

Manira Sandhir

From: Adam Nugent
Sent: Wednesday, April 27, 2022 9:56 PM
To: Manira Sandhir; Zachary Dahl
Cc: Eloiza Murillo-Garcia; HousingElements@hcd.ca.gov
Subject: San Mateo Planning Commission Input - Draft Housing Element - Apr 26
Attachments: Planning Commission Input - Draft Housing Element - Adam Nugent - April 26.pdf

Hi Manira and Zach,

Thank you, again, for your team's hard work on the City of San Mateo's Draft Housing Element. It is a massive undertaking!

Here are my notes and consolidated input from last night's Planning Commission review of the Draft Housing Element. I spent a few hours following the meeting getting as much of the discussion topics I commented on during the meeting incorporated into my notes as possible.

I hope the additional detail and clarifying elements in these notes prove useful to the team.

Best,
Adam

Adam Nugent, PLA

Planning Commissioner, City of San Mateo
anugent@cityofsanmateo.org

Commissioner Input Draft 2023-2031 Housing Element

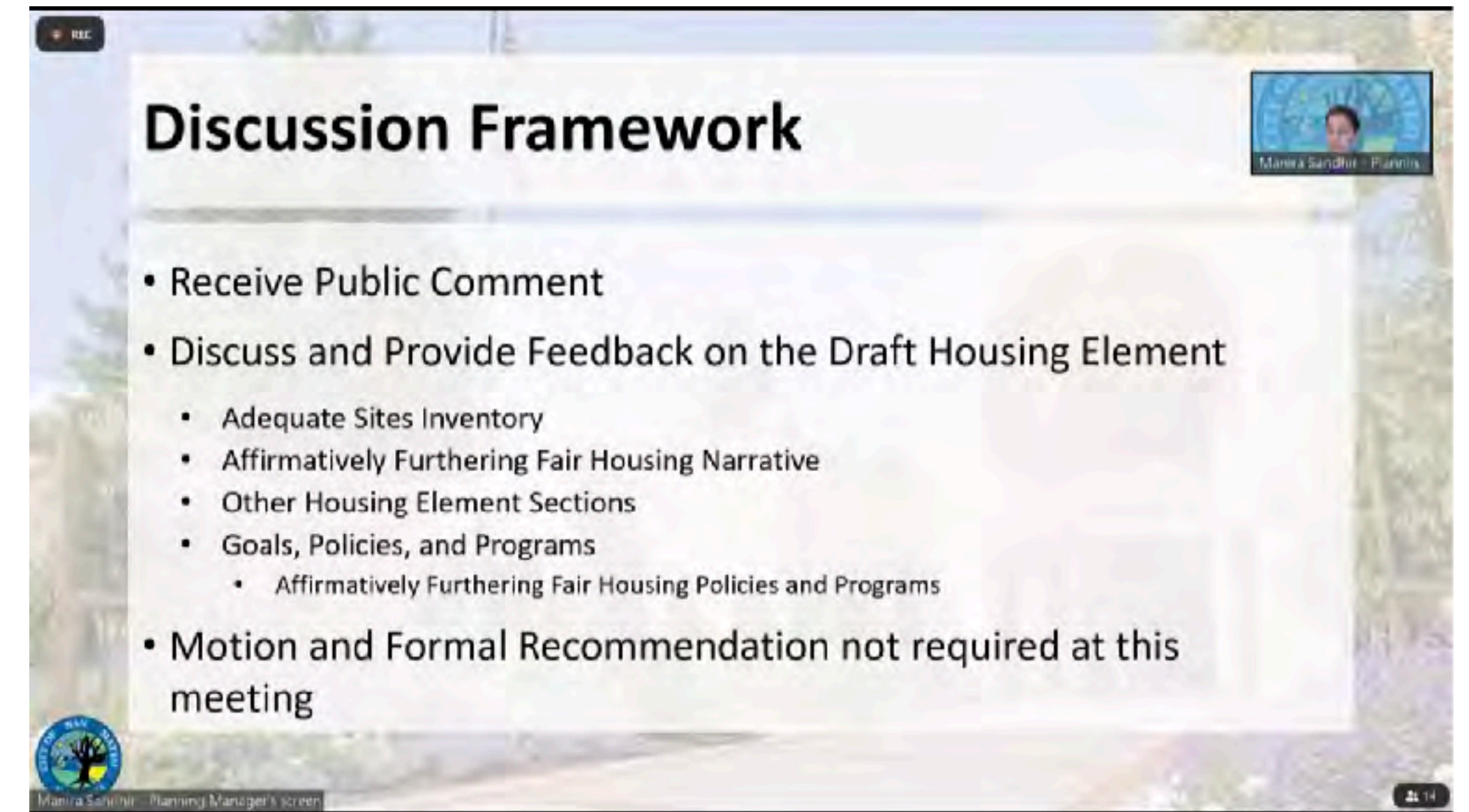
**Draft for Public Review: Housing Element of the General Plan
2023-2031, April 6, 2022**

Commissioner Adam Nugent, April 26, 2022 Planning Commission Meeting

Outline

Draft 2023-2031 Housing Element Input

- Introduction and Thank You
- Part 1: Site Inventory Comments
 - Methodology-focused
- Part 2: Affirmatively Furthering Fair Housing Comments
 - General Comments
 - Fair Housing Assessment
 - Contributing Factors



Note: Topics to be discussed at Continuance Meeting, May 3:

- Part 3: Other Housing Element Sections
- Part 4: Goals, Policies, and Programs
 - Including Affirmatively Furthering Fair Housing Policies and Programs

Introduction and Thank You

Thank you, Housing Element Team!

The work you are doing is extremely important and impactful

- All of my comments and questions come from a place of deep respect and appreciation for the hard work you are doing!
- I am proud to have a city with staff of such caliber, who genuinely desire to create a better, more just housing landscape for our future
- This is **HARD WORK**; and you are undertaking it in uncharted territory that is fraught with puzzles and potential pitfalls

Thank you, Housing Element Team!

Fair warning:

- My comments are extensive
- To implement the Housing Element in a way that truly advances fair housing goals and meets the needs of our younger generations it will take:
 - Tough decisions and a lot of work
- This Housing Element is an opportunity to make real progress:
 - Repair racial and economic disparities
 - Combat cost of living increases that are disproportionately harming younger adults

The Push for Change Has Never Been Greater

Demographics will drive our housing needs *and* our political will

- The younger half of our population has a different outlook and set of values than many who are in the older generations
- The political winds are blowing in the right direction for positive change
- The Millennial and Gen-Z generations are the largest generations in history and will have continually increasing political voice and power
- It is the younger generations that are feeling the most pain in this crisis, and they are the most motivated to bring about change
 - 14% of 4-year university students experienced homelessness last year; 42% experienced housing insecurity (*Governing*, 4/26/2022)
- We cannot botch this for the next generation

Quantified Objectives Discussion

Draft City of San Mateo 2031 Housing Element, Chapter 8

- “According to HCD, the sum of the quantified objectives for the programs should ideally be equal to or surpass the community's identified housing needs.” (Page H-75)
- Nevertheless, in the Draft Housing Element, the City has chosen not to produce a plan that meets our Regional Housing Needs Assessment (RHNA) allocation
- The City has (erroneously*) calculated its own, quantified objectives that are below its regionally identified housing needs
- The Draft Housing Element does not currently include meaningful, quantifiable actions that would significantly increase housing production to an appropriate level, but this can and should be changed
- The only way we can justify not planning to meet our identified housing needs is if it is impossible for us to create programs, policies, develop funding, or make land use changes that can commensurably increase housing production in line with our allocation, i.e. if there were no precedents in which municipalities reformed policies and subsequently increased housing production

* The quantified objectives themselves are incorrect due to omissions in the Housing Element's capacity calculation methodology, discussed next

“Unaffordable housing has one and only one cause: purposeful communal enforcement of it. This is legislated poverty.”

Kevin Erdmann

Part 1: Sites Inventory

Fundamentally, there is not a set of programs or proposals in the Draft Housing Element that justify an assertion that there will be a 300% increase in housing production over the next eight years.

My comments focus entirely on methodological issues and I will heavily reference state statutes and documented state guidance

Why does zoning capacity matter?

How much buffer do we have and how does it affect housing costs and fair housing?

Historically, most US cities planned for far more housing than was needed for the existing population. But as cities started to integrate in the post-war era of the 1950s and 60s, a backlash ended this practice, and a wave of mass downzonings followed.

The result: Housing is increasingly unaffordable for most households. This was deliberate, and often predicted, as downzonings greatly reduced the “zoning buffer” between current housing stock and the maximum allowable housing capacity. “Before 1960, the buffer in both New York and Los Angeles was at least 300% ... New York’s fell to roughly 50% after the 1961 zoning update, and it was just 12% in Los Angeles in 2010.” (Shane Phillips, Housing Initiative Project Manager, UCLA Lewis Center for Regional Policy Studies)



Methodological Shortcomings: Nonvacant Sites Analysis

A Necessary Threshold listed in the “HDC Housing Element Completeness Checklist 1/1/2021”:

- “Nonvacant Sites Analysis: For nonvacant sites, **demonstrate the potential and *likelihood* of additional development within the planning period based on extent to which existing uses may constitute an impediment to additional residential development, past experience with converting existing uses to higher density residential development, current market demand for the existing use, any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development, **development trends, market conditions,** and regulatory or other incentives or standards to encourage additional residential development on these sites”**

This information needs to be objectively quantified



HOUSING ELEMENT COMPLETENESS CHECKLIST

A Quick Reference of Statutory Requirements for
Housing Element Updates
Updated 1/2021

The purpose of this completeness checklist is to assist local governments in the preparation of their housing element. It includes the statutory requirements of Government Code section 65580 – 65588. Completion of this checklist is not an indication of statutory compliance but is intended to provide a check to ensure that relevant requirements are included in the housing element prior to submittal to the Department of Housing and Community Development pursuant to Government Code section 65585(b). For purposes of the Checklist the term “analysis” is defined as a description and evaluation of specific needs, characteristics, and resources available to address identified needs.

For technical assistance on each section visit [California Housing and Community Development Building Blocks Technical Assistance](https://www.hcd.ca.gov/community-development/building-blocks/index.shtml) (<https://www.hcd.ca.gov/community-development/building-blocks/index.shtml>)

Methodological Shortcomings: Nonvacant Sites Analysis

A Necessary Threshold listed in the “HDC Housing Element Completeness Checklist 1/1/2021”:

- “If nonvacant sites accommodate 50 percent or more of the lower-income RHNA [which is the case in San Mateo], **demonstrate the existing use is not an impediment to additional development and will likely discontinue in the planning period**, including adopted findings based on **substantial evidence.**”



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Realistic Development Capacity

My Underlying Questions

- How does the city plan to increase home building by over 300%?
 - And is this development increase realistic under the described methodology?
- What is different in cycle 6 from cycle 5?
 - The city's site's capacities have only decreased from cycle 5 as the city has grown and land uses intensified (new developments have replaced existing underutilized parcels)
 - So, is there a proposed program or group of new programs that can be shown to increase home building by over 300%, based on substantial evidence from other municipalities or from economic studies?

Sites Inventory Analysis is Incomplete

Current incompleteness prohibits City from assessing actual capacity to meet its RHNA allocation

- From the Draft Housing Element: “The purpose of the Sites Inventory is to evaluate whether there are sufficient sites with appropriate zoning to meet the RHNA goal. It is based on the City’s current land use designations and zoning requirements. The analysis does not include the economic feasibility of specific sites, nor does it take into consideration the owner’s intended use of the land now or in the future.” (Page H-25 Draft City of San Mateo 2031 Housing Element)
- **My Q: What substantial evidence, then, does the city provide that uses will be discontinued for nonvacant sites?**
- **My Q: How does the city incorporate redevelopment trends in its site capacity calculations?**

Site Inventory Methodology - State Law

(Compare to Draft City of San Mateo 2031 Housing Element, Page H-26)

- Government Code section 65583.2(c)(2) The housing element must describe the methodology used to determine the number of units calculated based on the following factors:
 1. Land use controls and site improvements requirements,
 2. *NEW* The realistic development capacity for the site,
 3. *NEW* Typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction,
 4. *NEW* The current or planned availability and accessibility of sufficient water, sewer, and dry utilities.

Site Inventory Methodology

Page H-26

Draft City of San Mateo 2031 Housing Element

- “The number of units that might be able to be developed at various affordability levels **was then estimated**, e.g., available land zoned at higher densities can be counted toward the very low- and low-income level needs, and land zoned at lower densities are counted toward the moderate and above moderate-income housing need. The analysis was then completed **using the actual average residential densities for developments** built on land with various zoning designations over the past five years.” (Page H-26 Draft City of San Mateo 2031 Housing Element)
- This a surprisingly short description of a crucial part of our otherwise extensive Draft Housing Element
- “**was then estimated**” is doing a lot of work in this passage
- The City needs to show its math and data so the public can adjudicate its capacity calculations

- Locational requirements of identified sites (AB 686, 2018)
- Sites identified in previous housing elements (AB 1397, 2017)
- Non-vacant site replacement unit requirements (AB 1397, 2017)
- Rezone program requirements (AB 1397, 2017)

These laws are further described in Section 2.2 (Legislative Context) of the Housing Element.

3.4.2 Site Inventory Methodology

City staff inventoried vacant and underutilized parcels in San Mateo to determine what land is available for development at various levels of density. Types of sites included:

- Vacant sites zoned for residential use.
- Vacant sites zoned for nonresidential use that allow residential development.
- Residentially zoned sites, including non-residentially zoned sites with a residential overlay, that are capable of being developed at a higher density (non-vacant sites, including underutilized sites).
- Sites owned or leased by a city, county, or city and county.

The number of units that might be able to be developed at various affordability levels was then estimated, e.g., available land zoned at higher densities can be counted toward the very low- and low-income level needs, and land zoned at lower densities are counted toward the moderate and above moderate-income housing need. The analysis was then completed using the actual average residential densities for developments built on land with various zoning designations over the past five years.

The City of San Mateo's Sites Inventory for future housing includes property zoned for multi-family use that is currently vacant as well as land that is severely underutilized. Sites that are zoned commercial or office but allow residential uses were included. As seen in Table 7 below, the adequate sites analysis demonstrates that there is enough land to meet the City's RHNA. The analysis for affordable housing units for extremely low, very low, and low-income households is based on the assumption that land zoned at densities higher than 30 units to the acre can facilitate affordable housing development, given the City's inclusionary requirements of 15%. More than 50% of the City's below market rate housing would be developed on lands that are underutilized. However, the city is experiencing a high volume of residential and mixed-use development projects looking to revitalize these sites and seeking density bonus and other incentives to achieve higher density residential development.

3.4.3 Site Inventory Approach

Staff conducted a site-by-site review of all potential development sites, citywide. As will be demonstrated below, staff currently believes that the RHNA, plus a reasonable buffer, can be accommodated within the existing zoning densities and the growth limits of the voter-approved initiative known as Measure Y.⁶

Development Potential Ranking. Each site – or potential aggregation of sites – was analyzed to discern the likelihood and feasibility of development during the period 2023-2031. Factors such as underperforming or vacant uses, owner or developer interest, age and size of current improvements, site

⁶ Measure Y imposes height and density limits that will limit the amount of development that can be built on any site in San Mateo through 2030.

Site Inventory Methodology

Page H-26

Draft City of San Mateo 2031 Housing Element

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- **Q: What is the denominator used in calculating the average?**
- **Q: Does this denominator only use recently developed sites or does it look at all similarly zoned parcels?**

- Locational requirements of identified sites (AB 686, 2018)
- Sites identified in previous housing elements (AB 1397, 2017)
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⁶ Measure Y imposes height and density limits that will limit the amount of development that can be built on any site in San Mateo through 2030.

Site Inventory Methodology

Realistic Development Capacity for nonresidential, nonvacant, or overlay zoned sites

- Practically all sites are non-vacant, and so we must look at production trends...

Realistic Development Capacity

City must consider past experience converting existing uses for Nonvacant Sites

- HCD’s “Site Inventory Guidebook,” page 24:
- “If the inventory identifies nonvacant sites to address a portion of the RHNA, **the housing element must describe the realistic development potential of each site within the planning period.** Specifically, the analysis *must* consider the extent that the nonvacant site’s existing use impedes additional residential development, the **jurisdiction's past experience converting existing uses to higher density residential development, market trends and conditions,** and regulatory or other incentives or standards that encourage additional housing development on the nonvacant sites.”

“Development potential”

X period of time (“planning period”)

= *rate* of parcel conversion to new housing

PART D: NONVACANT SITES

Local governments with limited vacant land resources or with infill and reuse goals may rely on the potential for new residential development on nonvacant sites, including underutilized sites, to accommodate their RHNA. Examples include:

- Sites with obsolete uses that have the potential for redevelopment, such as a vacant restaurant.
- Nonvacant publicly owned surplus or excess land; portions of blighted areas with abandoned or vacant buildings.
- Existing high opportunity developed areas with mixed-used potential.
- Nonvacant substandard or irregular lots that could be consolidated.
- Any other suitable underutilized land.

Local governments can meet other important community objectives to preserve open space or agricultural resources, as well as assist in meeting greenhouse gas emission-reduction goals, by adopting policies to maximize existing land resources and by promoting more compact development patterns or reuse of existing buildings.

Definition of a Vacant Site

A vacant site is a site without any houses, offices, buildings, or other significant improvements on it. Improvements are generally defined as development of the land (such as a paved parking lot, or income production improvements such as crops, high voltage power lines, oil-wells, etc.) or structures on a property that are permanent and add significantly to the value of the property.

Examples of Vacant Sites:

- No improvement on the site (other than being a finished lot).
- No existing uses, including parking lots.
- Underutilized sites are not vacant sites.
- Sites with blighted improvements are not vacant sites.
- Sites with abandoned or unoccupied uses are not vacant sites.

If the inventory identifies nonvacant sites to address a portion of the RHNA, the housing element must describe the realistic development potential of each site within the planning period. Specifically, the analysis must consider the extent that the nonvacant site’s existing use impedes additional residential development, the jurisdiction's past experience converting existing uses to higher density residential development, market trends and conditions, and regulatory or other incentives or standards that encourage additional housing development on the nonvacant sites.

Nonvacant Site Analysis Methodology

From HCD's "Site Inventory Guidebook," May 2020, page 25

Development Trends:

The inventory analysis should describe development and/or redevelopment trends in the community as it relates to nonvacant sites, i.e., the rate at which similar sites have been redeveloped. This could include a description of the local government's track record and specific role in encouraging and facilitating redevelopment, adaptive reuse, or recycling to residential or more intensive residential uses. If the local government does not have any examples of recent recycling or redevelopment, the housing element should describe current or planned efforts (via new programs) to encourage and facilitate this type of development (e.g., providing incentives to encourage lot consolidation or assemblage to facilitate increased residential-development capacity). The results of the analysis should be reflected in the capacity calculation described in Part C

Part C: Example Calculation

From HCD's "Site Inventory Guidebook," May 2020, page 22

Example Capacity Calculation

Here is an example of the actual capacity calculation for a particular site in the inventory. The methodology analysis must describe how each of these adjustments was generated per the analysis requirements above. The factors used below are based on the factors outlined in the statute. The percentages and how the factors are applied will vary depending on the unique circumstance in each jurisdiction.

| Site Description | |
|-----------------------------|---------------------------------|
| Size of site | 2.5 acres |
| Zoning | Residential Mixed-Use |
| Allowable density | 20 – 45 dwelling units per acre |
| RHNA affordability | Lower income |
| Existing Use | Nonvacant, single storefront |
| Infrastructure availability | Yes, no constraints |
| Environmental constraints | None known |

| Capacity Factors | Adjustment | Reasoning |
|---|---------------|---|
| Land Use Controls and Site Improvements | 95% | For net acreage due to on-site improvements including sidewalks, utility easement |
| Realistic capacity of the site | 55% | 55% adjustment based on past development trends for residential redevelopment in the residential mixed-use zones, and programs to incentivize development in this zone. |
| Typical densities | 95% | Affordable housing projects are built out to almost maximum density |
| Infrastructure availability | No adjustment | Not applicable, no constraint |
| Environmental constraints | No adjustment | No known site constraint |

Realistic capacity utilizing factors = $(2.5 \times 45) \times (.95) \times (.55) \times (.95) = 56$ units

Realistic Capacity = 56 Units

I cannot find this factor in our site inventory methodology

Site Inventory Approach

Page H-26-27

Draft City of San Mateo 2031 Housing Element

The closest thing I can find to a calculation of the rate at which similar parcels were redeveloped is this non-empirical “Development Potential Ranking”.

The writers of this draft used a *subjective*, ranked series of numbers, 1-5, in its calculations to encode what amounts to an unsubstantiated guesstimate of the “realistic development capacity” of sites

This is like using “thumbs up” emojis where we should be using available, numerical, development trend data

3.4.3 Site Inventory Approach

Staff conducted a site-by-site review of all potential development sites, citywide. As will be demonstrated below, staff currently believes that the RHNA, plus a reasonable buffer, can be accommodated within the existing zoning densities and the growth limits of the voter-approved initiative known as Measure Y.⁶

Development Potential Ranking. Each site – or potential aggregation of sites – was analyzed to discern the likelihood and feasibility of development during the period 2023-2031. Factors such as underperforming or vacant uses, owner or developer interest, age and size of current improvements, site size, and site constraints were reviewed. Depending on these considerations, sites were ranked from 1 to 5, with 1 being a site unlikely to develop/redevelop within the planning period, and 5 being highly likely to develop/redevelop during the period. Samples of these rankings include, but are not limited to:

- National chain gas stations, national chain fast food restaurants, and community-serving grocery stores. The State has indicated these types of sites are the most difficult to justify including in an inventory. Generally, no sites in this category are included in the inventory; however, the city has identified two sites with redevelopment interest that are ranked 4 (i.e. Bridgepointe Shopping Center and Olympic Shopping Plaza).
- Sites that are extremely small with little opportunity for aggregation, sites that may require substantial environmental clean-up, and other heavily constrained sites. No sites in this category are included in the inventory.
- Sites with existing uses that could be redeveloped along with adjacent parcels but which may have multiple owners, small underperforming strip malls, and certain office developments. Many of the City’s sites are within this category.
- Sites that have uses on them but in which a developer has expressed interest in the site, shopping malls with significant potential for redevelopment, adjacent sites with only one or two owners, and low-density commercial developments in high-density areas. Many of the City’s sites are within this category.
- Large sites with potential for substantial development, vacant sites, or sites with proposed or soon to be proposed projects and approved projects that have not yet been built. Majority of the City’s sites are in this category and have either proposed or approved projects that have not yet been built.

Realistic Development Capacity

for nonvacant sites

- Using *qualitative* characteristics to “rank” the “likelihood” of redevelopment for various sites is *not* an acceptable methodology in any HCD guidance documentation (Draft Housing Element, page H-26 to H-27)
- The likelihood of redevelopment should be based on *quantitative*, measurable *trends* [rates] (HCD “Site Inventory Guidebook,” page 21)
- The only valid exceptions should be for places without reasonably similar development history to calculate trends from, and that should generally not apply to the Bay Area

Realistic Development Capacity

for nonvacant sites

- Using *qualitative* characteristics to “rank” the “likelihood” of redevelopment for various sites is not an acceptable methodology in any HCD guidance documentation (Draft Housing Element, page H-26 to H-27)
- When ratings are subjective, it is impossible for the public to ascertain the quality of the City’s analysis.
- It amounts to staff saying, “there is enough capacity because, to us, it feels like there is enough capacity. Trust us.”
- It then becomes uncannily convenient that staff “determined” we have enough zoned capacity to meet our RHNA allocation.

Realistic Development Capacity

for nonvacant sites

- Using *qualitative* characteristics to “rank” the “likelihood” of redevelopment for various sites is not an acceptable methodology in any HCD guidance documentation (Draft Housing Element, page H-26 to H-27)
- When we use objective, quantitative data and we find that the probability of development is lower than what we need to meet our goals, we have the ability to draft policies that will enable changes that will help us meet our goals in predictable ways
- In contrast, when you base development capacity on subjective, non-empirical ratings, the Public has no way to understand how to change policies in ways that will meet our development needs

Non-Vacant Site Analysis Methodology - State Law

Government Code section 65583.2, subdivision (g)(2) states:

- “An existing use shall be presumed to impede additional residential development, absent findings based on substantial evidence that the use is likely to be discontinued during the planning period.”

- Q: How can a qualitative ranking of sites be considered substantial evidence?

Realistic Development Capacity - Nonvacant Sites

Current incompleteness prohibits City from assessing actual capacity to meet its RHNA allocation

- In sum, past production **trends** must be used, **including whether or not a site will be developed at all**. Staff or consultant “intuition” is not acceptable
- Unless there is substantial evidence that a site will be redeveloped according to a listed density, be it a letter from the property owner or a pre-application submission, the city should be using an objective, calculated probability of redevelopment based on all similar properties locally or regionally over the course of the past RHNA cycle.
- **For the City of San Mateo, that probability is 8.5% according to a UCLA study published in 2021**

Realistic Development Capacity - Nonvacant Sites

Current incompleteness prohibits City from assessing actual capacity to meet its RHNA allocation

- In sum, past production **trends** must be used, **including whether or not a site will be developed at all**. Staff or consultant “intuition” is not acceptable
- **Each parcel capacity calculation should be multiplied by the probability of development for parcels in San Mateo, something akin to 0.085 (or 1.0 if the parcel has *substantial evidence* of redevelopment)**
- **If there is additional, refined and warranted, *development trend data*, such as the probability of development for parcels with a specific zoning-designation that are of a functionally equivalent size, that probability may be factored into the calculation if reviewed and approved by the PC or council**

Non-vacant Site Analysis Next Steps

The City shall serve the Public in its evaluation of suitable sites

- From HCD Site Inventory Guidebook, page 27:
 - “If a housing element relies on nonvacant sites to accommodate 50 percent or more of its RHNA for lower income households, the nonvacant site’s existing use is **presumed to impede** additional residential development, **unless the housing element describes findings based on substantial evidence** that the use will likely be discontinued during the planning period. The housing element must include the following:
 - As part of the resolution adopting the housing elements, findings stating the uses on nonvacant sites identified in the inventory to accommodate the RHNA for lower income is likely to be discontinued during the planning period and the factors used to make that determination. This can be included in the body or in the recital section of the resolution.”

Step 3A:

If a housing element relies on nonvacant sites to accommodate 50 percent or more of its RHNA for lower income households, the nonvacant site’s existing use is presumed to impede additional residential development, unless the housing element describes findings based on substantial evidence that the use will likely be discontinued during the planning period. The housing element must include the following:

- As part of the resolution adopting the housing elements, findings stating the uses on nonvacant sites identified in the inventory to accommodate the RHNA for lower income is likely to be discontinued during the planning period and the factors used to make that determination. This can be included in the body or in the recital section of the resolution.

Example: WHEREAS, based on <name factors here (e.g., expiring leases, dilapidated building conditions, etc.)>, the existing uses on the sites identified in the site inventory to accommodate the lower income RHNA are likely to be discontinued during the planning period, and therefore do not constitute an impediment to additional residential development during the period covered by the housing element.

- The housing element should describe the findings and include a description of the substantial evidence they are based on.

In general, substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. An example of substantial evidence would be a nonvacant site with a grocery store and with a building lease expiring in a year, and evidence that the store has entered into a lease to relocate to another site subsequent to the lease expiring.

Examples of substantial evidence that an existing use will likely be discontinued in the current planning period include, but are not limited to:

- The lease for the existing use expires early within the planning period,
- The building is dilapidated, and the structure is likely to be removed, or a demolition permit has been issued for the existing uses,
- There is a development agreement that exists to develop the site within the planning period,
- The entity operating the existing use has agreed to move to another location early enough within the planning period to allow residential development within the planning period.
- The property owner provides a letter stating its intention to develop the property with residences during the planning period.

If multiple sites make up a common existing use and the same factors affect each of the sites, the same findings can be used for each of the sites (e.g., an abandoned shopping mall with sites under common ownership that will not be restored to commercial use located in an area where there is recent residential development). The “substantial evidence” would indicate the existing use will not impede further residential development or that the existing use will be discontinued during the planning period. In this type of situation, use of the same findings for each of the multiple sites would be appropriate.

Non-vacant Site Analysis Next Steps

The City shall serve the Public in its evaluation of suitable sites

- When substantial evidence is provided for site redevelopment, it should be available to the public, early in the process, in an easy, user-friendly way that is connected to the site geographically,
- The substantial evidence's warrant for use should be adjudicated by the the Public through the Planning Commission and verified by HCD
- Absent substantial evidence:
 - The likelihood of redevelopment of any given site should default to the likelihood of development for all sites across the city (or all sites of a particular zoning category and equivalent size, if the data are available)

Realistic Development Capacity

Include a Monitoring Program with next-step actions

- Monitoring Programs with next-step actions should be incorporated if the expected housing development is not produced
- “In addition, the housing element should include monitoring programs with next-step actions to ensure sites are achieving the anticipated development patterns. The programs should identify modifications to incentives, sites, programs, or rezoning the jurisdiction will take should these strategies not yield the expected housing potential.” (HCD “Site Inventory Guidebook,” page 21)

Part 2: Affirmatively Furthering Fair Housing

**Using California HCD Guidance for Public Entities and Housing
Elements to advocate for our neighbors in San Mateo**

Commissioner Adam Nugent, April 26, 2022 Planning Commission Meeting

AFFH General Comments

Where are we going with this?

- We should have a very clear end-state where this city has solved the identified patterns of segregation, geographic disparities, and affirmatively furthered fair housing
- It does not have to be achieved by the end of this single cycle, but its expected year of achievement should be stated and agreed upon, under the direct consultation of identified, excluded demographics and protected classes, like an emissions goal
- This end-state should be discernible and anticipated by the goals and actions

“Many Americans have a hard time recognizing the magnitude and persistence of racial inequality because, psychologically, we resist these truths. Psychologists refer to this kind of broad bias in perception as “motivated cognition” — that is, most Americans want to live in a society that is more racially equal, and so they engage in mental actions that ignore, discount or downplay contradictory evidence to maintain coherence between belief and reality.”

Michael Kraus, a social psychologist and an associate professor at Yale University

Likewise, when progress toward equality is seen as inevitable, incentives for political action are low.

**We need to end residential segregation
and reinvest in our Northern
Neighborhoods**

Without displacement

State Guidance

Affirmatively Furthering Fair Housing

- New California laws require active steps by our city government to dismantle housing segregation
- Actions must be taken in the Housing Element/General Plan creation in 2021 and 2022
- HCD outlines best practices and policies for cities to use



California Department of Housing and Community Development

Affirmatively Furthering Fair Housing

Guidance for All Public Entities and for Housing Elements

(April 2021 Update)



Quick AFFH Overview for Readers of These Notes



**California Department of Housing
and Community Development**

Affirmatively Furthering Fair Housing

Guidance for All Public Entities and for Housing Elements

(April 2021 Update)



What is AFFH?

Affirmatively Furthering Fair Housing

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.

The duty to affirmatively further fair housing extends to all of a public agency's activities and programs relating to housing and community development.

Part 1: Duty of All Public Agencies to Affirmatively Further Fair Housing

AB 686 strengthens existing California fair housing and civil rights laws. California's Fair Employment and Housing Act (FEHA) provides broad protections to California residents, prohibiting housing discrimination based upon "race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information."³³ California's Government Code section 65008 prohibits discrimination in housing based on occupation, age, or protected characteristic; method of financing; or the intended occupancy by lower or moderate income people. While state law prohibited discrimination through public or private land use practices, decisions, and authorizations based on any of these characteristics, it had not included a state requirement to affirmatively further fair housing. As of January 1, 2019, AB 686 creates a state mandate requiring public agencies and jurisdictions to go beyond combating discrimination to affirmatively further fair housing.

"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, subc. (a)(1).)

Beyond the housing element requirements, AB 686 requires all public agencies (including, but not limited to, all cities and counties, and housing authorities) to ensure that their housing and community development programs and activities—taken together—affirmatively further fair housing, and that they take no action materially inconsistent with this obligation.³⁴

Affirmatively furthering fair housing includes taking proactive and meaningful actions that have a

³³ Gov. Code, §§ 12900-12996.

³⁴ Gov. Code, § 8899.50, subcs. (a)(1), (b), (d).

Meaningful Action

AFFH requirements

- Address significant disparities in housing needs and in access to opportunity
- Replace segregated living patterns with truly integrated and balanced living patterns
- Transform racially and ethnically concentrated areas of poverty into areas of opportunity
- Foster and maintain compliance with civil rights and fair housing laws

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 reentry 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.³⁶

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.

Fair Housing Actions

What we need San Mateo to do

- Create housing mobility strategies
- Provide new housing choices and affordability in areas of opportunity
- Design place-based strategies to encourage community conservation and revitalization
- Protect existing residents from displacement

Examples of Affirmatively Furthering Fair Housing Actions

Housing Mobility Strategies consist of removing barriers to housing in areas of opportunity and strategically enhancing access. Examples include:

- Voucher mobility
- Housing mobility counseling
- City-wide affordable rental registries
- Landlord outreach to expand the location of participating voucher properties
- Landlord education and outreach on source of income discrimination and voucher programs
- Assistance with security deposits and moving expenses for voucher holders and other low-income tenants
- Extend search times for particular groups with housing choice vouchers, such as larger families with children or persons with disabilities
- Regional cooperation and administration of vouchers (such as through portability and shared waiting lists);
- Affirmative marketing can be targeted at promoting equal access to government-assisted housing or to promote housing outside the immediate neighborhood to increase awareness and the diversity of individuals in the neighborhood
- Collaborate with high performing school districts to promote a diversity of students and staff to serve lower income students
- Developing multifamily housing opportunities⁹⁵
- Encouraging the development of four or more units in a building
- Encouraging collaboration between local governments and community land trusts as a mechanism to develop affordable housing in higher-opportunity areas.⁹⁶
- Accessibility programs focus on improving access to housing, transit, public buildings and facilities, sidewalks, pedestrian crossings, and businesses.

New Housing Choices and Affordability in Areas of Opportunity means promoting housing supply, choices and affordability in areas of high opportunity and outside of areas of concentrated poverty. Examples include:

- Zoning, permit streamlining, fees, incentives and other approaches to increase housing choices and affordability (e.g., duplex, triplex, multifamily, accessory dwelling units, transitional and supportive housing, group homes) in high opportunity areas
- Target housing creation or mixed income strategies (e.g., funding, incentives, policies and programs, density bonuses, land banks, housing trust funds)
- Inclusionary requirements

⁹⁵ The federal FHA includes design and construction requirements for all residential buildings with four or more attached units. In buildings with stairs, all ground floor units must be accessible, and in buildings with elevator access, all units must have minimum access. There is no federally mandated standard for accessibility in single family homes. Government Code section 12956.1, subdivision (b), requires 10 percent of units in multifamily buildings without elevators consisting of 3 or more rental units or 4 or more condominium units are subject to accessibility building standards.

⁹⁶ See Community Land Trusts and Stable Affordable Housing, available at <https://www.huduser.gov/podals/podalg/pdf/cldtc-featd-article-11-0417.html>, last visited on March 19, 2021.

Components of New HE Requirements for AFFH

1. Outreach
2. Assessment of Fair Housing (AFH)
3. Site Inventory
4. Identification & Prioritization of Contributing Factors
5. Goals and Actions/Programs



Affirmatively Furthering Fair Housing

6.3 San Mateo's Fair Housing Assessment

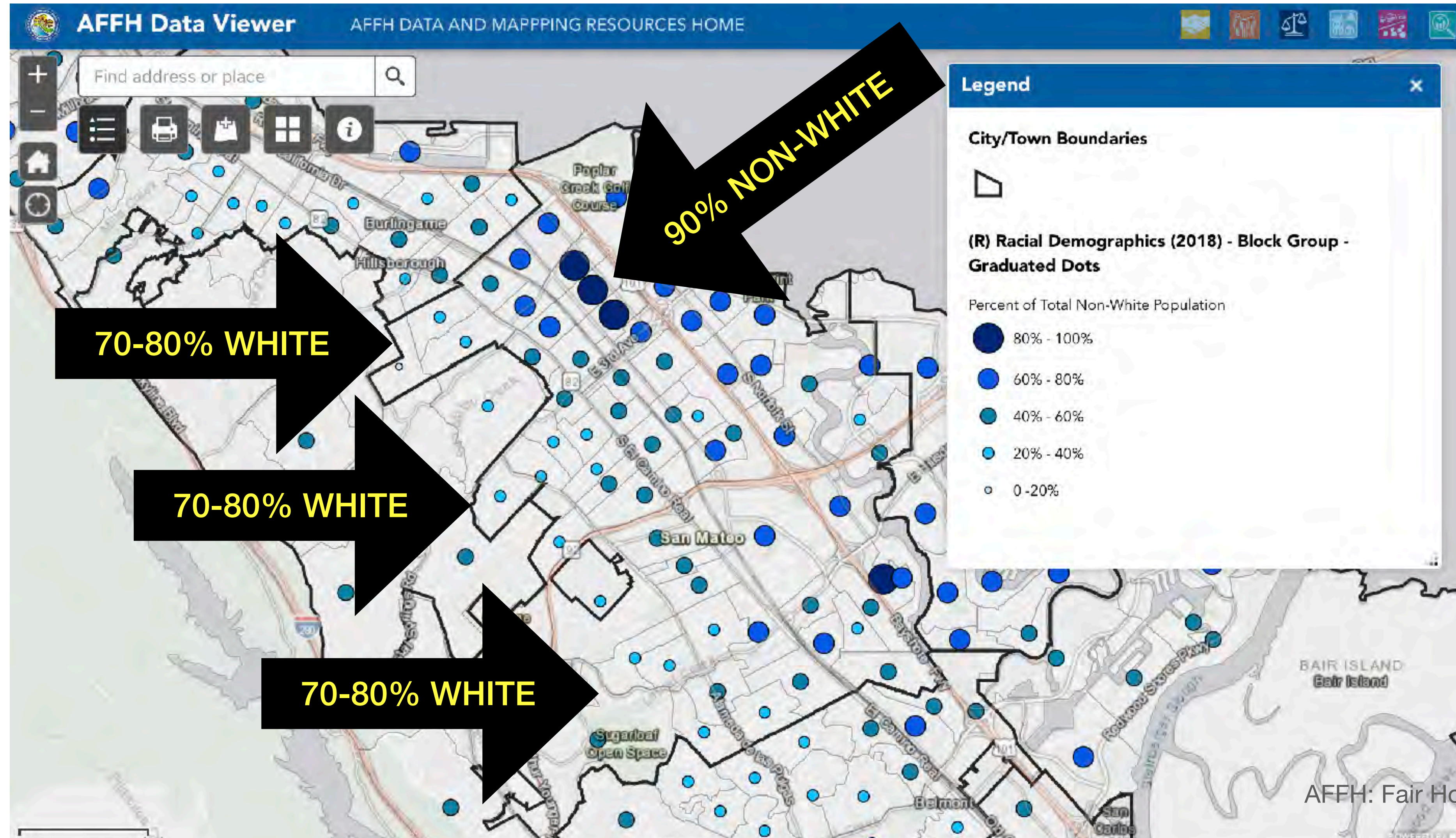
Fair Housing Assessment

Shortcomings In the Assessment of Segregation and Integration Patterns and Trends:

- No analysis of racially segregated, concentrated areas of affluence
 - Missing assessment of the most segregated racial population: non-Hispanic whites (APPENDIX D, Attachment 4 – UC Merced Segregation Report)
- No opportunity sites are located within the city's highest-opportunity areas

Assessment's Miss:

Racially Concentrated Areas of Affluence Completely Left Out of the Analysis and Sites Inventory



"Figure II-6: % Non-White Population by Census Block Groups," 2018, Root Policy Research Map and Data Packet, Page 10

Fair Housing Assessment

Shortcomings In the Assessment of Segregation and Integration Patterns and Trends:

- Why is income-segregation substantially higher in San Mateo compared to the rest of the Bay Area?
 - This assessment should highlight factors that can be fixed
- Why has San Mateo's income segregation at the neighborhood level not improved over time and why is it worse than the Bay Area average?

Fair Housing Assessment

Shortcomings In the Assessment of Segregation and Integration Patterns and Trends:

- Missing meaningful assessment of segregation in San Mateo relative to the Bay Area region
 - Extremely low population of black people. Why?
 - Need assessment of **causes** for the growing exclusion of this demographic from San Mateo in order to solve for this issue

Assessment's Miss: Black population

Exclusion and displacement → low population relative to Bay Area

- Only 2% of the city's population is now black
- In 1990 the North Central census tract was 18% black, the highest in the city
- In 2017 it was only 4% black
- Discuss possible causes:
 - Disinvestment-driven displacement in North Central due to rising rental costs and lack of improvement of rental housing conditions
 - Government policy preventing home purchasing
 - Historical exclusion elsewhere in the city

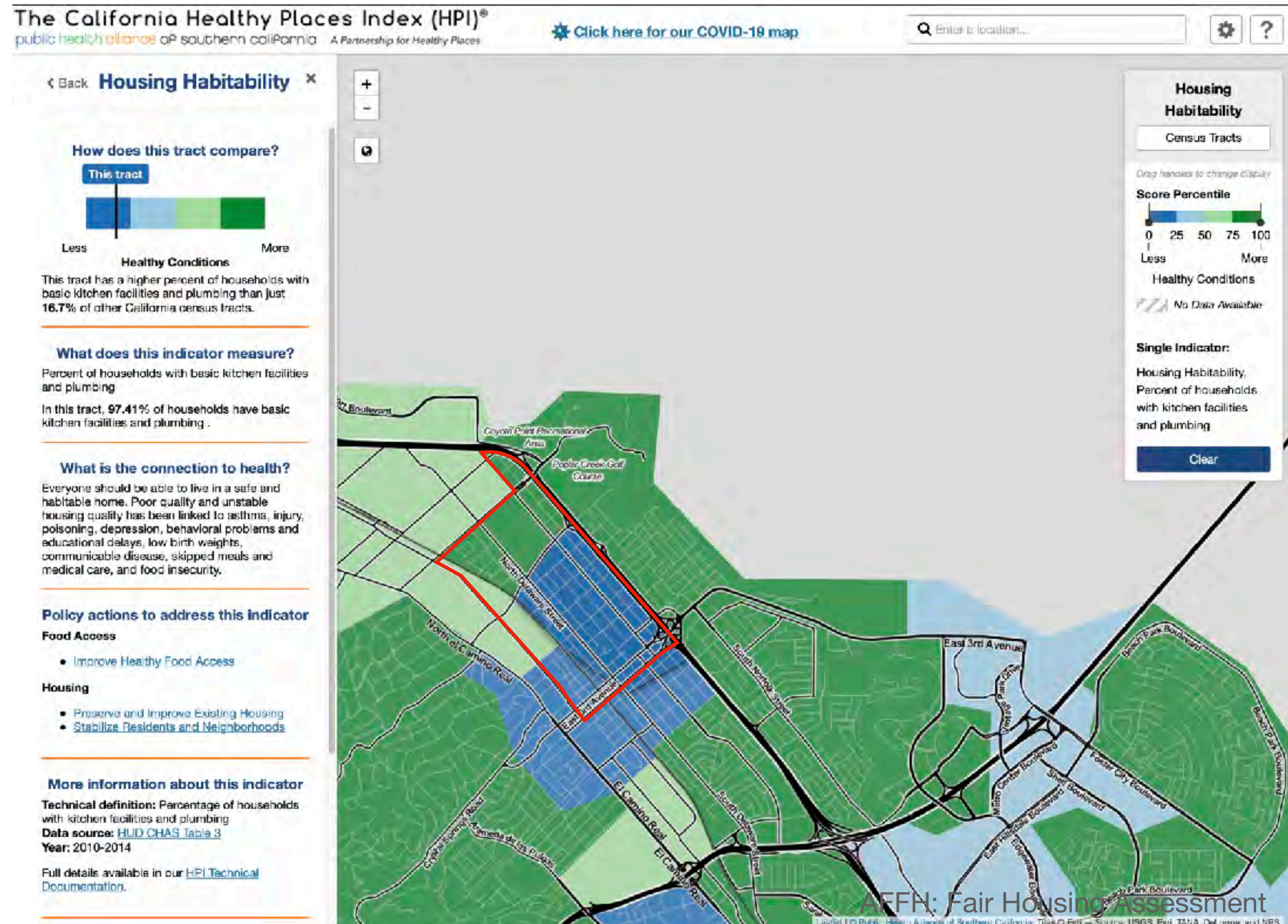
| Black Population in Census Tract 6062 | |
|--|-----|
| Census Period 1960-Present | |
| 1990 | 18% |
| 2000 | 11% |
| 2010 | 6% |
| 2017 | 4% |

Assessment's Miss: Geographic Differences

Housing Habitability Issues

- Strong and distinguishing characteristic of North Central
- Highly concentrated in North Central and downtown
- North Shoreview is *not* characterized by this issue

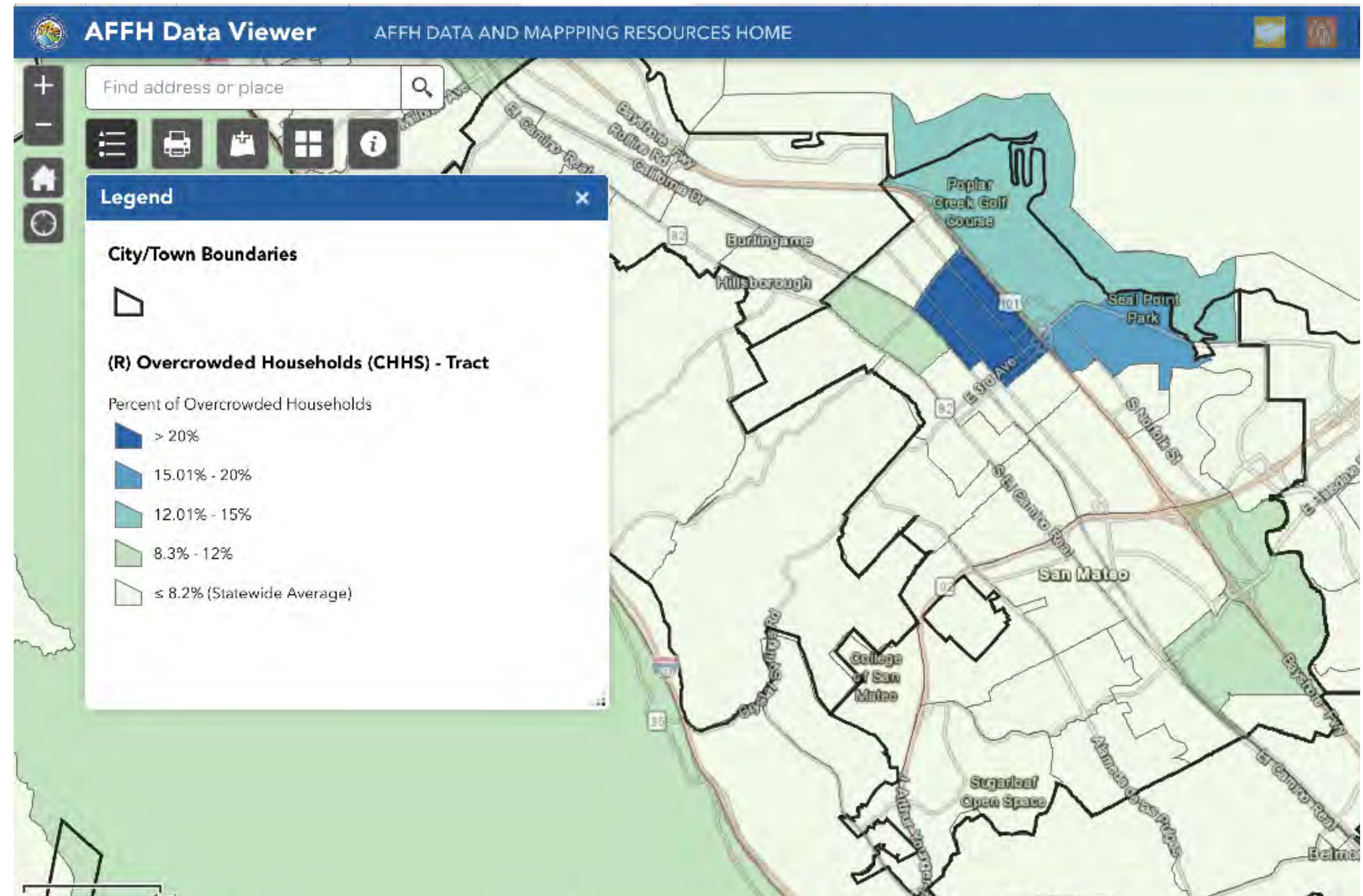
See also: "Figure III-11: Healthy Places Index by Census Tract, 2021," Root Policy Research Map and Data Packet, Page 40



Assessment's Miss: Geographic Differences

Overcrowding issues in North Central

- Strong and distinguishing characteristic of southern North Central
- Highly concentrated in one neighborhood
 - North Shoreview (13%) is much less characterized by this issue
- San Mateo overcrowding overall average: 7%, which is heavily skewed by North Central
- San Mateo Park: < 1%
- North Central north of Poplar Ave: 1%
- **North Central south of Poplar Ave: 27%**



"Figure IV-19: Overcrowded Households by Census Tract, 2019," Root Policy Research Map and Data Packet, Page 60

Fair Housing Assessment

Resident trauma and exclusion

- North Central residents, including many who are alive today, have experienced the trauma of exclusion and steering from other neighborhoods of San Mateo
- Paired with a strong history of disinvestment and government practices to prevent POC from home ownership, the neighborhood and its people will need thoughtful repair in both the public and private realms

6.3.2 Contributing factors and Fair Housing Action Plan.

Excerpt from HCD's AFFH Presentation

4. Identify and Prioritize Contributing Factors

- » The housing element must identify and prioritize significant contributing factors to segregation, R/ECAPS, opportunity access, & disproportionate housing needs
 - Fair housing contributing factor = a factor that creates, contributes to, perpetuates, or increases the severity of one or more fair housing issues.
 - Contributing factors should be based on all prior AFFH analyses (Outreach, AFH, Site Inventory)

Excerpt from HCD's AFFH Presentation

4. Identify and Prioritize Contributing Factors

- » Identification and evaluation of contributing factors must:
 - Identify fair housing issues and significant contributing factors
 - Prioritize contributing factors, giving highest priority to those factors that most limit or deny fair housing choice, access to opportunity, or negatively impact fair housing or civil rights compliance
 - Discuss strategic approaches to inform and strongly connect to goals and actions. Goals and actions should stem directly from Contributing Factors
- » Prioritization is important – should be a manageable list (4-6, not 50)
- » Must be tailored to local conditions

Analysis of Contributing Factors is inadequate

- It currently focuses more on the characteristics of the victims of our discriminatory structures and thus functions more as a continuation of the fair housing assessment than what it's meant to be
- For instance, listing the fact *that Hispanic residents are more likely to work low-wage jobs or that Hispanic residents are primarily concentrated in the northeastern area of the city where residents face higher poverty and cost burden as well as poor opportunity outcomes* is something that belongs in the fair housing assessment, not in the contributing factors space

Analysis of Contributing Factors is inadequate

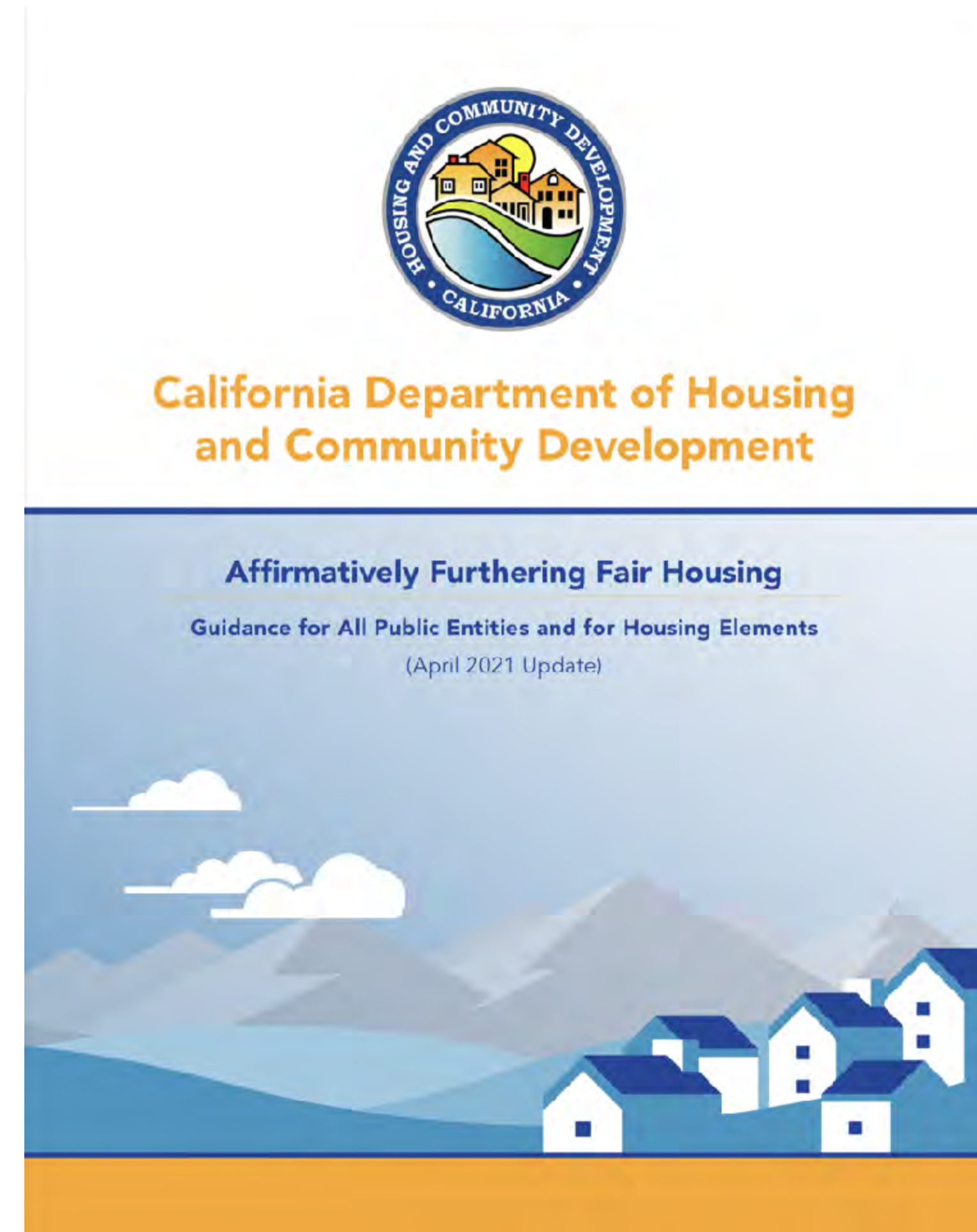
What is a fair housing contributing factor?

- Fair housing contributing factor = a factor that creates, contributes to, perpetuates, or increases the severity of one or more fair housing issues
- **City-controlled regulatory factors, policies, or ways of doing business** that cause or contribute to fair housing issues ***should be fully identified and take primacy in this analysis***, but they are inadequately discussed

Examples of Contributing Factors to Fair Housing Issues by Area

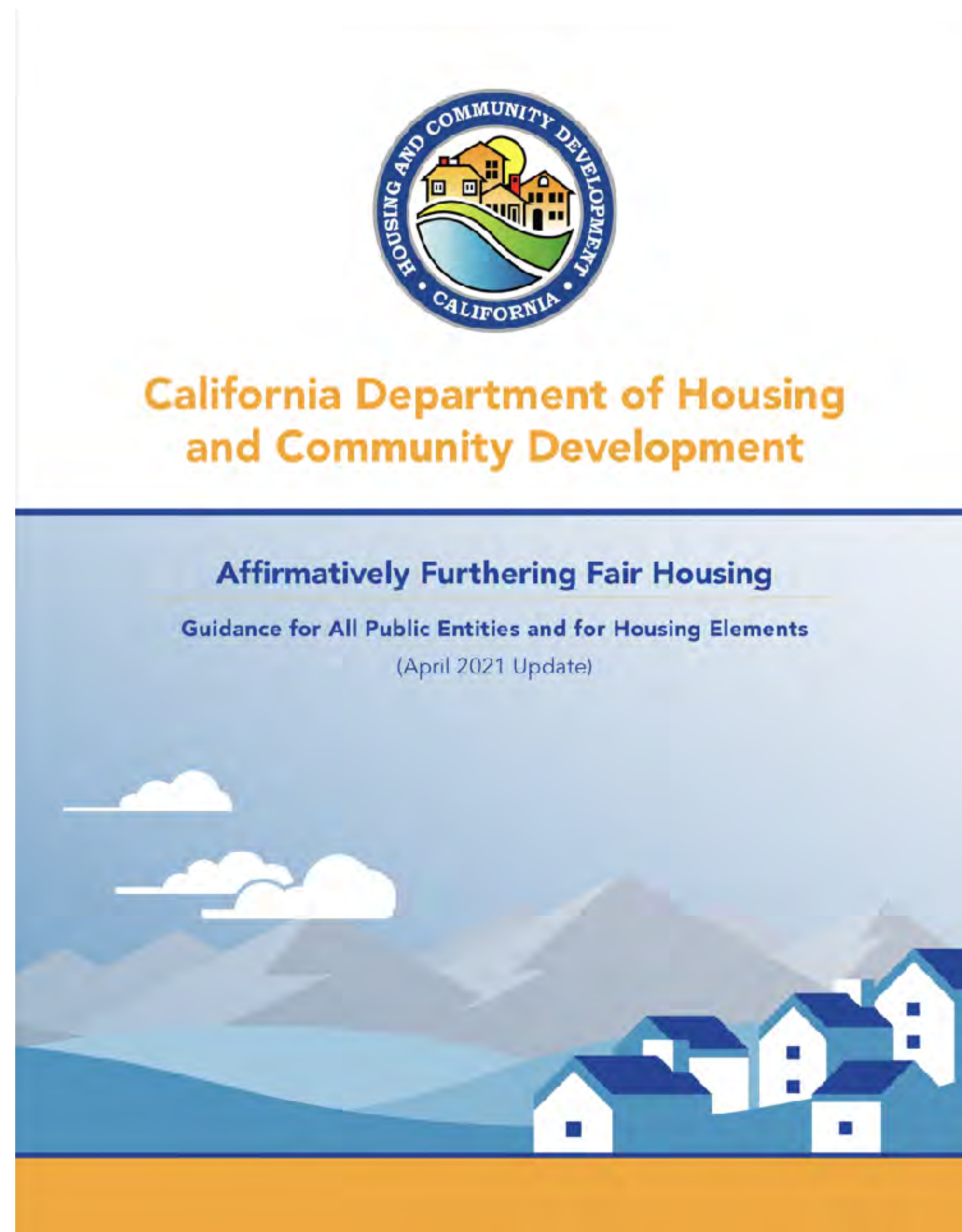
From HCD's "Affirmatively Furthering Fair Housing: Guidance to All Public Entities and for Housing Elements"
Pages 68-70

- **Segregation and Integration**
 - Community opposition
 - Lack of community revitalization strategies
 - Lack of private investments in specific neighborhoods
 - Land use and zoning laws



Examples of Contributing Factors to Fair Housing Issues by Area

From HCD's "Affirmatively Furthering Fair Housing: Guidance to All Public Entities and for Housing Elements"
Pages 68-70

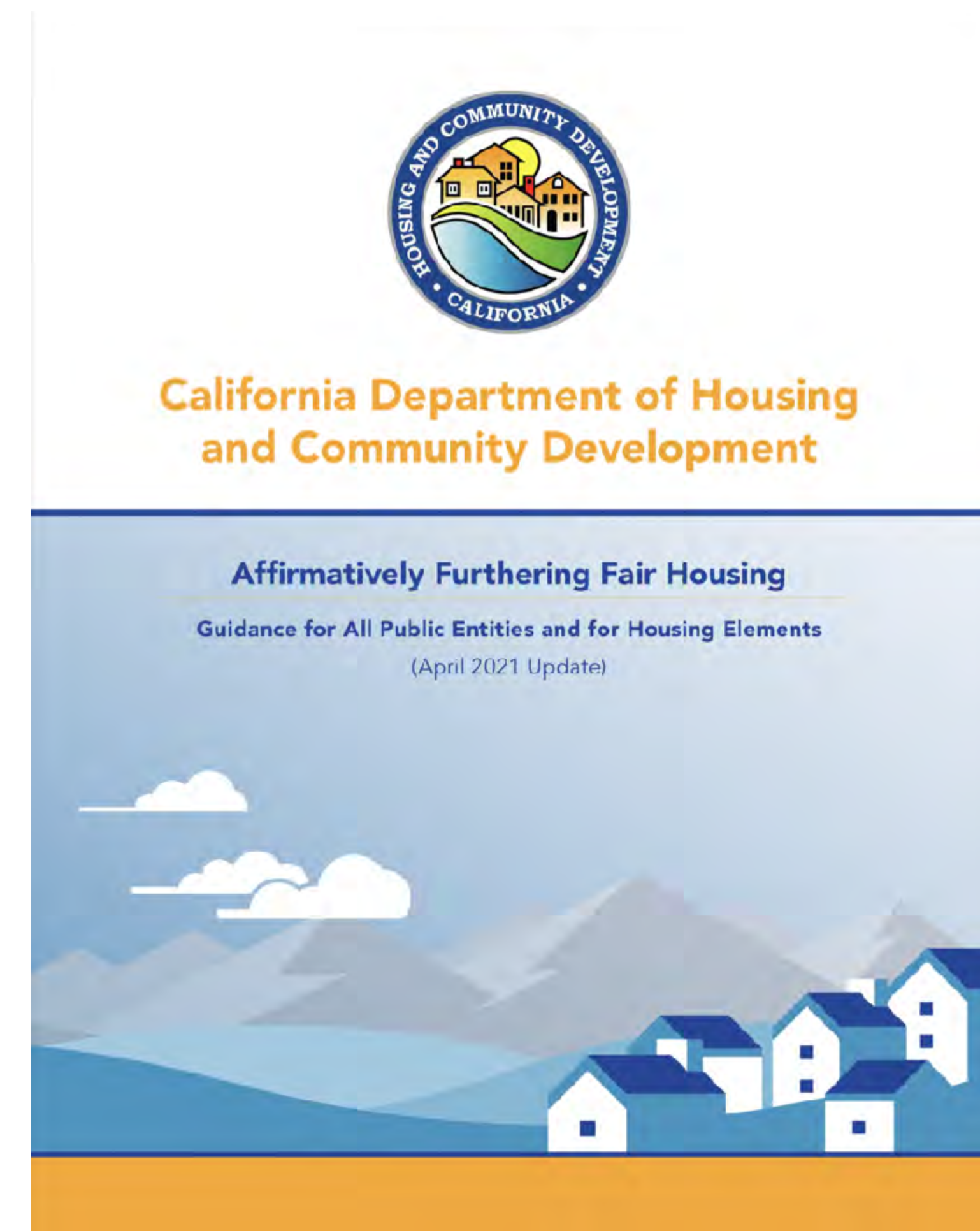


- **Racially and Ethnically Concentrated Areas of Poverty**
 - Deteriorated and abandoned properties
 - Displacement of residents due to economic pressures
 - Land use and zoning laws
 - Occupancy codes and restrictions

Examples of Contributing Factors to Fair Housing Issues by Area

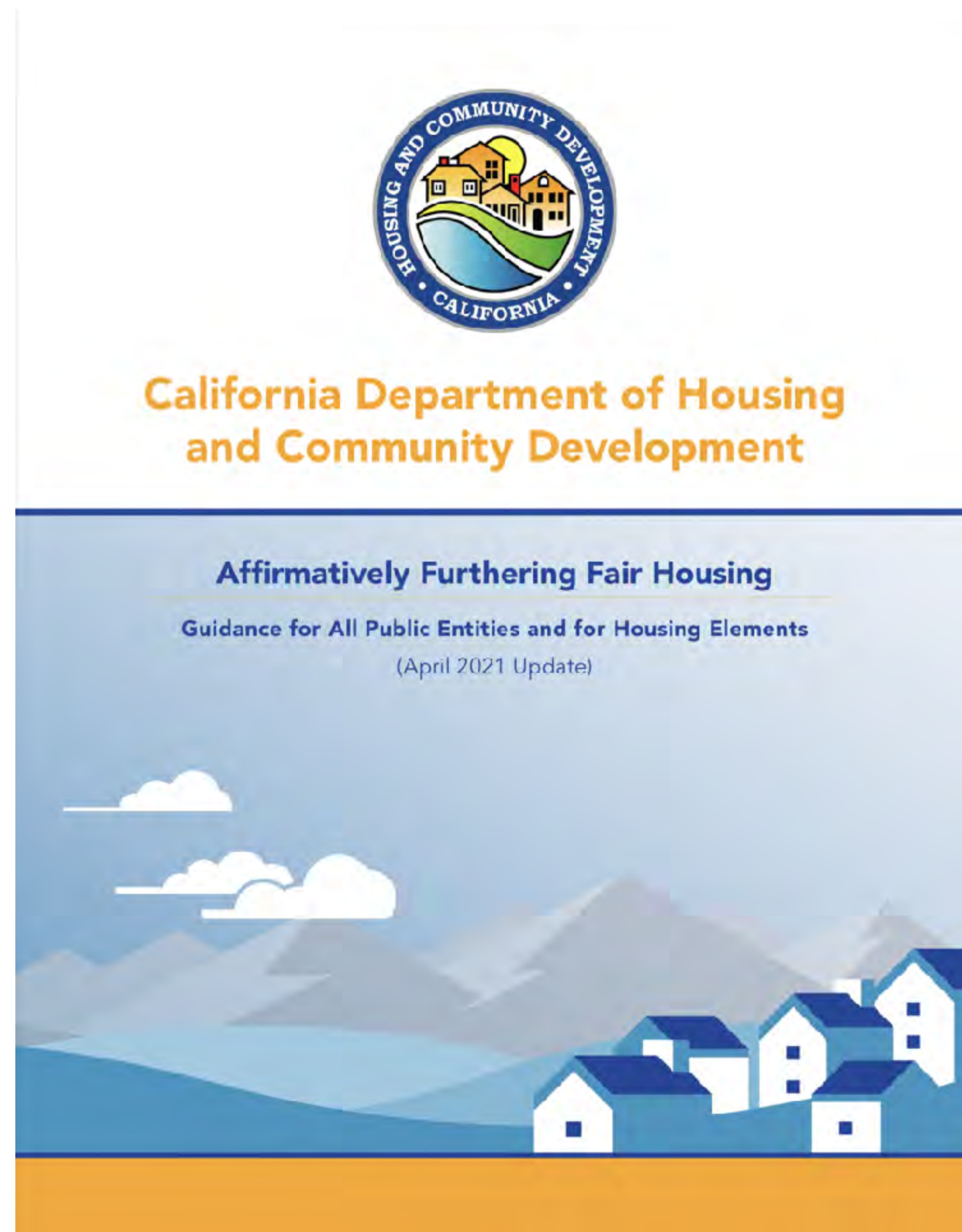
From HCD's "Affirmatively Furthering Fair Housing: Guidance to All Public Entities and for Housing Elements"
Pages 68-70

- **Disparities in Access to Opportunity**
 - The availability, type, frequency, and reliability of public transportation
 - Land use and zoning laws
 - Lack of public investments in specific neighborhoods, including services or amenities
 - Location of proficient schools and school assignment policies
 - Location and type of affordable housing



Examples of Contributing Factors to Fair Housing Issues by Area

From HCD's "Affirmatively Furthering Fair Housing: Guidance to All Public Entities and for Housing Elements"
Pages 68-70



- **Disproportionate Housing Needs, Including Displacement Risks**
 - The availability of affordable units in a range of sizes
 - Lack of renter protections
 - Land use and zoning laws

Analysis of Contributing Factors

Analysis of Contributing Factors is inadequate.

- Contributing Factors analysis must answer key “why” questions:
 - What unique factors, characteristics, and history in North Central and, separately, North Shoreview are leading to the concentration of higher poverty, low economic and environmental opportunity, high-cost burden, overcrowding, and flood hazards compared to the rest of the City of San Mateo?
 - What existing government constraints or policies have perpetuated these concentrated characteristics?
 - What factors, policies, and history in other parts of the city contribute to the absence of these characteristics, especially west of El Camino?

The Analysis of Contributing Factors

Shortcomings

- The Housing Element needs to assess the **geographic and regulatory causes** leading to the concentration of poverty, low economic and environmental opportunity, high-cost burden, and overcrowding in North Central and, to a lesser extent, North Shoreview
- The Housing Element also needs to assess the **geographic and regulatory causes** leading to the concentration of affluence and, disproportionately, white people in western neighborhoods
- This necessary assessment of **causes** is needed in order to develop place-based programs and actions that will meaningfully repair these issues

The Analysis of Contributing Factors

Must be able to guide Significant, Meaningful, and Sufficient policies to Overcome Patterns of Segregation

- Existing patterns of segregation in San Mateo are significant and persistent
 - Census tract divergence within the city ranges from 82% white to 6% white (San Mateo Park vs North Central, respectively)
 - Class segregation largely follows these lines
 - Actions and policies must be sufficient to overcome this pattern in a reasonable period of time
 - Why is the white population significant? Check out Appendix D and read *Segregation by Design* by Prof. Jessica Trounstein

The Analysis of Contributing Factors

Must be able to guide Significant, Meaningful, and Sufficient policies to Overcome Patterns of Segregation

- The Housing Element also fails to discuss strategic approaches to inform and strongly connect “Contributing Factors” to “Goals and Actions”
- This contributes to the the creation of goals and actions that are not yet sufficient to produce meaningful action

The Analysis of Contributing Factors

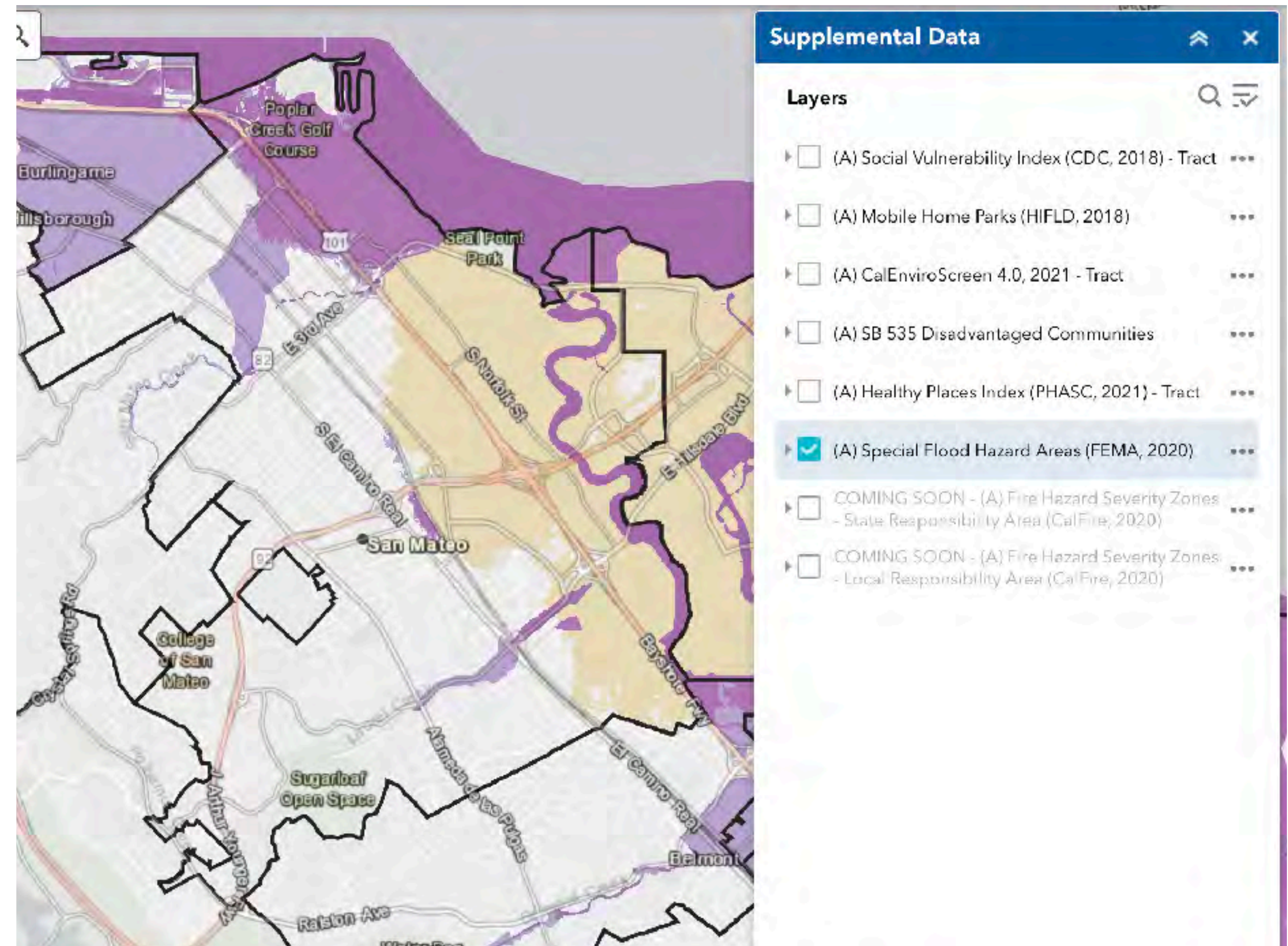
Must be able to guide Significant, Meaningful, and Sufficient policies to Overcome Patterns of Segregation

- Again, existing patterns of segregation in San Mateo are significant and persistent
- Analysis of Contributing Factors should be able to connect to Actions and Policies that are structured in a way that, economically, creates value for the city and for residents, without destroying the value of existing places
- This should not be about diminishing the quality of existing high-resource neighborhoods in order to achieve parity
- This process is about:
 - Lifting up disinvested portions of our city, and
 - Pairing that uplift with expanded access and residential integration across the city through thoughtful government-guided programs

Identify and Prioritize Contributing Factors

Tell the Story: North Shoreview: Environmental Hazard and Isolation

- Why is North Shoreview an edge Racially/Ethnically Concentrated Area of Poverty?
- What characteristics distinguish North Shoreview from other similar neighborhoods, and how might they lead to higher concentrations of marginalized or vulnerable groups?



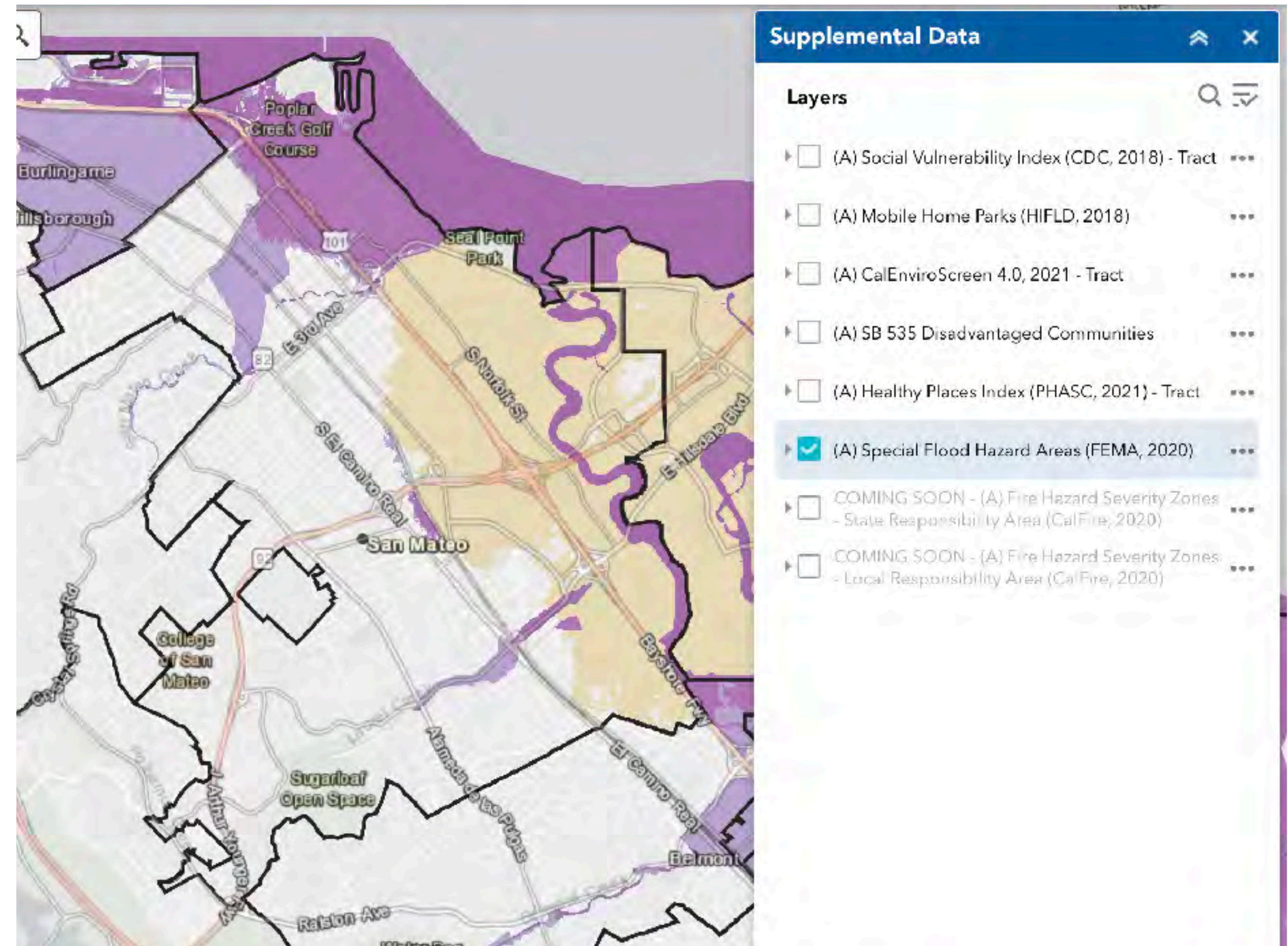
"Figure IV-31: Special Flood Hazard Areas, 2000,"
Root Policy Research Map and Data Packet, Page 69

**Identify and Prioritize Contributing Factors:
Tell the Story**

Identify and Prioritize Contributing Factors

Tell the Story: North Shoreview: Environmental Hazard and Isolation

- Why is North Shoreview an edge Racially/Ethnically Concentrated Area of Poverty?
- Key differences between North Shoreview and South Shoreview:
 - Levy protection and flood hazard chance.
 - Limited access to circulation and transportation



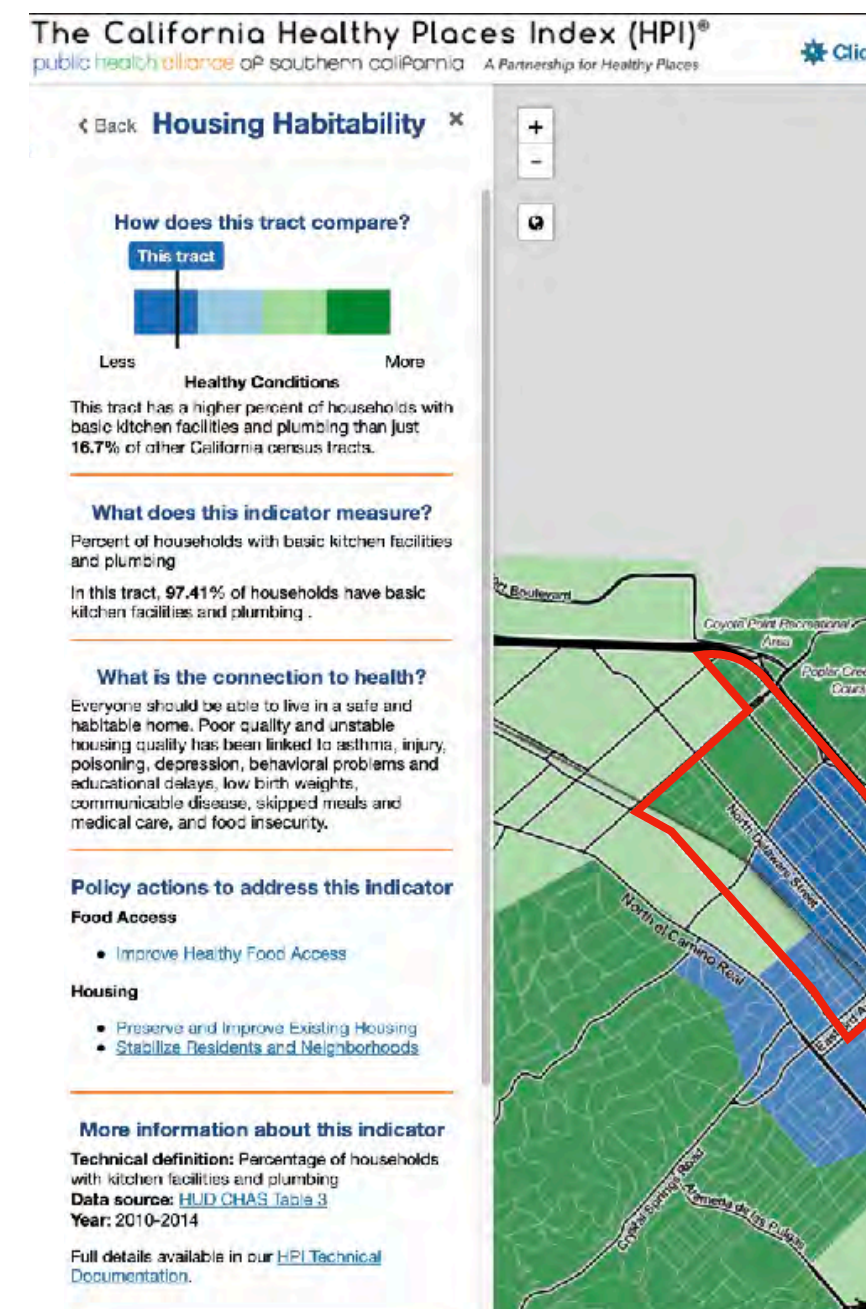
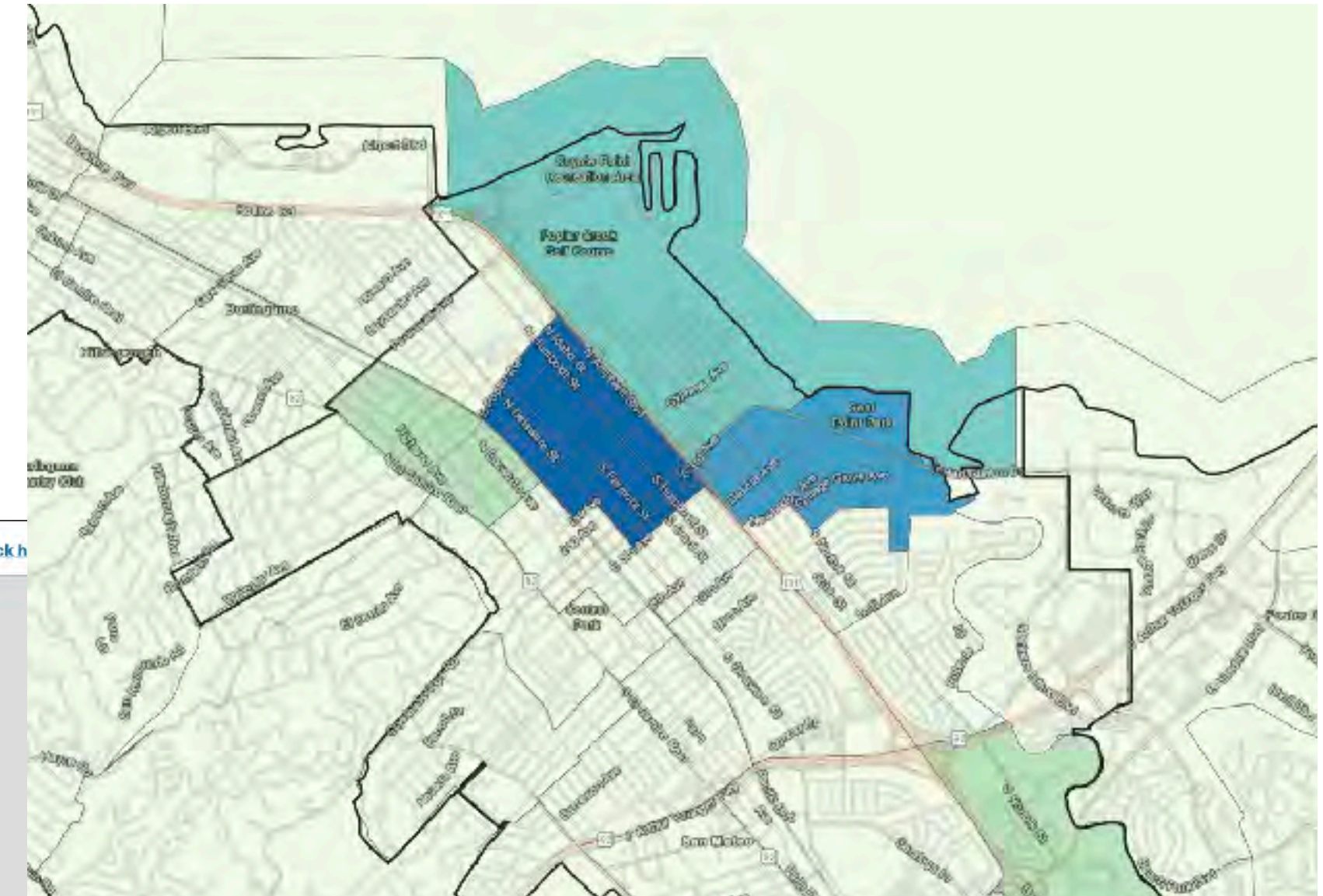
"Figure IV-31: Special Flood Hazard Areas, 2000," Root Policy Research Map and Data Packet, Page 69

Identify and Prioritize Contributing Factors

Tell the Story: North Central: Poor Housing Conditions + Overcrowding

- Why is North Central (south of Poplar) an edge Racially/Ethnically Concentrated Area of Poverty?
- What characteristics distinguish North Central south of Poplar Ave from other parts of the city, and
- How might they lead to higher concentrations of marginalized groups?

Overcrowding



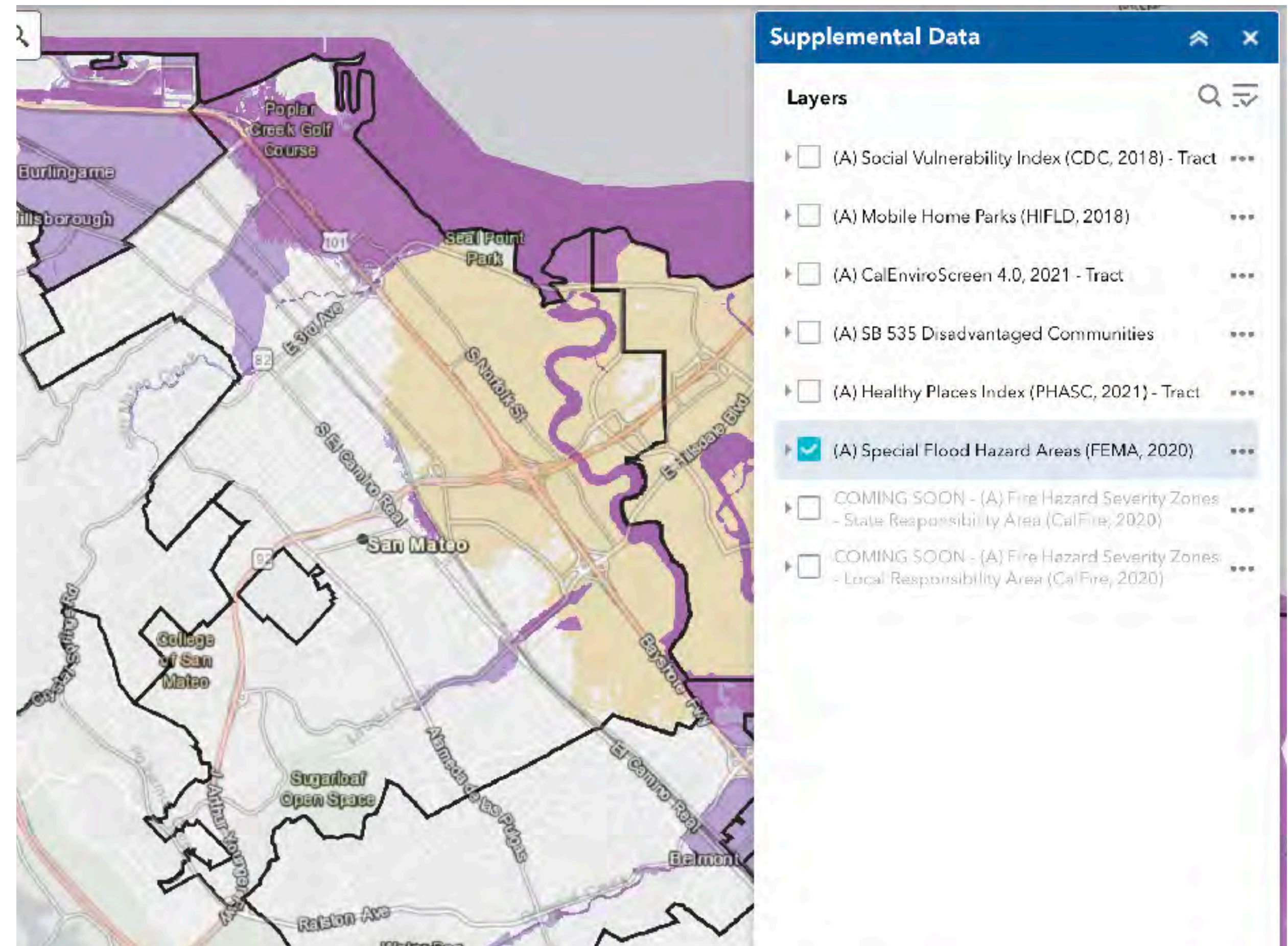
Unhealthy Housing Conditions

AFFH: Contributing Factors

Identify and Prioritize Contributing Factors

Tell the Story: North Central: Disinvestment + Environmental Hazard

- Why is North Central (south of Poplar) an edge Racially/Ethnically Concentrated Area of Poverty?
 - Key differences between North Central (south of Poplar) and other areas:
 - Decades of disinvestment:
 - Both private housing stock and public infrastructure
 - Overcrowding and poverty as both symptoms and causes of private disinvestment
 - Levy protection and flood hazard chance (in portions of that area)



"Figure IV-31: Special Flood Hazard Areas, 2000,"
Root Policy Research Map and Data Packet, Page 69

Identify and Prioritize Contributing Factors

Tell the Story: North Central: Historical Ghettoization + Failed, Segregated Schools

- Why is North Central (south of Poplar) an edge Racially/Ethnically Concentrated Area of Poverty?
 - Key differences between North Central and other areas:
 - History of a highly segregated neighborhood and its underperforming school
 - Neighborhood's Turnbull Learning Academy closed about 15 years ago
 - The building repurposed for the College Park Mandarin Immersion magnet school



The screenshot shows a news article from 'THE DAILY JOURNAL'. The title is 'Turnbull Learning Academy places dead last again'. The byline is 'By Alison Hawkes Daily Journal Reporter' with a date of 'Jan 19, 2001' and an update date of 'Updated Feb 20, 2018'. There are social media icons for Facebook, Twitter, Email, Print, and LinkedIn. The article text reads: 'Newly released reports which showing Turnbull Learning Academy as one of the worst in the state and in the lowest ranks among similar schools have some community members deeply concerned -- but the district administration is critical of the numbers. The state Academic Performance Index, re-released on Wednesday, ranked schools' performance on the spring 2000 Stanford-9 tests to others across the state and to smaller groups of schools with a similar socio-economic background. The information is meant to help school officials and the public better assess where a school stands in relation to others, and how much they need to improve in order to be eligible for additional state funding. Turnbull Learning Academy, an elementary school in San Mateo's North Central neighborhood, received an overall score of 468 out of a possible 1000 points, significantly lower than the state expectation of 800 points and hundreds of points behind all other schools in the San Mateo-Foster City School District. Turnbull ranked at the very lowest level compared to the rest of the state -- a one, with 10 being the highest level.'

AFFH Links and Resources

- California HCD Affirmatively Furthering Fair Housing (AFFH) Guidance https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf
- AFFH Data Viewer <https://affh-data-resources-cahcd.hub.arcgis.com>
- California Healthy Places Index <https://map.healthyplacesindex.org>



**California Department of Housing
and Community Development**

Affirmatively Furthering Fair Housing

Guidance for All Public Entities and for Housing Elements

(April 2021 Update)



The Planning Commission discussion will resume on May 3rd at 7pm where we will discuss Goals, Policies, and Actions, including those related to AFFH