

HOUSING ELEMENT AND AFFH: FROM ADOPTION TO IMPLEMENTATION

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Public Interest Law Project

April 2023

ROADMAP

- Federal Proposed AFFH Rule – TIME FOR COMMENTS EXTENDED
- CA. State AFFH Requirements
 - Government Code section 8899.50
 - Application in *Martinez v. Clovis*
 - CA. Housing Element AFFH Requirements
- Duty to Implement Housing Element Programs

AFFIRMATIVELY FURTHERING FAIR HOUSING

- Affirmatively Furthering Fair Housing means to
 - Replace segregation with integration
 - Invest in racially and ethnically concentrated areas of poverty
 - Eliminate barriers that restrict access to opportunity
 - Maintain compliance with fair housing and civil rights laws

FEDERAL RULE 2.0

- 1968 Fair Housing Act required a goal of affirmatively furthering fair housing
- 2015 Federal Government Adopts the AFFH Rule (HUD)
- Trump administration suspended and then repealed the 2015 Rule
- 2018 California adopts its own AFFH law
- 2023 federal Government circulates a new AFFH Rule –PUBLIC COMMENT PERIOD EXTENDED TO APRIL 24, 2023



FEDERAL PROPOSED AFFH RULE

- Robust community participation
- Fair housing analysis in an Equity Plan identifying causes of identified fair housing
- Equity Plan focusing on the goals, HUD's review of the goals to determine whether goals can be reasonable expected to overcome issued identified
- Incorporate the Equity Plan goals into other required documents such as the Consolidated Plan
- Annual progress reports
- HUD enforcement

AFFH RULE COMMENT LETTERS

- Originally due Mid-April now accepting comments until April 24, 2023. Could contact National Housing Law Project to join the sign on letter to draft your own with guidance from any of the following:
 - NFHA's AFFH Messaging memo
 - PolicyLink's Comment Guide
 - NLIHC Sample Comment Letter
- Alliance for Housing Justice's AFFH Petition

CALIFORNIA'S DUTY TO AFFIRMATIVELY FURTHER FAIR HOUSING

- “Taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity”
- Public agencies must take no action that is materially inconsistent with its obligation to affirmatively further fair housing. **Broad Application**
 - Government Code section 8899.50

THE CLOVIS WAY OF LIFE

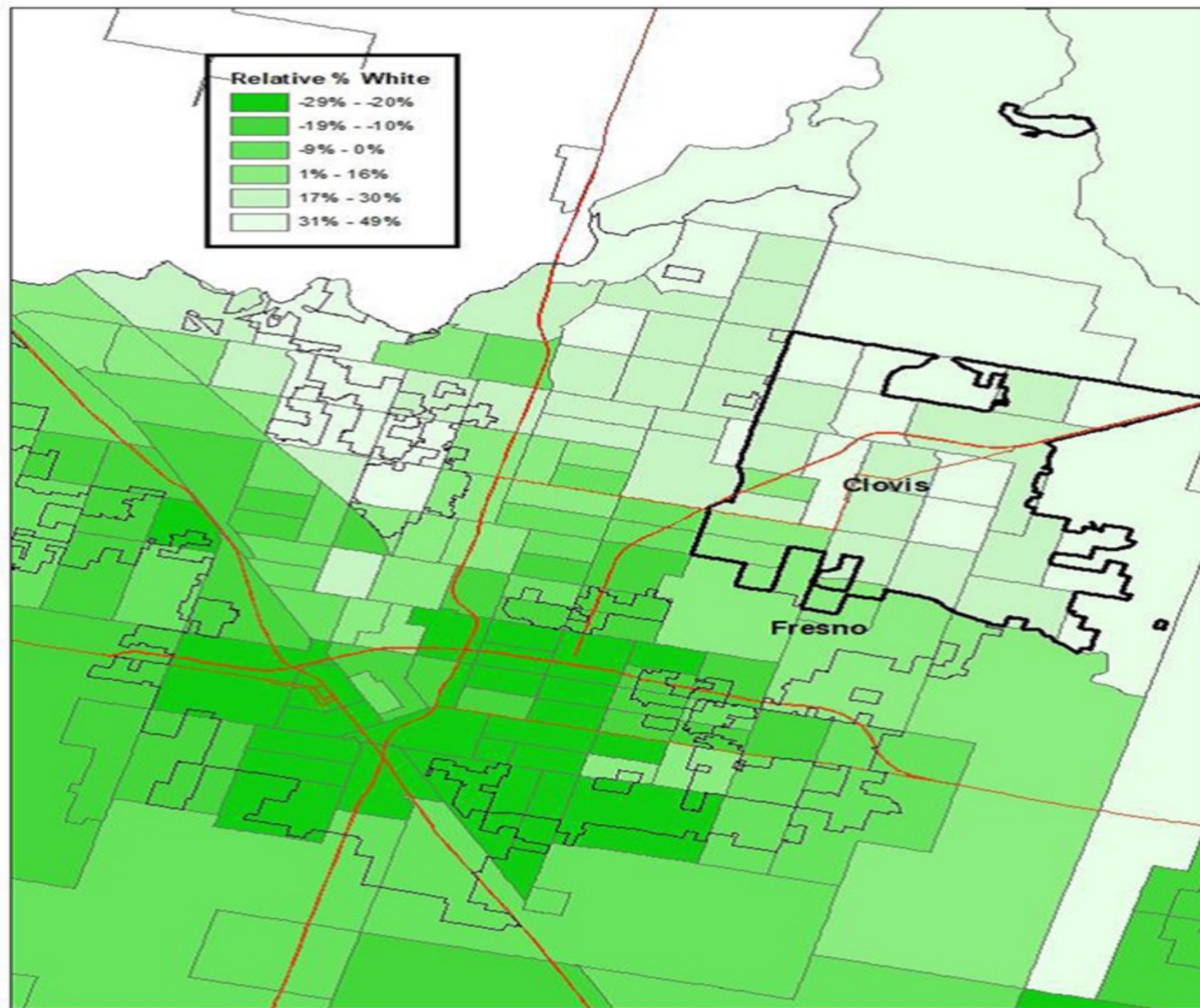
112,022 People

\$71,731 Clovis Area Median
Income

\$47,189 Regional Area Median
Income

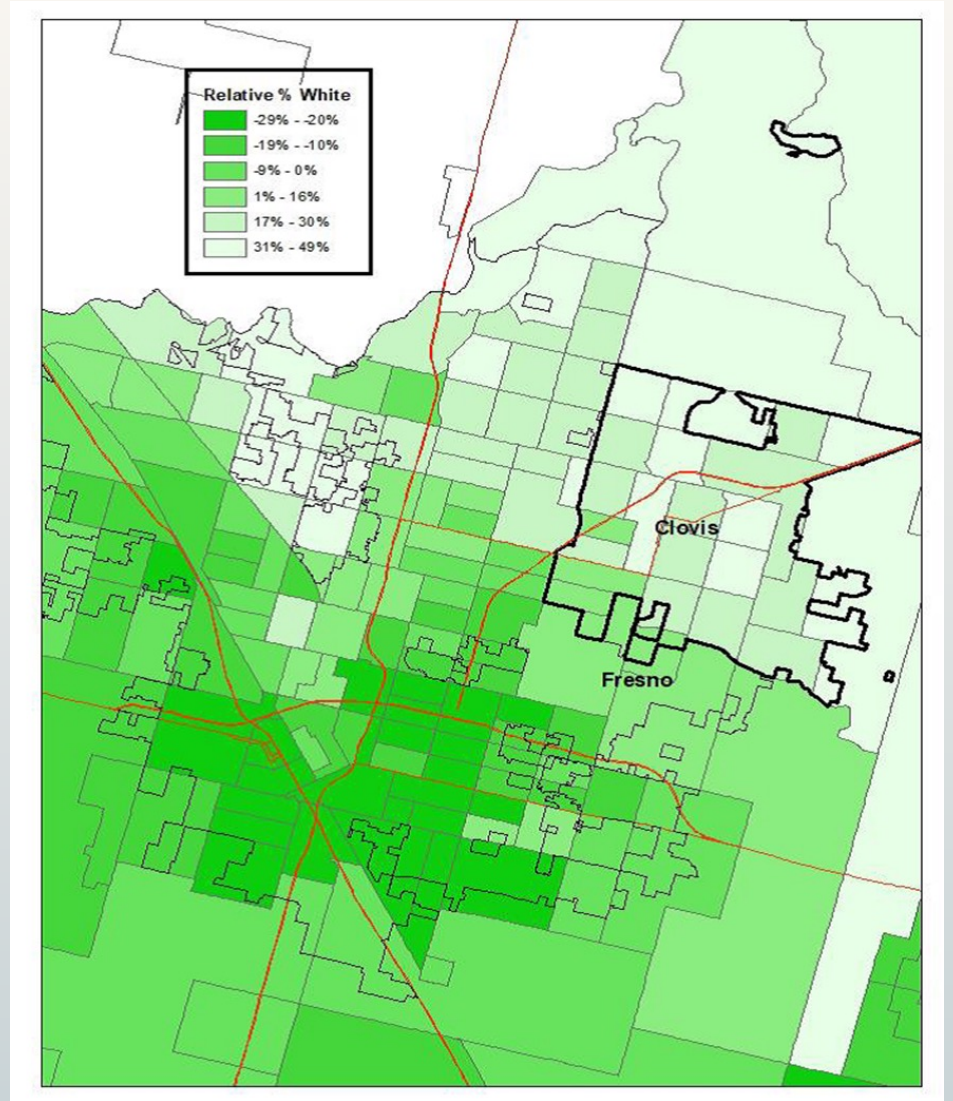
70% of white residents are
homeowners





HOUSING NEEDS IN CLOVIS

Low rental vacancy rate;
57% of all renters are rent
burdened;
78.6% of lower income
renters are overpaying
(paying more than 30% of
income toward rent)



Legal Violations

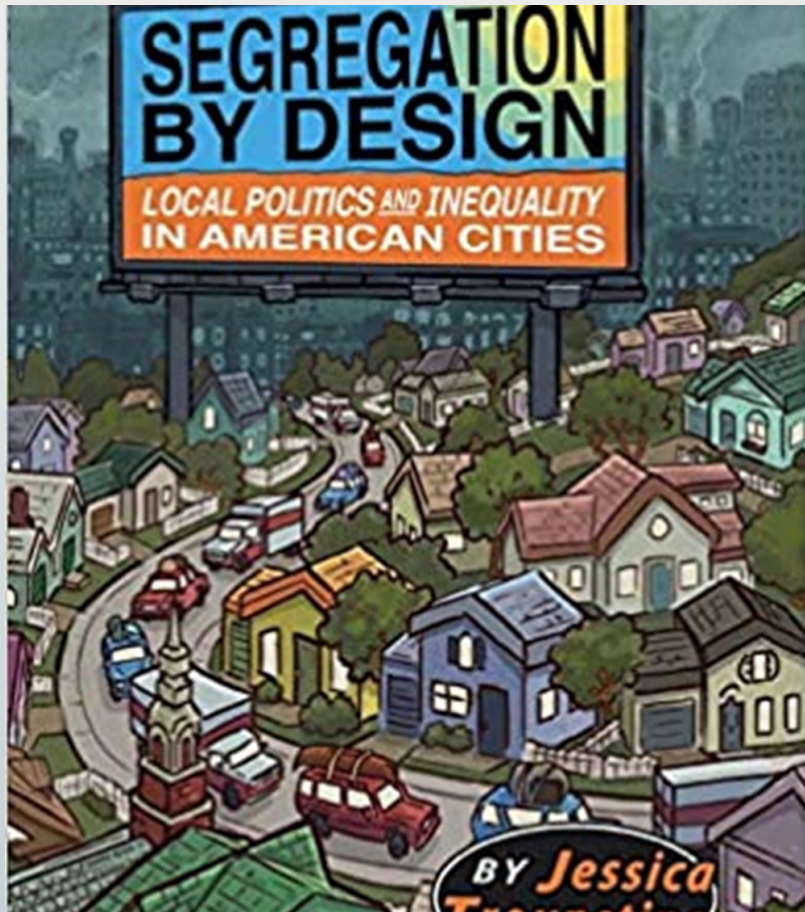
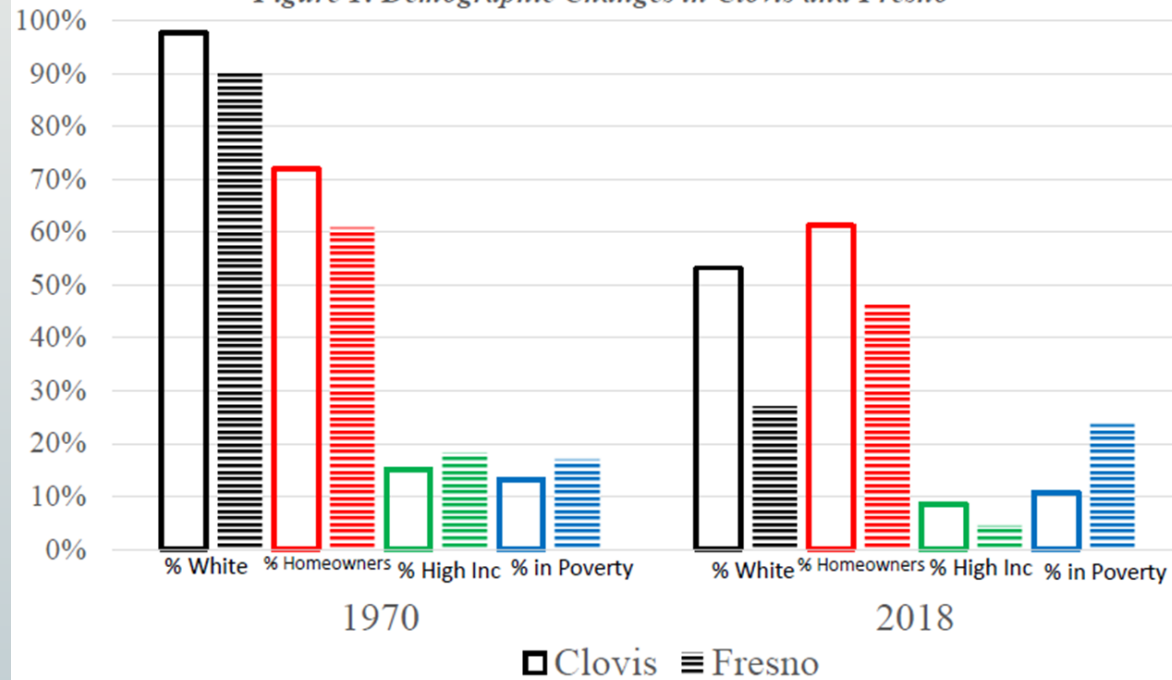


Figure 1: Demographic Changes in Clovis and Fresno



LOCAL

Clovis is mostly **white** and that's no **accident**, says group suing the city over housing

OCTOBER 23, 2019 AT 12:59 PM

I have concluded that Clovis is whiter and wealthier than the metropolitan area as a whole, that housing is more expensive in Clovis, and that the city's residential land use regulations are more stringent than the metropolitan area's central city. The weight of the evidence indicates that it is highly probable that residential land use regulations have significantly affected Clovis demographic makeup. It is extremely unlikely that the differences in demographic composition and housing costs between Clovis and the metro area central city could have happened by chance. Jessica Trounstone, Chair, Political Science Department, UC Merced.

MARTINEZ V. CLOVIS

2023 WL 2820092

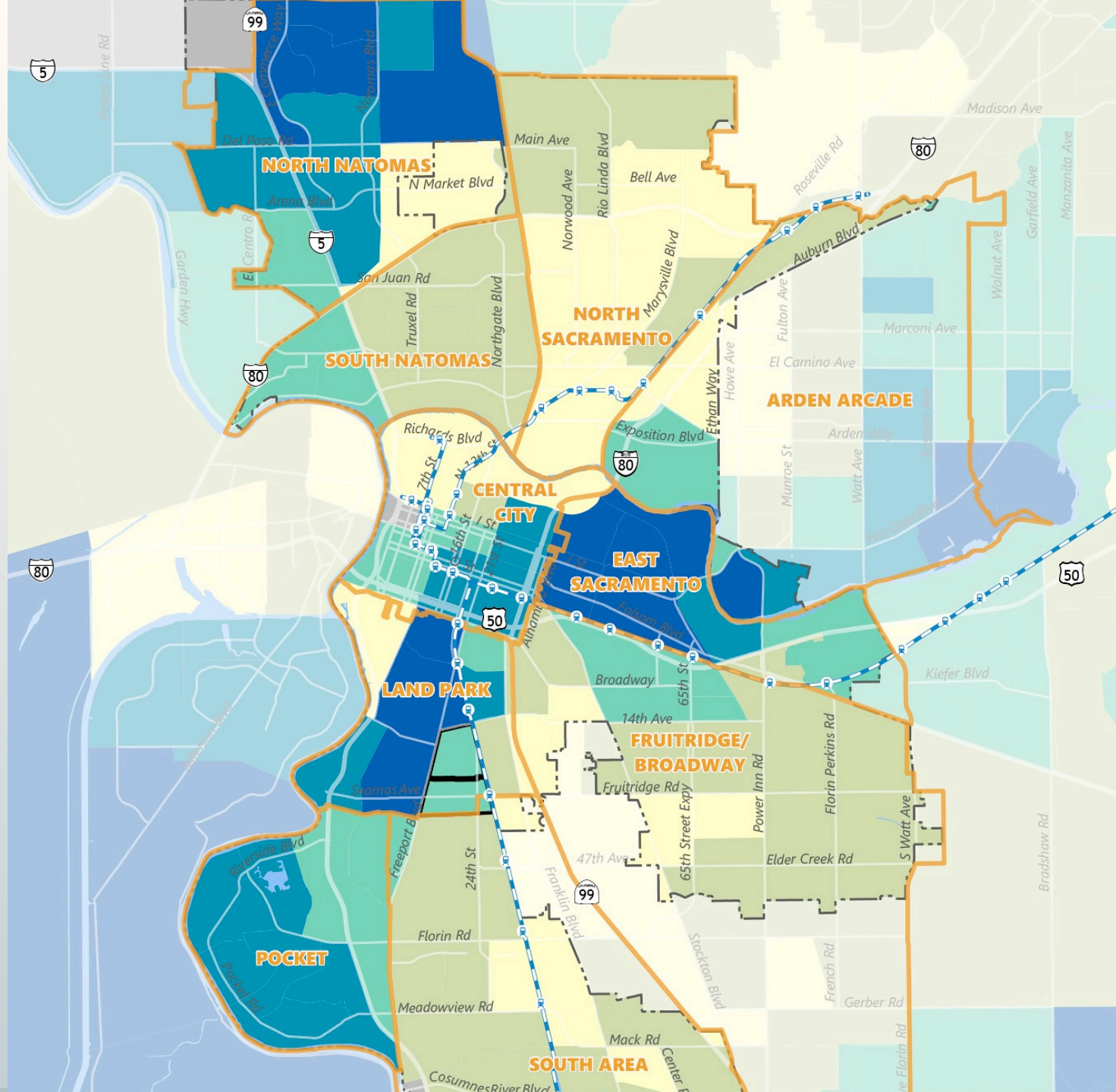
- City appealed the housing element claims: failure to zone high density sites to accommodate affordable housing
- Petitioners cross-appealed the fair housing claims.
- First appellate opinion considering the state's AFFH duty:
- ...we conclude as a matter of law that the violations of section 65583, 65583.2(h), and 65584.09 ...establish that the City has failed to “affirmatively further fair housing in violation of section 8899.50, subdivision (b)(1).

AFFH – HOUSING ELEMENTS

- Touches on several parts of the Housing Element Requirements:
 - Enhanced outreach to all economic segments of the community
 - Assessment of Fair Housing (HCD assists with needed data)
 - Sites must not only be feasible but distributed throughout the community
 - Programs must reflect the priorities reflected in the AFFH analysis
 - Programs need specificity and metrics to determine progress

HOUSING ELEMENT AFFH FOCUS

- Place based strategies
 - Invest in under-resourced areas
 - Prevent displacement as a result of investment
 - Emphasis is on the goals and programs
- Mobility Strategies
 - Increase affordable home options in wealthier, higher resource areas
 - Emphasis on Sites inventory
 - Also programs and goals to increase incentives



IMPLEMENTING PROGRAMS

- Government Code section 65583© requires programs with action items and outcomes
- Government code section 65587(d) requires that programs intended to facilitate affordable housing be implemented and specifies writ can be issued to require implementation
- And, evidence burden shifts to the jurisdiction

DON'T JUST TALK, WALK THE WALK

METRICS AND MILESTONES

- Housing Element Law requires metrics to determine what fair housing results will be achieved. Government Code section 65583(c)(10)(A)(iv)
- Monitoring implementation, what else?
- What happened if none of the milestones are achieved even if programs are implemented?
- Could we use Government Code section 6588 to require revision if goals are no longer appropriate?

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