lower-income communities with underserved city centers, many residents must commute out to suburban job-rich areas. In an attempt to save money on housing, many lower-income households are spending disproportionately higher amounts on transportation. A study conducted by the Center for Housing Policy revealed that families who spend more than half of their income on housing spend only eight percent on transportation, while families who spend 30 percent or less of their income on housing spend almost 24 percent on transportation. This equates to more than three times the amount spent by persons living in less affordable housing.

Source: San Diego Regional Analysis of Impediments to Fair Housing, August 2020

AFFIRMATIVELY FURTHERING FAIR HOUSING (AFFH): FEDERAL LEVEL

This policy, part of the Fair Housing Act

(<https://www.govinfo.gov/content/pkg/USCODE-2016-title42/html/USCODE-2016-title42-chap45-subchapl.htm>) or see also

[https://uscode.house.gov/view.xhtml?req=\(title:42%20section:3608%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:42%20section:3608%20edition:prelim)))

functions at the Federal level under the auspices of the Department of Housing and Urban Development (HUD) <https://www.hud.gov/AFFH>

As part of the Civil Rights Act of 1968, AFFH was created through Executive Order No. 12892, and it requires HUD and the recipients of federal funds from HUD to affirmatively further the policies and purposes of the Fair Housing Act.

As an official federal policy, AFFH outlines specific duties for HUD and funding recipients:

From its inception, the Fair Housing Act (and subsequent laws reaffirming its principles) not only prohibited discrimination in housing related activities and transactions, but also

imposed a duty to affirmatively further fair housing (AFFH). The AFFH rule sets out a framework for local governments, States and Insular Areas, and public housing agencies (PHAs) to take meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination. The rule is designed to help program participants better understand what they are required to do to meet their AFFH duties and enables them to assess fair housing issues in their communities and then to make informed policy decisions.

For purposes of the rule, affirmatively furthering fair housing “means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a program participant’s activities and programs relating to housing and urban development.”

For purposes of the rule, meaningful actions “means significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in access to opportunity.”

(AFFH Fact Sheet: The Duty to Affirmatively Further Fair Housing:

<https://www.hud.gov/sites/dfiles/FHEO/documents/AFFH-Fact-Sheet.pdf> Accessed 02/06/2023)

As it relates to transit, the AFFH Rule Guidebook states that (p. 121)

(<https://www.nhlp.org/wp-content/uploads/HUD-AFFH-Rule-Guidebook-Dec.-2015.pdf>)

“To the extent that the AFH identifies issues related to public transportation, employment, and education access, program participants are encouraged to review local, regional, and State transportation plans to identify opportunities to align fair housing priorities and goals set in the AFH with planned transportation investments. For example, a community with a goal to increase employment opportunities may want to explore doing so in an area the community has planned to serve with rail service. Additionally, program participants might work to educate transportation planners about areas or populations identified in the AFH as lacking sufficient or reliable transit access in order to improve future transportation plans. “

On August 7, 2020, the rule entitled "Preserving Community and Neighborhood Choice" (codified at parts 5, 91, 92, 570, 574, 576, and 903 of title 24, Code of Federal Regulations) in part repealed the Obama administration’s July 16, 2015, rule entitled "Affirmatively Furthering Fair Housing" and thus affected HUD's statutory duty to affirmatively further fair housing. See <https://www.federalregister.gov/documents/2020/08/07/2020-16320/preserving-community-and-neighborhood-choice> or

<https://nlihc.org/resource/trump-administration-eliminates-affirmatively-furthering-fair-housing-rule-nlihc-and-other>

More recently, in a Jan. 26, 2021 Memorandum (“Redressing Our Nation’s and the Federal Government’s History of Discriminatory Housing Practices and Policies”) the President directed that

The Secretary of Housing and Urban Development (HUD) shall, as soon as practicable, take all steps necessary to examine the effects of the August 7, 2020, rule entitled "Preserving Community and Neighborhood Choice" (codified at parts 5, 91, 92, 570, 574, 576, and 903 of title 24, Code of Federal Regulations), including the effect that repealing the July 16, 2015, rule entitled "Affirmatively Furthering Fair Housing" has had on HUD's statutory duty to affirmatively further fair housing. The Secretary shall also, as soon as practicable, take all steps necessary to examine the effects of the September 24, 2020, rule entitled "HUD's Implementation of the Fair Housing Act's Disparate Impact Standard" (codified at part 100 of title 24, Code of Federal Regulations), including the effect that amending the February 15, 2013, rule entitled "Implementation of the Fair Housing Act's Discriminatory Effects Standard" has had on HUD's statutory duty to ensure compliance with the Fair Housing Act. Based on that examination, the Secretary shall take any necessary steps, as appropriate and consistent with applicable law, to implement the Fair Housing Act's requirements that HUD administer its programs in a manner that affirmatively furthers fair housing and HUD's overall duty to administer the Act (42 U.S.C. 3608(a)) including by preventing practices with an unjustified discriminatory effect.

(“Memorandum”

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-redressing-our-nations-and-the-federal-governments-history-of-discriminatory-housing-practices-and-policies/> Accessed 02/06/2023)

On 07/31/2021, "Preserving Community and Neighborhood Choice" (PCNC) was rescinded <https://dsnews.com/news/06-11-2021/hud-rescinds-preserving-neighborhood-and-community-choice-rule>

On 06/25/2021, the “Implementation of the Fair Housing Act's Disparate Impact Standard" was repealed

<https://www.federalregister.gov/documents/2021/06/25/2021-13240/reinstatement-of-huds-discriminatory-effects-standard> and the February 15, 2013, rule entitled "Implementation of the Fair Housing Act's Discriminatory Effects Standard" was also rescinded, thus reinstating the Discriminatory Effects Standard:

<https://www.federalregister.gov/documents/2021/06/25/2021-13240/reinstatement-of-huds-discriminatory-effects-standard>

HUD’s 2021 Interim Final Rule (IFR), “Restoring Affirmatively Furthering Fair Housing Definitions and Certifications,” requires program participants to submit certifications that they will affirmatively further fair housing in connection with their consolidated plans, annual action

plans, and PHA plans. In order to support these certifications, the IFR creates a voluntary fair housing planning process for which HUD will provide technical assistance and support.

The 2021 IFR does not require program participants to undertake any specific type of fair housing planning to support their certifications; instead it commits HUD to providing technical assistance to those agencies that wish to undertake Assessments of Fair Housing (AFHs), Analyses of Impediments to Fair Housing Choice (AIs), or other forms of fair housing planning, and HUD currently provides resources to assist program participants. The following fact sheets were issued in connection with HUD's 2015 AFFH Rule and may be useful to program participants and their communities as they engage in fair housing planning.

Additional information regarding AFFH policies can be found at the following sites:

AFFH Fact Sheet: The Fair Housing Planning Process under the AFFH Rule

<https://www.hud.gov/sites/dfiles/FHEO/documents/AFFH-Fact-Sheet-The-Fair-Housing-Planning-Process-Under-the-AFFH-Rule.pdf>

Key Excerpt:

The AFFH rule is a fair housing planning rule—the rule clarifies existing fair housing obligations for HUD program participants to analyze their fair housing landscape and set locally-determined fair housing priorities and goals through AFH (Assessment of Fair Housing). The regulations establish specific requirements for the development and submission of an AFH by program participants and the incorporation and implementation of the strategies and goals set in the AFH into subsequent planning documents, including consolidated plans and PHA Plans, in a manner that connects housing and community development policy and investment planning with meaningful actions that affirmatively further fair housing.

AFFH Fact Sheet: Community Participation and AFFH – Guidance for Consolidated Plan Program Participants

<https://www.hud.gov/sites/dfiles/FHEO/documents/AFFH-Fact-Sheet-Community-Participation-and-AFFH-Guidance-for-Consolidated-Plan-Program-Participants.pdf>

Key Excerpt:

WHAT IS COMMUNITY PARTICIPATION?

Community Participation, consultation, and coordination is required under the Affirmatively Further Fair Housing (AFFH) rule (24 CFR § 5.158). While they have different names, the requirements for community participation under the AFFH rule are the same as the “Citizen Participation” requirements in HUD Community Planning and Development regulations, but are two separate processes. Community participation requirements apply to all program participants. Without meeting the community participation requirements, an AFH will be found to be substantially incomplete and not accepted by HUD.

For the purposes of the rule, community participation as required in 24 CFR § 5.158, “means a solicitation of views and recommendations from members of the community and other interested parties, a consideration of the views and recommendations received, and a process for incorporating

such views and recommendations into decisions and outcomes.”

WHAT ARE THE COMMUNITY PARTICIPATION REQUIREMENTS?

Section 5.158 and subsequent conforming amendments contain community participation, consultation, and coordination requirements. The community participation required by the new AFFH rule is similar to what is already required of program participants. In fact, in addition to the community participation requirements outlined at 24 CFR § 5.158, the rule incorporates AFH community participation into existing program regulations at parts 91 and 903.

When collaborating to submit an AFH, the community participation process must include residents, and other interested members of the public, in the jurisdictions of each collaborating program participant, and not just those of the lead entity. *Those program participants who choose to collaborate must meet those requirements specific to their program regulations.*

- **ALL PROGRAM PARTICIPANTS.** The requirements at 24 CFR § 5.158 provide that the public has reasonable opportunities for involvement in the development of the AFH and in the incorporation of the AFH into Public Housing Agency Plans. These requirements are aimed at assisting program participants achieve an inclusive fair housing planning process where community members, community-based organizations, and program participants contribute to the development of the AFH, as well as plans and activities to achieve fair housing goals specified in the AFH.

AFFH Fact Sheet: Community Participation and AFFH – Guidance for Public Housing Agencies

<https://www.hud.gov/sites/dfiles/FHEO/documents/AFFH-Fact-Sheet-Community-Participation-and-AFFH-Guidance-for-Public-Housing-Agencies.pdf>

Same as above but focused on requirements for public housing agencies

Guidance on HUD’s Review of Assessments of Fair Housing (AFHs)

<https://www.hud.gov/sites/dfiles/FHEO/documents/Guidance-on-HUDs-Review-of-Assessments-of-Fair-Housing-AFH.pdf>

When reviewing an AFH, HUD reviewers will apply the two review standards set forth in the Affirmatively Furthering Fair Housing Final Rule (AFFH Rule) at 24 C.F.R. § 5.162. Specifically, HUD will not accept an AFH if:

- **The AFH is inconsistent with fair housing or civil rights requirements.** Under this standard, an AFH will not be accepted if HUD finds that the AFH, or a portion of the AFH, is inconsistent with fair housing or civil rights requirements; or
- **The AFH is substantially incomplete.** Under this standard, an AFH will not be accepted if HUD finds that the AFH or a portion of the AFH is substantially incomplete. The HUD reviewer will apply both standards.

[...]

INCONSISTENT WITH FAIR HOUSING OR CIVIL RIGHTS REQUIREMENTS

The AFFH Rule itself provides two examples of an AFH that is inconsistent with fair housing or civil rights requirements (24 C.F.R. § 5.162(b)(1)(i)):

- HUD determines that the analysis of fair housing issues, fair housing contributing factors, goals, or priorities contained in the AFH would result in policies or practices that would operate to discriminate in violation of the Fair Housing Act or other civil rights laws;
- The AFH does not identify policies or practices as fair housing contributing factors, even though the policies and practices result in the exclusion of a protected class from areas of opportunity.

HUD would not accept an AFH if HUD determined that the AFH failed to identify existing policies or practices that violate fair housing or civil rights requirements. Thus, where a program participant has information that a state or local policy or practice acts as a significant contributing factor for a fair housing issue, such as segregation, and where the AFH fails to discuss the policy or practice, that AFH would not be accepted by HUD. An example of this might be where a local residency preference operates to exclude protected class groups in the surrounding area and the AFH does not discuss how this preference contributes to fair housing issues such as segregation and access to opportunity.

AFFH Fact Sheet: Interim Final Rule

https://www.hud.gov/sites/dfiles/FHEO/documents/10_6_21_AFFH_IFR_Fact_Sheet.pdf

What the AFFH IFR Requires of HUD Program Participants

- Consistent with their statutory obligation under the Fair Housing Act, the IFR requires HUD grantees to certify that they will affirmatively further fair housing, which is defined as taking meaningful actions to address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.
- HUD grantees may engage in fair housing planning to support their AFFH certifications, but the AFFH IFR does not require any specific form of planning or the submission of fair housing plans to HUD.

NOTE: This could be interpreted as meaning that the “area of opportunity” needs to be created within an existing “area[s] of poverty” and not that low-income residents are to be transplanted to “areas of opportunity” (the housing equivalent of school busing)

HUD’s AFFH program additionally provides a number of tools and resources for local and state governments, public housing agencies, and other entities.

AFFH Rule Guidebook:

<https://www.hud.gov/sites/dfiles/FHEO/documents/AFFH-Rule-Guidebook.pdf>

Assessment of Fair Housing (AFH) for local governments:

<https://www.hud.gov/sites/dfiles/FHEO/documents/Assessment-of-Fair-Housing-Tool-For-Local-Governments-2017-01.pdf>

Assessment of Fair Housing (AFH) for Public Housing Agencies:

<https://www.hud.gov/sites/dfiles/FHEO/documents/Assessment-of-Fair-Housing-Tool-For-Public-Housing-Agencies-2017-01.pdf>

Assessment of Fair Housing (AFH) for States:

<https://www.hud.gov/sites/dfiles/FHEO/documents/AFH-Assessment-Tool-for-States-and-Insular-Areas-2016-09.pdf>

AFFH-T User Guide:

https://www.hud.gov/sites/dfiles/FHEO/documents/AFFHT_4_0_User_Guide_Final_2017.pdf

AFFH-T Data and Mapping Tool: <https://egis.hud.gov/affht/>

AFFIRMATIVELY FURTHERING FAIR HOUSING (AFFH): STATE LEVEL

At the State level, AFFH policies are administered by the CA Department of Housing & Community Development (HCD)

<https://www.hcd.ca.gov/planning-and-community-development/affirmatively-furthering-fair-housing>

Affirmatively Furthering Fair Housing's stated goal is "to combat housing discrimination, eliminate racial bias, undo historic patterns of segregation, and lift barriers that restrict access in order to foster inclusive communities and achieve racial equity, fair housing choice, and opportunity for all Californians."

In 2018, the California State Legislature passed AB 686 to expand upon the fair housing requirements and protections outlined in the Fair Employment and Housing Act (FEHA). The law:

- requires all state and local public agencies to facilitate deliberate action to explicitly address, combat, and relieve disparities resulting from past patterns of segregation to foster more inclusive communities.
- creates new requirements that apply to all housing elements due for revision on or after January 1, 2021.

The passage of AB 686 protects the requirement to affirmatively further fair housing within California state law, regardless of future federal actions. It also preserves the strong policy in the U.S. Department of Housing and Community Development's (HUD) Affirmatively Furthering Fair Housing Rule as published in the Federal Register in 2015.

As of January 1, 2019, AB 686 proactively applies the obligation to affirmatively further fair housing to all public agencies in California. Public agencies must now examine existing and future policies, plans, programs, rules, practices, and related activities and make proactive changes to promote more inclusive communities.

"Affirmatively furthering fair housing" means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful

actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency's activities and programs relating to housing and community development. - (Gov. Code, § 8899.50, subd. (a)(1).)

Meaningful actions must be taken in concert with each other and address all of the following:

1. Significant Disparities in Housing Needs and in Access to Opportunity: Examples include incentivizing new residential development to include below-market rate housing; conserving affordability of existing housing, such as limitations on rents or conversion of such housing to higher rent or higher priced housing; encouraging systematic code enforcement activities that maintain housing stock while ensuring such enforcement does not cause displacement; and promoting housing mobility strategies and displacement mitigation strategies to ensure equitable access to opportunity. Housing mobility strategies may include providing affordable and accessible transportation options to enhance access to education and economic development opportunities. Displacement mitigation strategies may include tenant protections, conservation of existing stock, preservation of units at-risk of conversion to market-rate uses, acquisition and rehabilitation of existing stock, including naturally occurring affordable housing, and removing barriers to building affordable housing.

2. Replacing Segregated Living Patterns with Truly Integrated and Balanced Living Patterns: Examples include community benefits agreements that balance development proposals with tangible, local benefits to residents in the area (e.g., creating affordable housing, funding renter assistance programs for nearby residents, or other investments that meet community-identified needs, such as infrastructure and community amenities). Other examples include inclusionary zoning requirements and land-value recapture mechanisms, zoning for a variety of housing types, particularly those that may be lacking from the community or neighborhood, including: multifamily housing, low-barrier navigation centers, group homes, supportive housing, and accessible units. Promote education on how restrictions on multifamily housing, such as limited multifamily zoning and height and density limitations, impact inclusive communities. Seek local input on housing proposals while recognizing that "local vetoes" of affordable and mixed-income housing in racially segregated concentrated areas of affluence create fair housing issues.

3. Transforming Racially and Ethnically Concentrated Areas of Poverty (R/ECAP) into Areas of Opportunity: Examples include community-led, place-based strategies to revitalize communities, such as economic development strategies and prioritizing investment in R/ECAPs that meet the needs of existing low-income residents, such as safe routes to school, transit, parks, schools, bike and pedestrian infrastructure, urban forestry, other neighborhood

improvements; preserving naturally occurring affordable housing, such as mobilehome parks; and preservation as affordable housing of market-rate units where low-income households live; and promoting mixed-income development coupled with strong anti-displacement protections. Conduct outreach and advertise city program to persons with limited English proficiency. Other examples include community engagement in planning processes, including targeted outreach, technical assistance to help apply for grants, economic development strategies, workforce development, youth engagement and educational programs, healthy food access, affordable energy, and transportation access.

4. Fostering and Maintaining Compliance with Civil Rights and Fair Housing Laws: Agencies must diligently comply with civil rights and fair housing laws, including the California Fair Employment and Housing Act (FEHA) (Part 2.8 (commencing with section 12900) of Division 3 of Title 2), Government Code sections 8899.50, 65008, 65583, subdivisions (c)5 and (c)(10), and 11135, Civil Code section 51 (the Unruh Civil Rights Act), and FEHA regulations in California Code of Regulations, title 2, sections 12005-12271.

In addition to taking meaningful action, public agencies must not take any action materially inconsistent with the obligation to affirmatively further fair housing. Examples of materially inconsistent actions include those that:

- Hinder any of the affirmative actions public agencies take to further fair housing (e.g., lack of enforcement of rules intended to promote fair housing choices, diminishing fair housing principles from program guidelines, and inequitable implementation or enforcement of programs and activities)
- Perpetuate discrimination, segregation, R/ECAPs, and barriers that restrict access to opportunity based on protected characteristics (e.g., lack of affirmative marketing in funded housing developments, excluding accessibility modifications from eligible uses in funding, absence of community revitalization strategies in programs and policies)
- Are inconsistent with the housing element or the No-Net-Loss Law (e.g., downzoning without upzoning, zoning barriers to housing choices, removing tenant protections)
- Have a disparate impact on protected classes (e.g., zoning or siting toxic or polluting land uses or projects near a disadvantaged community, lack of investment in concentrated areas of poverty, lack of multifamily housing or affordable housing options in high-resource areas, investment without anti-displacement strategies in areas of disproportionate housing need)

Public agencies must ensure housing and community development programs and activities are designed and can be reasonably expected to achieve a significant and tangible positive change that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in access to opportunity.

https://www.hcd.ca.gov/community-development/affh/docs/AFFH_Document_Final_4-27-2021.pdf#page=16

AFFH Data and Mapping Resources

AFFH Data and Maps

<https://affh-data-resources-cahcd.hub.arcgis.com/>

Racially Concentrated Areas of Affluence map

<https://cahcd.maps.arcgis.com/apps/mapviewer/index.html?layers=4100330678564ad699d139b1c193ef14>

Guidance for All Public Entities and for Housing Elements

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