SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

DESIREE MARTINEZ and MARIA DE JESUS SANCHEZ, Petitioners, v. CITY OF CLOVIS, CLOVIS CITY COUNCIL, LUKE SERPA, and DOES 1-20 inclusive, Respondents/Real Parties in Interest.	No. 19CECG03855 Dept. 403 ORDER GRANTING PETITION FOR WRIT OF MANDATE IN PART AND STATEMENT OF DECISION

After considering all of the papers submitted in support, opposition, and reply to the petition for writ of mandate, and after considering the oral arguments made by counsel, this court rules as follows:

The writ of mandate is granted in part as set forth herein.

1. Introduction

Petitioners seek a writ of mandate pursuant to Code of Civil Procedure section 1085, requiring Respondents to comply with the

Housing Element law requirements to promote development of high density low income housing.

The First Amended Petition alleges the following causes of action:

(1) Writ of Mandate – Inadequate Housing Element (Government Code, §§ 65583, 65583.2; [1] Code of Civil Procedure § 1085)

(2) Writ of Mandate – Failure to Accommodate the Unmet Housing Need (§ 65584.09)

(3) Writ of Mandate – Failure to Implement Program 4 of the Housing Element (§ 65587)

(4) Unlawful Land Use Discrimination (§ 65008)

(5) Federal Fair Housing Act (42 U.S.C. § 3601, et seq.)

(6) California Fair Employment and Housing Act

(7) Duty to Affirmatively Further Fair Housing (§§ 8899.50, 12900, et seq.)

(8) Declaratory and Injunctive Relief (Code Civil Proc., §§ 526, 526(a), 1060)

Demurrers to the fifth and sixth causes of action were sustained, without leave to amend, on August 11, 2020.

2. Statutory Scheme

The Housing Element Law requires that each city and county adopt a housing element as part of its general plan. A primary purpose of the housing element is to "make adequate provision for the housing needs of all economic segments of the community." (§ 65580, subd. (d).) Section 65588, subdivision (e), sets forth a schedule for cities and counties to revise their housing element.

[1] Statutory references are to the Government Code unless otherwise noted.

During each revision the California Department of Housing and Community Development ("HCD") determines the projected housing needs for each region, and then each Council of Governments distributes that housing need among the cities and counties in the region. (§ 65588, subd. (b).) The projected need is the jurisdiction's Regional Housing Needs Allocation ("RHNA")—its "fair share" of the regional housing need as determined by the local council of governments. (S 65588, subd. (b).) A jurisdiction must assess and plan for its existing and projected share of the regional housing needs of persons at all income levels and for special housing needs. (§ 65583, subds. (a)(1) & (7).) The Fresno Council of Governments ("FCOG") distributes the RHNA to Clovis for each housing element planning period. (§ 65584, subd. (b).) Each jurisdiction within FCOG then creates an inventory of the suitable and available land for residential development. (§ 65583, subd. (a)(3).) Each jurisdiction must then identify and make sites available to accommodate the RHNA if the land inventory demonstrates there is a shortfall of adequate sites. (§ 65583, subd. (c)(1).) The density for the City of Clovis for lower-income households is 20 units per acre. (Gov. Code, § 65583.2, subd. (c)(3)(B)(iii).)

A jurisdiction must revise its Housing Element every five to eight years (which is called the "planning period") to accommodate the new RHNA. A city or county must adopt a rezone program to identify additional sites to accommodate the housing need if a jurisdiction does not identify adequate sites to accommodate the current RHNA (a shortfall). The Housing Element must include a program that, when implemented, will identify or rezone additional

sites to accommodate this shortfall within three years of adopting the Housing Element. (§65583, subd. (c)(1)(A).) Additionally, if a jurisdiction did not identify adequate sites for the last planning period and failed to re-zone sites to make-up for the shortfall, the jurisdiction must zone or rezone sites for that unaccommodated need—or carry-over—within the first year of the new planning period. (§ 65584.09, subd (a).) This requirement is in addition to any zoning or rezoning required to accommodate the regional housing need for the new planning period. (§ 65584.09, subd. (b).)

Under those circumstances, the sites rezoned to accommodate a shortfall for the current planning period or the carry-over from the last planning period must meet the requirements of section 65583.2, subdivision (h) (§65583, subd. (c)(1)(B)), which requires that rezoned sites must be large enough to accommodate at least 16 units, with a minimum density of 20 units/acre, and allow by-right development if at least 20 percent of the units developed on the site are affordable. At least 50 percent of these sites must be rezoned for exclusively residential uses unless they allow 100 percent residential development and require that residential uses occupy at least 50 percent of the floor area. (§ 65583.2, subd. (h).)

The housing element must include a program with a "schedule of actions" that the jurisdiction will undertake to implement the housing element's policies and achieve its goals and objectives. (§ 65583, subd. (c).) The program must identify adequate sites for a variety of housing types and accommodate the RHNA for all income levels. (§ 65583, subd. (c).) The housing element is submitted to HCD to determine its legal sufficiency. (§§ 65588, 65585.)

State law prohibits enactment or administration of any ordinance that prohibits or discriminates against housing based on the intended occupancy by members of protected classes or people with lower incomes. (§ 65008, subd. (b)(a)(C).)

3. Factual Background

The Clovis City Council adopted a housing element in 2016. (Avila Dec. ¶ 3, Exh. A at p. Pet. 00007.) The FCOG had determined that Clovis needed 5,629 units of affordable housing in the 2008-2013 planning period and would need another 3,466 affordable units in the 2015-2023 planning period. (Avila Dec. ¶ 3, Exh. A at p. Pet. 00046.)

As noted above, if there is an unmet need during a planning period, this need carries over into the next planning period, and within the first year of that period a city must rezone or identify sites to satisfy this need. (Gov. Code, § 65584.09.) When Clovis developed its 2015-2023 Element (Fifth Cycle), it was required to plan for a carry-over of 4,425 affordable units from the prior cycle. (FAP ¶ 5; Avila Decl. Exh. A at p. Pet. 00046.) Clovis does not dispute that it had this carryover.

Accordingly, Program 4 of the 2015-2023 Housing Element included a commitment to "[P]rovide adequate zoning on at least 221 acres of land by December 31, 2016[,] to cover the unaccommodated need from the Fourth Cycle RHNA of 4,425 lower-income units." (Avila Dec. ¶ 3, Exh. A at p. Pet. 00046.)

By December 31, 2016, Clovis had not fulfilled its commitment in the 2016 Housing Element to rezone sites to cover the unaccommodated need from the previous planning period. (Avila Dec. ¶ 8, Ex. F, p. Pet. 00199; Ex. E, p. Pet. 00194; RJN ¶ 4.) The

City does not dispute this. Consequently, HCD revoked its finding that the City's 2015-2023 Housing Element substantially complied with state law. (Avila Dec. Ex. F, p. Pet. 00199.)

Following the revocation, on November 5, 2018, the City Council adopted Ordinance 18-26, amending the P-F zone district to allow multi-family housing as a permitted use, which applied an Overlay to all vacant residential sites between 1 and 10 acres in size within the City, and adding Section 9.18.050 to the City's Municipal Code to establish the RHN Overlay development standards. (FAP ¶ 76; Avila Decl., Ex. G.) The RHN Overlay was enacted to provide "by-right" approval for affordable housing at a density of 35 to 43 units per acre, applying to residential properties of 1 to 10 acres. (Avila Decl., Ex. G; also see Clovis Mun. Code, §§ 9.16.020, 9.18.050.) On or about December 3, 2018, the City Council adopted Ordinance 18-28, which rezoned 887 acres of land to the P-F Zone District. (FAP ¶ 76.)

The Regional Housing Need (RHN) Overlay does permit high density residential development on the sites where it applies, but it also still allows development consistent with underlying zoning at densities ranging from .5 units/acre to 7 units/acre. (Avila Dec. Ex. G at p. Pet. 00206; Ex. A at p. Pet. 00054.)

Following the adoption of Ordinance 19-22 on March 4, 2019, the City amended its 2015-2023 Housing Element (Amended Element) to include a revised inventory of what it considered adequate sites. The amendment relied substantially on the sites covered by the Overlay as well as select P-F sites, though Petitioners contend it did not include the analysis to demonstrate their development potential. (Avila Dec. ¶ 10; Ex. H, pp. Pet. 00208-

00255; ¶ 11, Ex. I. at p. Pet. 00257; RJN ¶¶ 6 & 7.) As required by Housing Element Law, the City then submitted the Amended Housing Element to HCD for review. (Avila Dec. ¶ 12, Ex. J at pp. Pet. 00263- 00264; RJN ¶ 8.) On March 14, 2019, Petitioners' counsel sent a letter to HCD objecting to the re-zone programs because the underlying zoning of the RHNA overlay was for lower densities, and because certain properties in the P-F program were infeasible. (FAC ¶¶ 96-97.) On March 25, 2019, HCD found that the Amended Housing Element substantially complied with state law. (Avila Dec. ¶ 12.)

4. Standard of Review

A writ of mandate under Code of Civil Procedure section 1085 lies to compel the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station. (Code Civ. Proc., § 1085, subd. (a); *State Comp. Ins. Fun v. Workers' Comp. Appeals Bd.* (2016) 248 Cal.App.4th 349, 370.) Any action to challenge a general plan or any element thereof on the grounds that such plan or element does not substantially comply with the law must be brought pursuant to Code of Civil Procedure section 1085. (§ 65751.)

"[T]the question of whether there has been substantial compliance with the laws related to general plans is one of law …" (*Garat v. City of Riverside* (1991) 2 Cal.App.4th 259, 292.)

Moreover, the City's Housing Element receives a rebuttable presumption of validity because it was certified by HCD. (§ 65589.3.)

Petitioners have brought four separate writ of mandate causes of action (First, Second, Third, and Seventh) based on allegedly

insufficient RHNA zoning for affordable housing. In this situation, a court's review is limited to whether the Housing Element is in "substantial compliance" with the statute. (*Fanseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1185.) This review "merely involves a determination whether the housing element includes the statutory requirements," and "[i]t is not to reach the merits of the element or to interfere with the exercise of the locality's discretion in making substantive determinations and conclusions about local housing issues, needs, and concerns." (*Ibid.*, see also *Buena Vista Gardens Apartments Assn. v. City of San Diego Planning Dept.* (1985) 175 Cal.App.3d 289, 298.)

5. Objections

The City objects to the declaration of Cathy Creswell, an independent consultant on affordable housing issues who used to work for HCD. She opines that the Overlay does not meet the requirements of section 65583.2(h). The declaration primarily offers opinions on a legal question of statutory interpretation, which the court does not find necessary or helpful. As expert testimony is admissible in writ proceedings, the objection is overruled, but the court has not relied upon the declaration at all.

The City next objects to the declaration of Jessica Trounstine, a demographer who offers opinions about how the City's land use regulations effect its demographic makeup. She concludes that "the recently adopted overlay ordinance is highly unlikely to substantially ameliorate these differences. (Trounstine Decl., Ex. R, p. 1.)

This declaration is not relevant to the writ of mandate causes of action. The inquiry there is whether the City has complied with the housing element law. The declaration would be more relevant to, and is in fact directed at, the disparate impact arguments raised by petitioners in the fourth and seventh causes of action. This objection is overruled as well.

Petitioners object to portions of the declaration of Michael Linden which is directed at zoning ordinances of other cities. All five objections are sustained. Those simply are not relevant to the question of whether the City of Clovis' Housing Element complies with the law.

6. Discussion

a. The Overlay

The primary point of contention here is whether the zoning overlay with by-right approval substantially complies with the relevant statutory scheme.

The following is undisputed: (a) as of March of 2016, the City had a carry-over of 4,425 affordable units for which it had neither identified nor zoned sites; (b) "by the end of 2016 – the first year of the following planning period Clovis had still not met its deadline for catching up to its affordable housing carry-over" (FAP ¶ 5); and (c) on October 11, 2018, HCD revoked its finding that the City's Housing Element substantially complied with state law.

The question is whether the City is currently in compliance with its statutory obligations in adopting Ordinance 18-26 on November 5, 2018, which amended the P-F zone district to allow multi-family housing as a permitted use, applying the RHNA Overlay

to particular sites. (Avila Dec. Exh. G.) Though the RHNA Overlay was enacted to provide "by-right" approval for affordable housing at a density of 35 to 43 units per acre, applying to residential properties with a minimum of 1.0 acres and a maximum of 10.0 acres (Avila Decl., Ex. G; also see Clovis Mun. Code, §§ 9. 16.020, 9.18.050), this does not satisfy all of the statutory requirements.

While it is true that HCD re-certified the City's Housing Element on March 25, 2019 (Avila Decl., Ex. J), HCD's recertification letter provides no explanation or analysis. It simply concludes that "the March 7, 2016 adopted housing element with supplemental appendix adopted March 4, 2019 complies with state housing element law (Article 10.6 of the Government Code)." (Avila Decl., Ex. J.)

If a jurisdiction does not identify adequate sites to accommodate the current RHNA (a shortfall), the Housing Element must include a program that, when implemented, will identify or rezone additional sites to accommodate this shortfall within three years of adopting the Housing Element. (§65583, subd. (c)(1)(A).) Additionally, if the jurisdiction did not identify adequate sites for the last planning period and failed to re-zone sites to make-up for the shortfall, the jurisdiction must rezone or identify sites for that carry-over within the first year of the new planning period. (§ 65584.09.) The City acknowledged its carry-over in its 2015 adopted Housing Element. (See Avila Dec., Ex. A, p. Pet. 00039.)

Pursuant to section 65583, subd. (c)(1)(B), sites rezoned to accommodate a shortfall for the current planning period or the carry-over from the last planning period must meet the requirements of section 65583.2, subdivision (h). Section 65583, subdivision (c)(1)(B), provides,

> Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program **shall identify** sites that can be developed for housing within the planning period **pursuant to subdivision (h) of Section 65583.2.** The identification of sites shall include all components specified in Section 65583.2."

(Emphasis added.)

Section 65583.2, subdivision (h) provides,

> The program required by subparagraph (A) of paragraph (1) of subdivision (c) of Section 65583 shall accommodate 100 percent of the need for housing for very low and low-income households allocated pursuant to Section 65584 for which site capacity has not been identified in the inventory of sites pursuant to paragraph (3) of subdivision (a) on sites that **shall be zoned to permit** owner-occupied and rental multifamily residential use by right for developments in which **at least 20 percent of the units are affordable to lower income households** during the planning period. These sites shall be zoned with **minimum density** and development standards that permit **at least 16 units per site** at a **density of at least** 16 units per acre in jurisdictions described in clause (i) of subparagraph (B) of paragraph (3) of subdivision (c), **shall be at least 20 units per acre** in jurisdictions described in clauses (iii) and (iv) of subparagraph (B) of paragraph (3) of subdivision (c) and shall meet the standards set forth in subparagraph (B) of paragraph (5) of subdivision (b). **At least 50 percent** of the very low and low-income housing need shall be accommodated on sites **designated for residential use** and for which nonresidential uses or mixed uses are not permitted, except that a city or county may accommodate all of the very low and low-income housing need on sites designated for mixed uses if those sites allow 100 percent residential use and require that residential use occupy 50 percent of the total floor area of a mixed-use project.

(Emphasis added.)

The City's rezoned sites do not comply because the minimum density on the RHN Overlay sites is less than 20 units/acre. The City does not appear to dispute that the statute's clear language requires that rezoned sites have a minimum density of 20 units/acre. The City is correct that section 65583.2 does not require that a parcel zoned for low-income housing only have that particular zoning designation. But it does require that at least 20 percent of the units be zoned for affordable housing and at a density of at least 20 units per acre.

Though the City did provide for by-right approval for the RHN Overlay, the rezoning for the carry-over does not include the mandatory density. The housing element does not satisfy the statutory requirements in this respect.

The City contends that RHNA law's "no net loss" requirement prevents building lower density housing on the rezoned sites, an outcome petitioners predict. However, the housing element in this circumstance still must meet the requirements of section 65583.2, subdivision (h). The City does not show that the No Net Loss law exempts a jurisdiction from subdivision (h) where it is otherwise applicable. The No Net Loss law addresses development of land during the planning period, and addresses what happens when changes happen during that period. (See § 65863, subd. (a).) As the planning period moves forward, a jurisdiction might receive a development proposal for less than the minimum density required for a site identified in the housing element. The No Net Loss law authorizes the locality to approve such a proposal but only on the condition that it identify a replacement site zoned for development at a minimum density. (§ 65863, subd. (c)(1)(2).) No

Net Loss is not a replacement for complying with housing element law in the first place. Subdivision (h) of section 65583.2 is an independent statute with requirements that the City's housing element does not satisfy.

b. P-F Sites

The City did not provide the analysis required to allow the public-facilities ("P-F") sites to accommodate the RHNA. For sites over 10 acres identified to accommodate housing for lower income households, the jurisdiction must provide an analysis that shows that sites of this size are feasible for affordable housing development based on previous development of affordable housing on similarly sized parcels. (§ 65583.2, subd. (c)(2)(B).)

Section 65583.2(c)(2)(B) provides,

> A site larger than 10 acres shall not be deemed adequate to accommodate lower income housing need unless the locality can demonstrate that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower income housing units as projected for the site **or unless the locality provides other evidence to the department that the site can be developed as lower income housing.**

(Emphasis added.)

The City emphasizes this latter provision. The City identified eight P-F zoned sites but three sites are over 10 acres, including "a 70-acre parcel, of which the City relies on 10 acres for potential high density development. (Avila Dec. Ex. T, p. 00388.)

However, this is without any analysis of whether the site will be subdivided or how it will facilitate development on a portion of the site. The Amended Housing Element does not indicate whether any of these sites are vacant or present the corresponding

analysis to demonstrate that a non-vacant site could be developed during the planning period. See § 65583.2, subdivision (g):

> (1) For sites described in paragraph (3) of subdivision (b), the city or county shall **specify the additional development potential for each site** within the planning period and shall **provide an explanation of the methodology used to determine the development potential.** The methodology shall consider factors including the extent to which existing uses may constitute an impediment to additional residential development, the city's or county's past experience with converting existing uses to higher density residential development, the current market demand for the existing use, an analysis of 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.
>
> (2) In addition to the analysis required in paragraph (1), **when a city or county is relying on nonvacant sites** described in paragraph (3) of subdivision (b) to accommodate 50 percent or more of its housing need for lower income households, the methodology used to determine additional development potential shall **demonstrate that the existing use identified pursuant to paragraph (3) of subdivision (b) does not constitute an impediment to additional residential development during the period covered by the housing element.** 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.
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> (3) Notwithstanding any other law, and in addition to the requirements in paragraphs (1) and (2), sites that currently have residential uses, or within the past five years have had residential uses that have been vacated or demolished, that are or were subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of low or very low income, subject to any other form of rent or price control through a public entity's valid exercise of its police power, or occupied by low or very low income households, shall be subject to a policy requiring the replacement of all those units affordable to the same or lower income level as a condition of any development on the site. Replacement requirements shall be consistent with those set forth in paragraph (3) of subdivision (c) of Section 65915.

(Emphasis added.)

The required analysis for P-F sites 1 and 3, which are both over 10 acres, is not included or referenced in the Housing Element. (See Supp. Linden Dec., Ex. A, p. 41.) The Housing Element does not satisfy the requirements of § 65583.2, subd. (g).

Accordingly, the court finds that the City's Housing Element does not satisfy the statutory requirements in two respects – the Overlay and the analysis for the P-F sites. The court further finds that due to these failures, the City is not in "substantial compliance." (§ 65751.)

c. First cause of action – violation of § 65583, 65583.2

Based on the above, the court concludes that the City is not in substantial compliance with sections 65583 and 65583.2.

d. Second cause of action – violation of § 65584.09

The City does not separately address this cause of action.

As noted above, the City had a carryover from the last planning period. (Avila Dec. Ex. A, p. Pet. 00046.) Section 65584.09, therefore required Clovis to have identified or zoned all sites needed to accommodate the carry-over from the last planning period within one year of the ensuing planning period—no later than December 31, 2016. (§ 65584.09.) Petitioners point out that any sites zoned to comply with 65584.09 were to have met the requirements of section 65583.2, subd. (h), including imposing minimum densities of 20 units/acre. (§ 65583, subd. (c)(1)(B).) Based on the above analysis, the City's housing element is not in compliance with 65583.2, subd. (h) and therefore Petitioners prevail on the second cause of action as well.

e. Third cause of action - violation of § 65587

The opposition does not separately address this cause of action. This cause of action is also premised on the insufficiencies discussed above and therefore the result of this cause of action tracks the result of the first and second causes of action.

f. Fourth cause of action - Unlawful Land Use Discrimination (§ 65008)

The fourth cause of action alleges unlawful land use discrimination in violation of section 65008. Subdivision (b)(1) provides that no city

> "in the enactment or administration of ordinances pursuant to any law, including this title, prohibit or discriminate against any residential development or emergency shelter for any of the following reasons: … (C) Because the development or shelter is intended for occupancy by persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income."

Petitioners also contend that the City violated subdivision (b)(1)(B)(i), which prohibits discrimination on the basis of race and ethnicity.

Petitioners contend that a facially neutral policy, or ordinance, is discriminatory if it has a disparate impact on affordable housing, citing *Bldg. Indust. Ass'n of San Diego* v. *City of Oceanside, supra*, 27 Cal.App.4th at pp. 770-771 and *Keith* v. *Volpe* (9th Cir, 1988) 858 F.2d 467, 485. However, neither case mentions disparate impact analysis.

Petitioners' contention is that Clovis' administration of the Overlay and its refusal to comply with state law to identify sites with minimum densities of 20 units/acre for affordable housing has

a disparate impact on people with low incomes in violation of Government Code section 65008. They then argue that the City's failure to comply with state law requirements regarding rezoned sites has a clear disparate impact on lower income households because sites that allow low density development will likely develop for single family homes that are too expensive for low income people to rent or purchase. (Declaration of Jessica Trounstine ISO Writ of Mandate (Trounstine Dec.") ¶ ¶ 2 & 3, Ex. R ("Trounstine Report"), p. 11.) In Clovis, the 2018 median home price was $308,300; its market rate housing is too expensive for lower income households. (Trounstine Report, p. 12; Ex. A, p. Pet. 00023.)" (MPA p. 23.)

The court finds that there is no viable claim here, as Petitioners have identified no action that the City has taken that would *limit* housing opportunities for lower income families and individuals. What petitioners have shown is that the City, in some minor respects, has not done enough to promote and advance development for low income housing.

Note that in response to the demurrer to this cause of action (which the court overruled), Petitioners focused on the statute's prohibition of "enactment or administration of ordinances" that discriminate against residential development. (§ 65008, subd. (b).) The demurrer was overruled because the plain language applies to the enactment of zoning ordinances resulting in discrimination against development intended for occupancy by low-income households. Since it is broad enough to apply to zoning ordinances, the statute clearly is not limited to individual development proposals, as ordinances can apply to development

throughout a community. Petitioners allege that the failure of the housing element to impose the minimum densities mandated by section 65583.2(h) steers development of the rezoned sites away from higher density, thereby discriminating against low-income families.

But there is a distinction between failing to take sufficient steps pursuant to a very complex statutory scheme to promote and facilitate development of housing for low income individuals, and taking some action that "prohibit[s] or discriminate[s]" against such development. There is little case law on section 65008, and Petitioners do not show that failing to do enough to promote high density housing for low-income persons is the equivalent of prohibiting or discriminating against such.

Petitioners seem to take the position that sites in the RHN Overlay will not be developed for low-income, higher density housing because there is also the ability to have lower density housing developed. But the RHNA does not require municipalities to actually develop low-income housing; instead it requires municipalities to have sites available. Respondents contend that the "no let loss" provision alleviates petitioners' concern because the City is required to always keep up its stock of sites that can be developed.

In *Keith v. Volpe* (9th Cir. 1988) 858 F.2d 467, 485, the Ninth Circuit Court of Appeals applied the standard under the federal Fair Housing Act, to analyze discrimination in violation of section 65008. Petitioners extend that concept in arguing that the Court to apply the standards included in FEHA, which also prohibits land use discrimination (§ 12955, subds. (k) & (l)), in