
FOOD ACCESS

Food access is another important component of access to opportunity, as access to food that is both affordable and nutritious is a challenge for many individuals and families in the United States. In neighborhoods in which the nearest grocery store is many miles away, transportation costs and lack of vehicle access may present particular challenges for low-income households, which may be forced to rely on smaller stores that are often not affordable and may not offer a full range of healthy food choices.

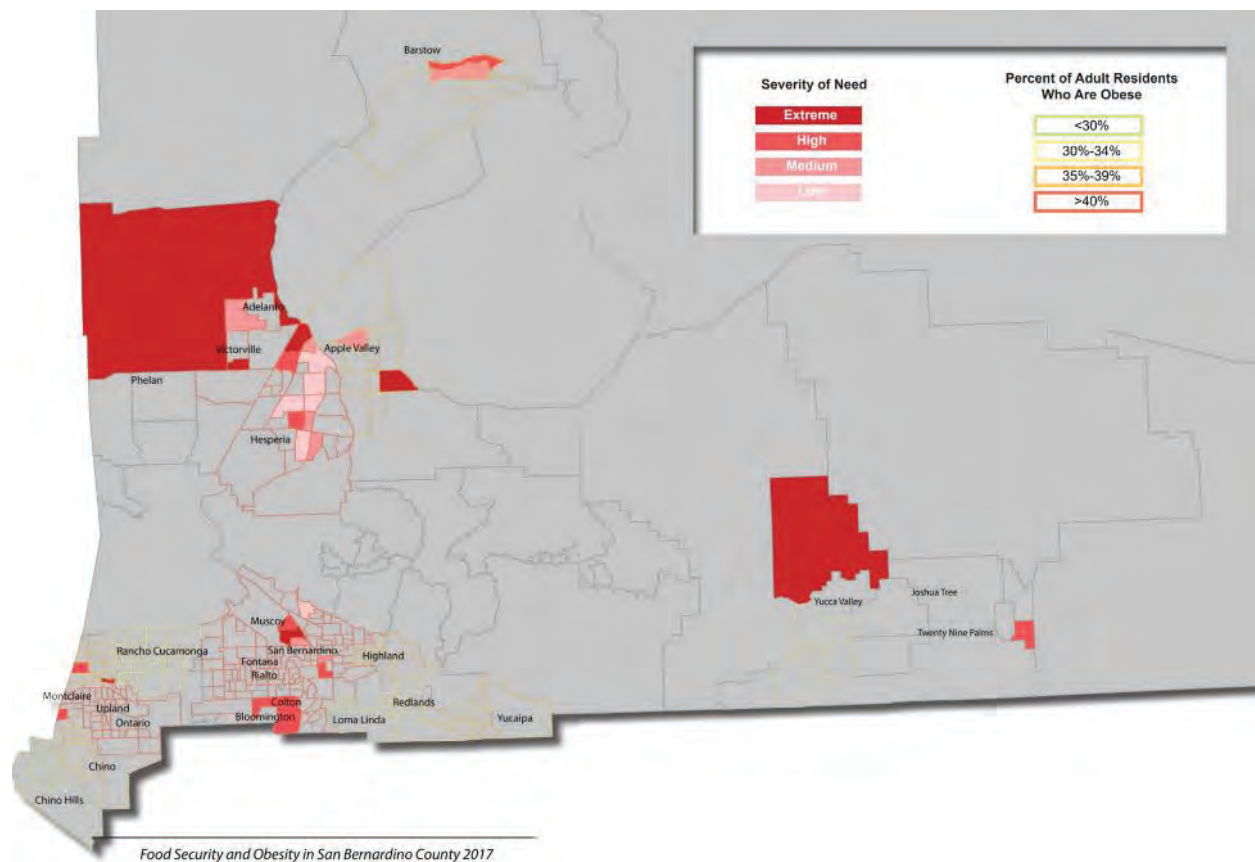
In 2017, the San Bernardino County Department of Public Health Nutrition Program released the Food Security and Obesity in San Bernardino County report, which highlights areas of the County impacted by low levels of access to fresh food and high rates of obesity. The map highlights High Poverty-Low Access (HPLA) food deserts, which it defines as census tracts in which:

- 1) at least 33% of the population resides more than one mile from a supermarket or grocery store within urban areas, or 10 miles in rural areas, and
- 2) 50% or more of the population earns less than 185% of the Federal poverty level.

Using these definitions of low-income and low food access, the study found that 8.6% of census tracts in San Bernardino County were High Poverty-Low Access food deserts, with the largest concentration of food deserts located in the High Desert region, including Adelanto, Apple Valley, Barstow, Hesperia, Phelan, and Victorville. Twenty-seven (27) of the 32 High Poverty-Low Access food deserts have a majority Hispanic population, and 5 have a majority White population. **Figure 25** also shows the percentage of adults with obesity by city within San Bernardino County. Notably, areas with low levels of food access often also have high percentages of adult residents with obesity.

Survey respondents in the County echoed concerns surrounding food access, with 57% stating that grocery stores and other shopping opportunities are not equally provided in the County. Only 35% of respondents described grocery stores and other shopping as equally provided in the County. Only property maintenance and roads and sidewalks were ranked as less evenly distributed than grocery stores and other shopping.

Figure 22, High Poverty Low Access Census Tracts, Food Deserts, and Obesity in San Bernardino County



SUMMARY

Spatial patterns show moderate to significant disparities among racial and ethnic groups in access to proficient schools, labor market engagement, transit usage, access to low cost transit, exposure to poverty, and food access in San Bernardino County. Conversely, spatial data and index scores suggest only minor spatial disparities in proximity to jobs among racial and ethnic groups.

Moderate disparities exist among racial and ethnic groups regarding access to proficient schools in San Bernardino County. The White and Asian populations have the highest levels of access to proficient schools, while Black and Hispanic populations have the lowest levels of access. There is a 14-point differential between the groups with the best and worst access to proficient schools. These moderate disparities also exist at the regional level, although access to proficient schools is slightly higher among all groups.

San Bernardino County has moderate Jobs Proximity Index scores with relatively minor disparities in distance to job locations among racial and ethnic groups. Proximity to jobs is similar at the regional level, with little disparity among racial and ethnic groups. In combination with these moderate Jobs

Proximity index scores, stakeholder input and Longitudinal Employer-Household Dynamics data suggest that many workers who live in the County commute long distances to their places of work. In particular, 52.4% of workers living in San Bernardino County commute across county lines to work.

Compared to the relatively minor disparities in job proximity, Labor Market Index scores indicate moderate disparities among racial and ethnic groups in labor market engagement. The Asian population has the highest level of engagement with the labor market among all groups (40 points), followed by the White population (31 points). The greatest disparity in labor market engagement, with a difference of 25 points, is between the Asian population (40 points) and the Black population below the poverty line (15 points).

Transit Trip Index scores indicate moderate disparities and overall low levels of transit usage among racial and ethnic groups in San Bernardino County. Asian, Black, and Hispanic populations use transit at higher rates than White and Native American populations.

Low Transportation Cost scores are generally low and uniform throughout most block groups in the County and disparities are moderate between groups. Asian, Black, and Hispanic populations in the County experience lower transportation costs and closer proximity to public transportation compared to White and Native American populations.

Low Poverty index scores in the County indicate that a moderate portion of the County's population is exposed to high levels of poverty. Higher scores in the San Bernardino Valley relative to the rest of the County suggest that residents of the cities in the valley area are less exposed to poverty relative to other county residents. Hispanic, Black, and Native American populations experience the greatest exposure to poverty, while Asian and White populations are the least exposed to poverty.

Air quality is relatively consistent across block groups in the County. Environmental Health Index scores suggest moderate disparities in exposure to low air quality among racial and ethnic groups. The Hispanic and Asian populations experience the greatest exposure to low air quality by a significant margin of 23 and 21 points, respectively.

Local research on food access and obesity in San Bernardino County indicate that High Poverty- Low Access areas are concentrated in the High Desert region. Areas with low levels of food access also often have high percentages of adult residents with obesity.

CHAPTER 6.

HOUSING PROFILE

The availability of quality affordable housing plays a vital role in ensuring housing opportunities are accessible to all residents. On the surface, high housing costs in certain areas are exclusionary based solely on income. But the disproportionate representation of several protected class groups in low- and middle-income levels can lead to unequal access to housing options and neighborhood opportunity in high-cost housing markets. Black and Hispanic residents, immigrants, people with disabilities, and seniors often experience additional fair housing barriers when affordable housing is scarce.

Beyond providing fair housing options, the social, economic, and health benefits of providing quality affordable housing are well-documented. National studies have shown affordable housing encourages diverse, mixed-income communities, which result in many social benefits. Affordable housing also increases job accessibility for low- and middle-income populations and attracts a diverse labor force critical for industries that provide basic services for the community. Affordable housing is also linked to improvements in mental health, reduction of stress, and decreased cases of illnesses caused by poor-quality housing.¹⁶ Developing affordable housing is also a strategy used to prevent displacement of existing residents when housing costs increase due to economic or migratory shifts.

Conversely, a lack of affordable housing eliminates many of these benefits and increases socioeconomic segregation. High housing costs are linked to displacement of low-income households and an increased risk of homelessness.¹⁷ Often lacking the capital to relocate to better neighborhoods, displaced residents tend to move to socioeconomically disadvantaged neighborhoods where housing costs are most affordable.¹⁸

AFFORDABILITY AND HOUSING NEED

Housing cost and condition are key components to housing choice. Housing barriers may exist in a jurisdiction when some protected class groups have greater difficulty accessing housing in good condition and that they can afford. To assess affordability and other types of housing needs, HUD defines four housing problems:

1. A household is *cost burdened* if monthly housing costs (including mortgage payments, property taxes, insurance, and utilities for owners and rent and utilities for renters) exceed 30% of monthly income.

¹⁶ Maqbool, Nabihah, et al. "The Impacts of Affordable Housing on Health: A Research Summary." *Insights from Housing Policy Research*, Center for Housing Policy, www.rupco.org/wp-content/uploads/pdfs/The-Impacts-of-Affordable-Housing-on-Health-CenterforHousingPolicy-Maqbool.etal.pdf.

¹⁷ "State of the Nation's Housing 2015." Joint Center for Housing Studies of Harvard University, <http://www.jchs.harvard.edu/sites/default/files/jchs-sonhr-2015-full.pdf>

¹⁸ Deirdre Oakley & Keri Burchfield (2009) Out of the Projects, Still in the Hood: The Spatial Constraints on Public-Housing Residents' Relocation in Chicago." *Journal of Urban Affairs*, 31:5, 589-614.

2. A household is *overcrowded* if there is more than 1.0 people per room, not including kitchen or bathrooms.
3. A housing unit *lacks complete kitchen facilities* if it lacks one or more of the following: cooking facilities, a refrigerator, or a sink with piped water.
4. A housing unit *lacks complete plumbing facilities* if it lacks one or more of the following: hot and cold piped water, a flush toilet, or a bathtub or shower.

HUD also defines four severe housing problems, including a severe cost burden (more than 50% of monthly housing income is spent on housing costs), severe overcrowding (more than 1.5 people per room, not including kitchens or bathrooms), lack of complete kitchen facilities (as described above), and lack of complete plumbing facilities (also as described above).

To assess housing need, HUD receives a special tabulation of data from the U. S. Census Bureau's American Community Survey that is largely not available through standard Census products. This data, known as Comprehensive Housing Affordability Strategy (CHAS) data, counts the number of households that fit certain combination of HUD-specified criteria, such as housing needs by race and ethnicity. CHAS data for San Bernardino County and the Riverside-San Bernardino-Ontario region is provided in the tables that follow.

Table 10. Demographics of Households with Disproportionate Housing Needs

Households Experiencing any of the Four Housing Problems	San Bernardino County			Riverside-San Bernardino-Ontario Region		
	# with problems	# of households	% with problems	# with problems	# of households	% with problems
Race and Ethnicity						
White, Non-Hispanic	45,473	121,553	37.4%	248,500	615,660	40.4%
Black, Non-Hispanic	8,046	14,042	57.3%	56,215	96,380	58.3%
Hispanic	39,597	70,552	56.1%	276,310	469,370	58.9%
Asian or Pacific Islander, Non-Hispanic	4,476	10,293	43.5%	37,085	75,739	49.0%
Native American, Non-Hispanic	623	1,419	43.9%	2,874	5,864	49.0%
Other, Non-Hispanic	1,723	4,196	41.1%	12,120	24,015	50.5%
Total	100,060	222,220	45.0%	633,100	1,287,025	49.2%
Household Type and Size						
Family households, <5 People	48,712	123,819	39.3%	310,890	715,300	43.5%
Family households, 5+ People	23,431	37,450	62.6%	160,795	249,069	64.6%
Non-family households	27,894	60,943	45.8%	161,420	322,655	50.0%
Households Experiencing any of the Four Severe Housing Problems						
Race and Ethnicity						
White, Non-Hispanic	24,289	121,553	20.0%	122,935	615,660	20.0%
Black, Non-Hispanic	4,757	14,042	33.9%	32,125	96,380	33.3%
Hispanic	25,669	70,552	36.4%	174,310	469,370	37.1%
Asian or Pacific Islander, Non-Hispanic	2,561	10,293	24.9%	20,279	75,739	26.8%
Native American, Non-Hispanic	315	1,419	22.2%	1,499	5,864	25.6%
Other, Non-Hispanic	1,118	4,196	26.6%	6,870	24,015	28.6%
Total	58,799	222,220	26.5%	358,025	1,287,025	27.8%

Note: All % represent a share of the total population, except household type and size, which is out of total households.

Source: CHAS

Table 11. Demographics of Households with Severe Housing Cost Burdens

Households with Severe Cost Burdens	San Bernardino County			Riverside-San Bernardino-Ontario Region		
	# with problems	# of households	% with problems	# with problems	# of households	% with problems
Race and Ethnicity						
White, Non-Hispanic	20,605	121,553	17.0%	109,075	615,660	17.7%
Black, Non-Hispanic	4,200	14,042	29.9%	28,670	96,380	29.8%
Hispanic	16,047	70,552	22.7%	112,350	469,370	23.9%
Asian or Pacific Islander, Non-Hispanic	1,810	10,293	17.6%	16,065	75,739	21.2%
Native American, Non-Hispanic	250	1,419	17.6%	1,145	5,864	19.5%
Other, Non-Hispanic	818	4,196	19.5%	5,605	24,015	23.3%
Total	43,730	222,220	19.7%	272,910	1,287,025	21.2%
Household Type and Size						
Family households, <5 People	22,213	123,819	17.9%	140,335	715,300	19.6%
Family households, 5+ People	6,723	37,450	18.0%	46,785	249,069	18.8%
Non-family households	14,782	60,943	24.3%	85,810	322,655	26.6%

Note: Severe housing cost burden is defined as greater than 50% of income. All % represent a share of the total population within the jurisdiction or region, except household type and size, which is out of total households. The number of households is the denominator for the share with problems and may differ from the number of households for the table on severe housing problems.

Source: CHAS

In San Bernardino County, there are 100,060 households with at least one housing problem, totaling 45% county-wide. Slightly more than one-quarter (26.5%) of residents in the County have at least one severe housing problem. Throughout the Riverside-San Bernardino-Ontario region, housing problems occur at a slightly higher rate, with 49.2% of households having one housing problem and 27.8% having one severe housing problem.

By race and ethnicity, approximately 37.4% of White residents in San Bernardino County have one housing problem. Two groups, African Americans and Hispanics, experience a disproportionately greater occurrence of housing problems. A total of 57.3% of African Americans and 56.1% of Hispanics have at least one housing problem. Similarly, 33.9% of African American and 36.4% of Hispanic households have a severe housing problem. These figures are disproportionately greater than those of White households in the County, of whom 20.0% have a severe housing need.

In the region, 40.4% of White households have at least one housing problem. Black and Hispanic households are also disproportionately affected at the regional level, with 58.3% and 58.9% of these groups experiencing at least one housing problem, respectively. One-half of "Other Non-Hispanic" households also disproportionately experience at least one housing problem. Around one-third of all Black and Hispanic households in the region also experience severe housing problems at disproportionate rates to White households.

Based on housing type and size, family households with 5+ people are more likely in both San Bernardino County and in the region to have a housing problem. In San Bernardino County, 62.6% of family households with 5+ people have a housing problem. Comparatively, 45.8% of non-family households and 39.3% of smaller family households have a housing problem. In the region, 64.6% of family households with 5+ people have a housing problem, compared to 50.0% of non-family households and 43.5% of smaller families (with fewer than 5 people).

Severe cost burdens represent one of the four severe housing problems as defined by HUD. African American households are the only group that disproportionately have more severe cost burdens, with nearly 30% spending more than half of their income on housing costs. Comparatively, 17.0% of White households are severely cost burdened. These statistics are nearly identical to those for the region, where about 30% of African Americans also experience severe housing problems compared to about 18% of White households.

Based on the housing type and size, severe housing costs tend to affect non-family households at a greater rate than family households. Nearly one-quarter (24.3%) of non-family households in San Bernardino County have a severe cost burden, compared to 17.9% of family households of any size. Similarly, approximately 26.6% of non-family households in the region have a severe cost burden, compared to 19-20% of family households.

Figures 26 and 27 map housing burdens in San Bernardino County by race, ethnicity and national origin.

Figure 23, Housing Burden and Race / Ethnicity in San Bernardino County

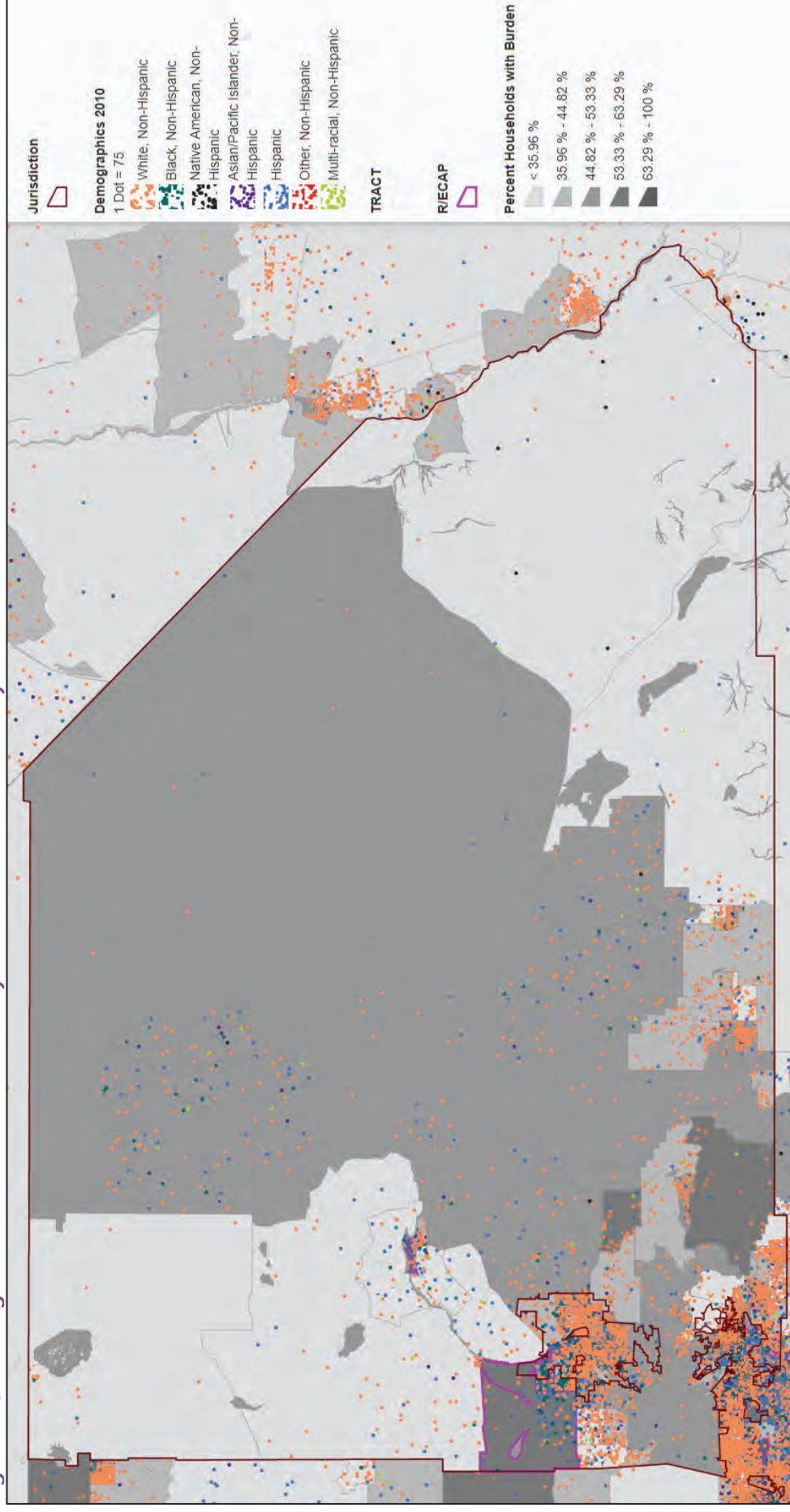
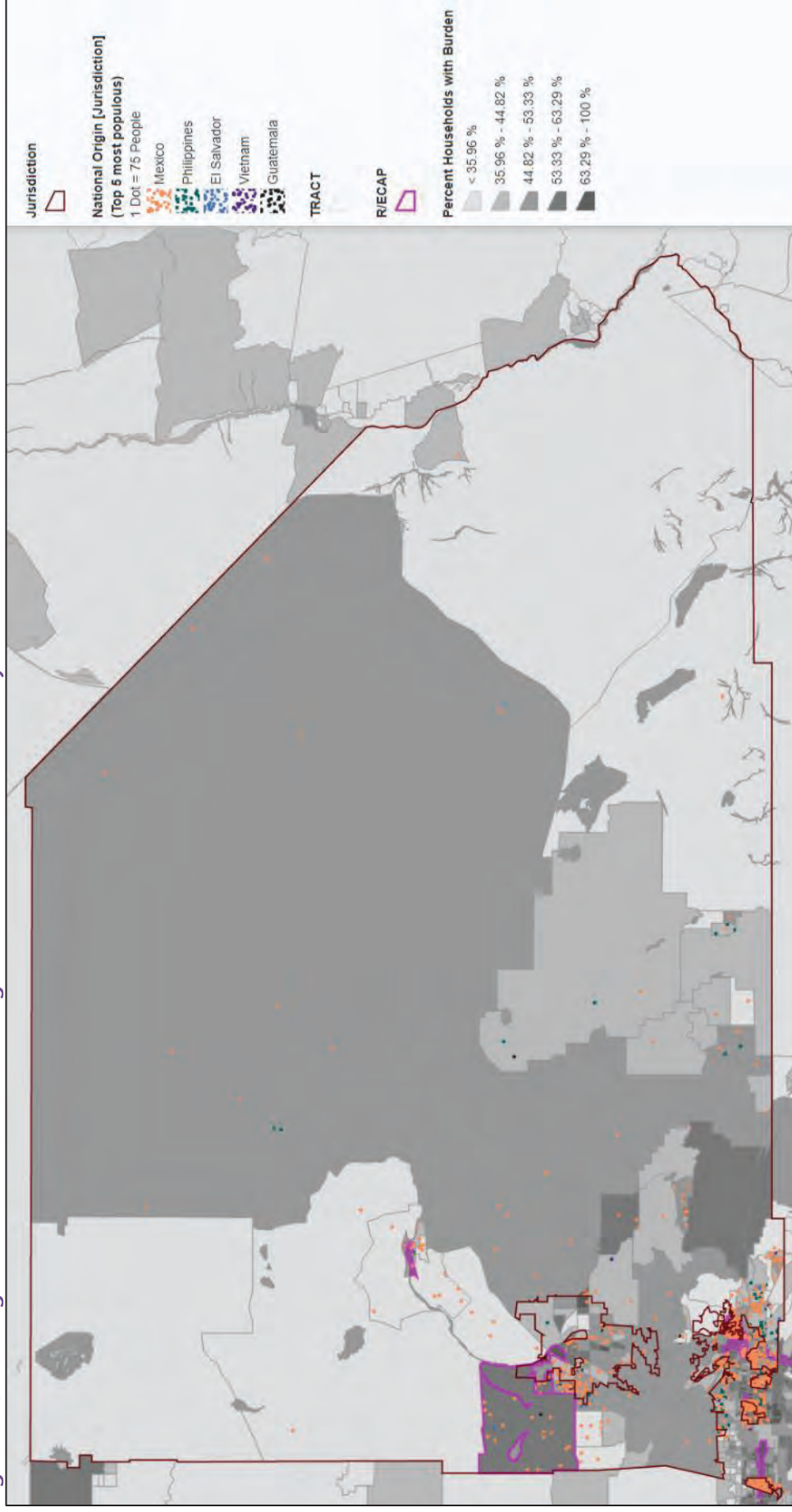


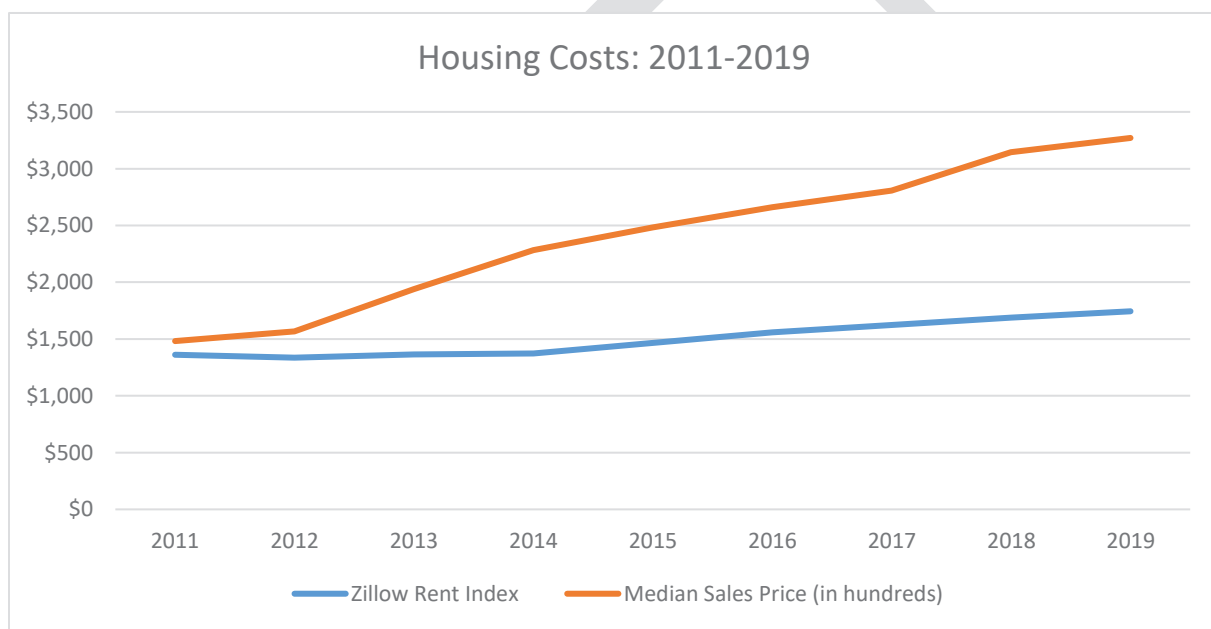
Figure 24. Housing Burdens and National Origin in San Bernardino County



Growing Affordability Challenges

The preceding data relies on HUD's Comprehensive Housing Affordability Strategy (CHAS) data, the most recent of which is developed using 2011-2015 American Community Survey data. While this data provides the most comprehensive information on housing need by race and ethnicity, it does not reflect current housing costs. To get a sense of how affordability challenges may have changed since the 2011-2015 ACS data was collected, this section considers how rental rates and home sales prices have grown in recent years.

According to research conducted by Harvard University's Joint Center for Housing Studies, in 2017, 42% of households are cost burdened, spending more than thirty percent of their income on housing costs. Twenty percent of all households are severely cost burdened, spending more than 50% of their income on housing costs.¹⁹ Housing costs vary markedly from one neighborhood or municipality to another



Source: Annual averages of monthly Zillow Rent Index and Zillow seasonally adjusted Median Sales Price data for San Bernardino County. www.zillow.com/research/data/

across the county, but overall countywide housing costs are depicted in the chart below, reflecting increasing home sales prices and, to a lesser degree, rents in the county. As of July 2019, Zillow reports that the median rent list price in various San Bernardino County cities were typically greater than \$1,400. Median rent prices were highest in Chino Hills (\$2,720), Rancho Cucamonga (\$2,480), Upland (\$2,460), Chino (\$2,450), Fontana (\$2,350), Ontario (\$2,200), Redlands (2,000), Rialto (\$1,970), Highland (\$1,950), and San Bernardino (\$1,500). Cities in the high desert tend to have comparatively lower rents, such as Hesperia (\$1,550) Apple Valley (\$1,400), and Victorville (\$1,450). and Yucaipa (\$1,860).²⁰

¹⁹ <https://www.jchs.harvard.edu/son-2019-cost-burdens-map>

²⁰ Market Overview: Rentals, July 2019. <https://files.zillowstatic.com/research/public/rental/ZRI.Riverside.395025.pdf>

Despite high rents, the California Association of Realtors (C.A.R.) called San Bernardino County the 6th most affordable location for homebuyers in the state. According to C.A.R.'s Traditional Housing Affordability Index, the median home price in San Bernardino County is \$310,000. The affordability index indicates that in Quarter 2 of 2019, 50% of households in San Bernardino County could purchase a median priced home. The association estimates that this home price would carry a \$1,570 monthly payment including taxes and insurance and would be available to households with a minimum qualifying income of \$62,620.²¹ The percentage of households that can afford a median priced home decreased by 28 percentage points, from a high of 78% at the beginning of 2012.

HOUSING SIZE

Availability of housing in a variety of sizes is important to meet the needs of different demographic groups. Neighborhoods with multi-bedroom detached, single-family homes will typically attract larger families, whereas dense residential developments with smaller unit sizes and fewer bedrooms often accommodate single-person households or small families. But market forces and affordability impact housing choice and the ability to obtain housing of a suitable size, and markets that do not offer a variety of housing sizes at different price points can lead to barriers for some groups. Rising housing costs can, for example, lead to overcrowding as large households with lower incomes are unable to afford pricier, larger homes and are forced to reside in smaller units. On the other hand, people with disabilities or seniors with fixed incomes may not require large units but can be limited by higher housing costs in densely populated areas where most studio or one-bedroom units are located.

Table 12 provides available information on households living in publicly supported housing, including unit size and presence of children by housing program type. Assuming households with children would need two-bedroom or larger units, comparing the number of two- and three-plus bedroom units with the number of households with children does not immediately indicate overcrowding in assisted housing. There are 205 households with children who live in public housing who could be housed in the 256 units with two or more bedrooms. In project-based Section 8 properties, where there are 371 units with two or more bedrooms for an estimated 280 households with children. The County also has 2,380 housing choice vouchers for units with two or more bedrooms for an estimated 1,503 households with children.

Despite these figures, precise conclusions regarding the suitability of the existing publicly supported housing stock cannot be drawn. There may be a mismatch between large family households and the availability of three bedroom or larger units, but such a situation is not discernible without additional information about household size.

²¹ Housing Affordability Index – Traditional <https://www.car.org/marketdata/data/haitraditional>

Table 12. Publicly Supported Housing by Program Category: Units by Number of Bedrooms and Number of Children in San Bernardino County

Housing Type	Households in 0-1 Bedroom Units		Households in 2 Bedroom Units		Households in 3+ Unit Bedrooms		Households with Children	
	#	%	#	%	#	%	#	%
San Bernardino County								
Public Housing	107	28.0%	104	27.2%	152	39.8%	205	53.7%
Project-Based Section 8	280	41.7%	264	39.3%	107	15.9%	280	41.7%
Other Multifamily	145	98.6%	0	0.0%	0	0.0%	0	0.0%
HCV Program	884	25.9%	1,335	39.1%	1,045	30.6%	1,503	44.0%

Data Source: APSH

HOMEOWNERSHIP

Homeownership is vital to a community's economic well-being. It allows individuals the opportunity to build wealth, is generally associated with higher levels of civic engagement,²² and is correlated with positive cognitive and behavioral outcomes among children.²³

Federal housing policies and discriminatory mortgage lending practices prior to the Fair Housing Act of 1968, along with continuing impediments to access, have had significant impacts on the homeownership rates of racial and ethnic minorities, particularly Black and Hispanic populations. The gap between the White and Black homeownership rate is the largest among racial and ethnic groups. In 2017, the U.S. Census Bureau reported a 21.6 percentage point gap in homeownership rate between White and Black households; just a 2.9 percentage point decrease since 1997.²⁴ This gap is reflected in the homeownership rates in both San Bernardino County and the wider region.

Homeownership trends have changed in recent years because of significant events in the housing market and labor force. The homeownership rate for Millennials (the generation born between 1981 and 1997) is 8 percentage points lower than the two previous generations, controlling for age. This discrepancy can be attributed to a multitude of factors ranging from preference to urban areas, cost of education and associated debt, changes in marriage and childbearing patterns, rising housing costs, and the current supply of affordable houses.²⁵

²² Manturuk K, Lindblad M, Quercia R. "Homeownership and civic engagement in low-income urban neighborhoods: a longitudinal analysis." *Urban Affairs Review*. 2012;48(5):731–60.

²³ Haurin, Donald R. et al. "The Impact of Homeownership on Child Outcomes." *Low-Income Homeownership Working Paper Series*. Joint Center for Housing Studies of Harvard University. October 2001, <http://www.jchs.harvard.edu/sites/default/files/liho01-14.pdf>.

²⁴ U.S. Census Bureau. Homeownership Rates by Race and Ethnicity of Householder: 1994 to 2017.

²⁵ Choi, Jung et al. "Millennial Homeownership: Why Is It So Low, and How Can We Increase It?" The Urban Institute. February 2000. https://www.urban.org/sites/default/files/publication/98729/millennial_homeownership_0.pdf

The table that follows shows the number of owner and renter households, as well as the homeownership rate, by race and ethnicity for San Bernardino County and the region. Overall, tenure data indicates that households of color are less likely than White households to own their homes in both the County and region. In San Bernardino County, African American households have the lowest homeownership rate (33.1%), which is less than half of the White homeownership rate of 68.7%. Hispanic and Native American homeownership is also significantly lower (55.4% and 49.8%, respectively) than the homeownership rate for White households. Asian and other non-Hispanic households have homeownership rates closer to those of White households (62.4% and 60.1%, respectively). By geography, the largest concentration of renters is near military bases, such as Fort Irwin and the Marine Corps Air Ground Combat Center in Twentynine Palms.

Regionally, homeownership rates are higher for every population segment with the exception of other non-Hispanic households. Despite higher levels of homeownership, disparities by race and ethnicity continue. The most notable gap is between White and African American households, who own their homes at rates of 72.5% and 44.7%, respectively.

Table 13. Homeownership and Rental Rates by Race and Ethnicity

Race and Ethnicity	Owner		Renters		Homeownership Rate
	#	%	#	%	
San Bernardino County					
Non-Hispanic					
White	83,494	61.0%	38,089	44.7%	68.7%
Black	4,654	3.4%	9,420	11.1%	33.1%
Asian	6,423	4.7%	3,869	4.5%	62.4%
Native American	704	0.5%	710	0.8%	49.8%
Other	2,539	1.9%	1,687	2.0%	60.1%
Hispanic	39,119	28.6%	31,484	36.9%	55.4%
Total	136,965	-	85,255	-	61.6%
Riverside-San Bernardino-Ontario Region					
Non-Hispanic					
White	446,425	53.9%	169,245	36.9%	72.5%
Black	43,075	5.2%	53,295	11.6%	44.7%
Asian	53,205	6.4%	22,550	4.9%	70.2%
Native American	3,275	0.4%	2,590	0.6%	55.8%
Other	13,770	1.7%	10,245	2.2%	57.3%
Hispanic	268,520	32.4%	200,830	43.8%	57.2%
Total	828,270	-	458,755	-	64.4%

Note: Data presented are number of households, not individuals.

Source: ACS

Figure 25. Share of Households that are Renters in San Bernardino County

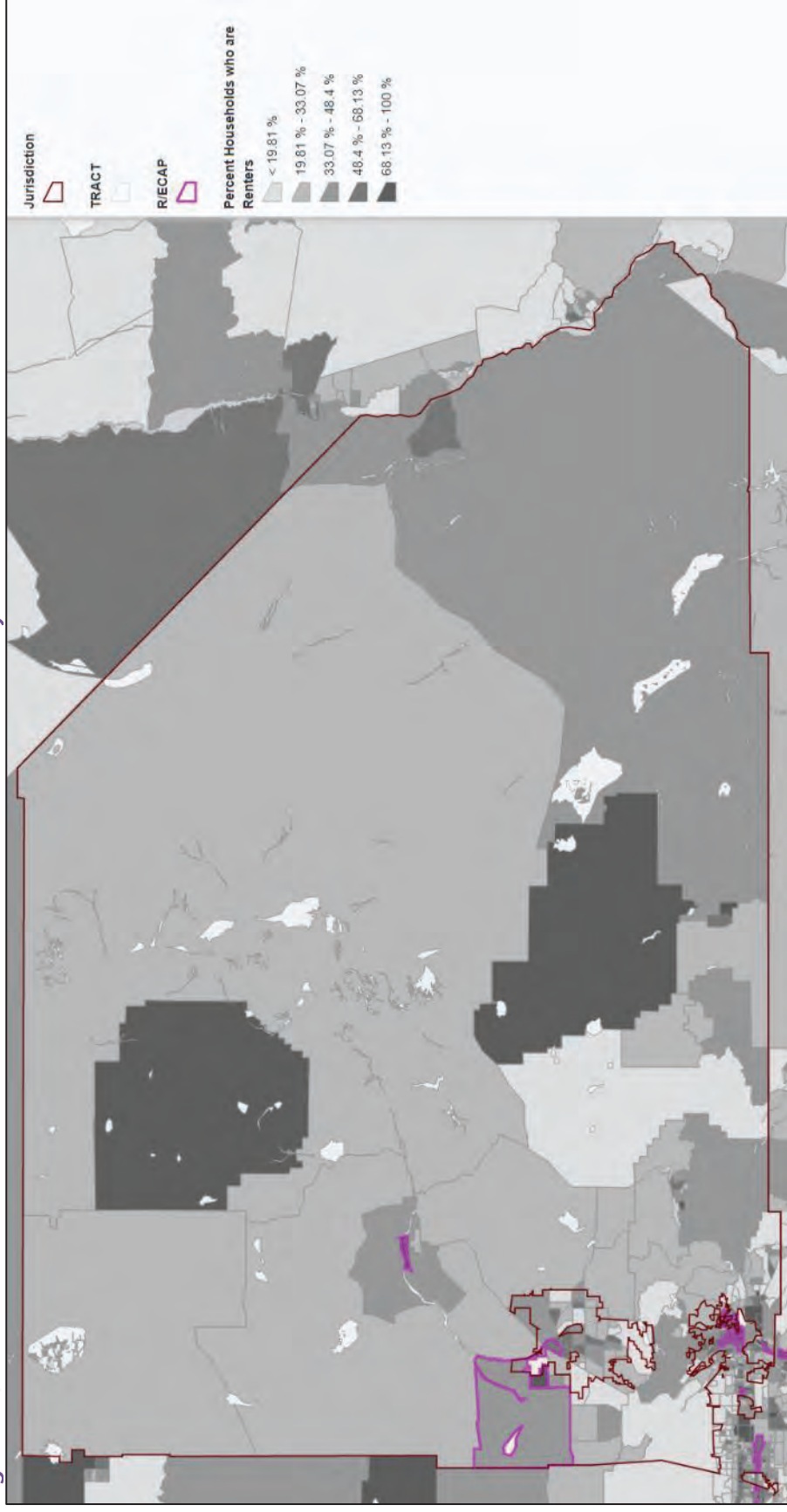
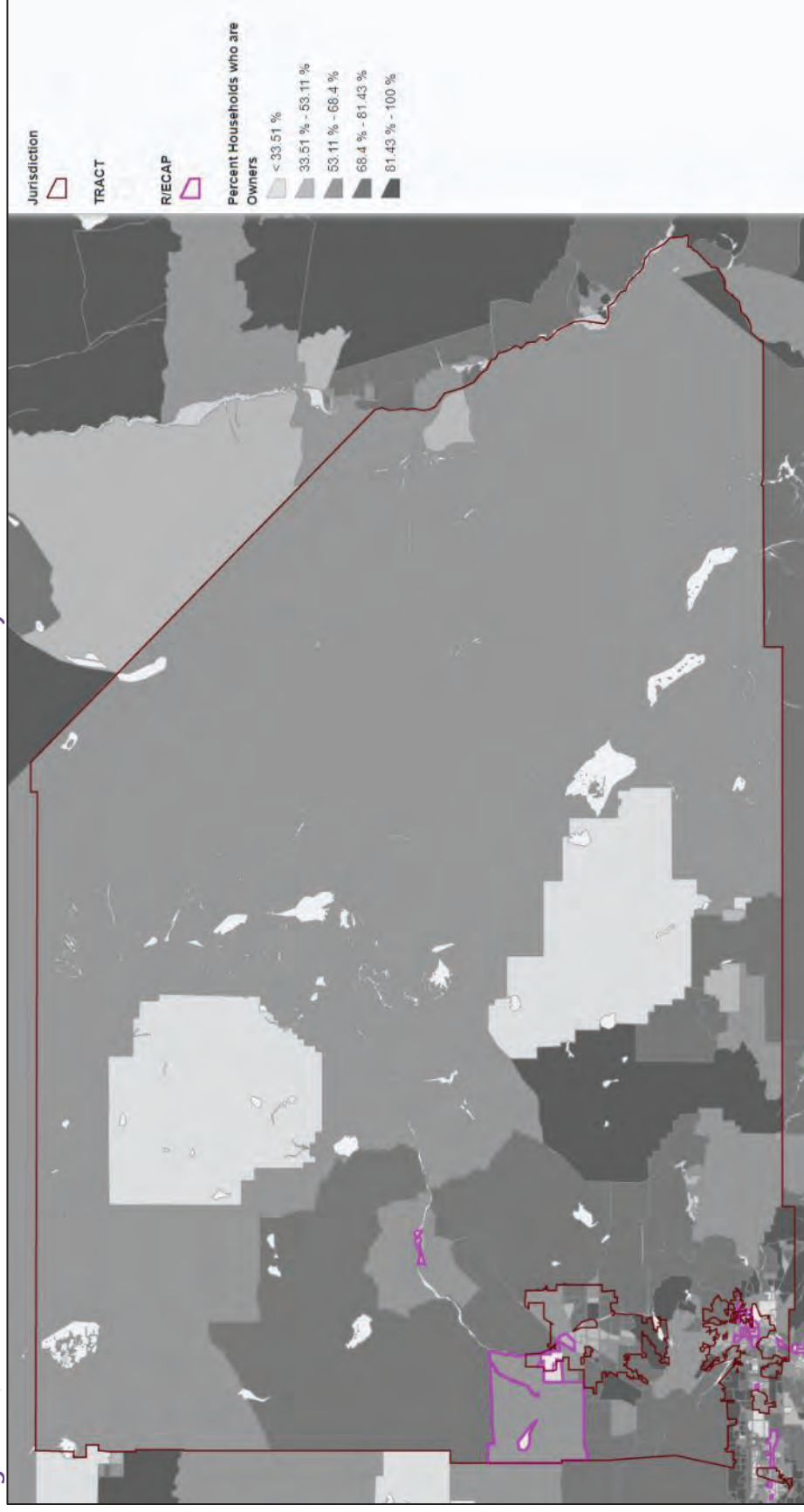


Figure 26. Share of Households that are Owners in San Bernardino County



Mortgage Lending

Prospective homebuyers need access to mortgage credit, and programs that offer homeownership should be available without discrimination. The proceeding data and analysis assesses the degree to which the housing needs of local residents are being met by home loan lenders.

The Home Mortgage Disclosure Act of 1975 (HMDA) requires most mortgage lending institutions to disclose detailed information about their home-lending activities annually. The objectives of the HMDA include ensuring that borrowers and loan applicants are receiving fair treatment in the home loan market.

The national 2017 HMDA data consists of information for 12.1 million home loan applications reported by 5,852 home lenders, including banks, savings associations, credit unions, and mortgage companies.²⁶ HMDA data, which is provided by the Federal Financial Institutions Examination Council (FFIEC), includes the type, purpose, and characteristics of each home mortgage application that lenders receive during the calendar year. It also includes additional data related to those applications including loan pricing information, action taken, property location (by census tract), and information about loan applicants such as sex, race, ethnicity, and income.

The source for this analysis is tract-level HMDA data for census tracts in San Bernardino County for the years 2013 through 2017, which includes a total of 122,973 home purchase loan application records.²⁷ Within each record, some data variables are 100% reported: "Loan Type," "Loan Amount," and "Action Taken," for example, but other data fields are less complete. According to the HMDA data, these records represent applications taken entirely by mail, Internet, or phone in which the applicant declined to identify their sex, race and/or ethnicity. Missing race, ethnicity, and sex data are potentially problematic for an assessment of discrimination. If the missing data are non-random there may be adverse impacts on the accuracy of the analysis. Ideally, any missing data for a specific data variable would affect a small proportion of the total number of loan records and therefore would have only a minimal effect on the results.

Of total San Bernardino County home loan applications, 11.0% were denied by the lending institution. There is no requirement for reporting reasons for a loan denial, and this information was not provided for about 26.0% of home purchase loan denials. Further, the HMDA data does not include a borrower's total financial qualifications such as an actual credit score, property type and value, loan-to-value ratio, or loan product choices. Research has shown that differences in denial rates among racial or ethnic groups can arise from these credit-related factors not available in the HMDA data.²⁸ Despite these limitations, the HMDA data play an important role in fair lending enforcement. Bank examiners

²⁶ Consumer Financial Protection Bureau. "FFIEC Announces Availability of 2017 Data on Mortgage Lending." May 7, 2018. <https://www.consumerfinance.gov/about-us/newsroom/ffiec-announces-availability-2017-data-mortgage-lending/>

²⁷ Includes applications for the purchase of one-to-four family dwellings (not including manufactured housing) in which the property will be occupied as the owner's principal dwelling and in which the mortgage will be secured as first lien. Includes applications for conventional, FHA-insured, VA-guaranteed, and FSA/RHS-guaranteed loans.

²⁸ R. B. Avery, Bhutta N., Brevoort K.P., and Canne, G.B. 2012. "The Mortgage Market in 2011: Highlights from the Data Reported Under the Home Mortgage Disclosure Act." Board of Governors of the Federal Reserve System. Federal Reserve Bulletin, Vol. 98, No. 6.

frequently use HMDA data in conjunction with information from loan files to assess an institution's compliance with fair lending laws.

Complete information regarding applicant race, ethnicity, and income is available for 110,846 purchase loan applications, about 90.1% of all applications. The largest share of applicants were Hispanic or Latino (44.6%). White applicants made up 38.0% of the pool, followed by Asians (10.3%), African Americans (5.7%), and people of other or multiple races (1.4%). Looking at San Bernardino County's population as of the 2013-2017 American Community Survey, more than one-half of residents are Latino (52.3%), 29.8% are White, 6.7% Asian, 8.0% Black, and 3.2% other or multiple races. Comparing these figures indicates that White and Asian households are more likely to apply for home purchase mortgage loans than African American, Latino, and other households.

The table below shows loan approval rates for completed loan applications by race and ethnicity at various income levels.²⁹ Not included in these figures are applications that were withdrawn or closed due to incompleteness such that no decision was made regarding approval or denial.

At each income level, applicants of color have higher purchase loan denial rates than White applicants. At low incomes, loan denial rates range from 13.8% for White households to rates of 21.0% for Black applicants and 22.4% for Asian applicants. At middle incomes, White applicants again had the lowest denial rate (9.2%) followed by Latino applicants (10.9%), other race applicants (12.4%), and Asian applicants (13.4%). Black applicants faced the highest denial rate (14.9%).

At higher incomes, disparities in loan approval rates by race and ethnicity persisted. About 9% of White applicants were denied a home loan compared to 13.0% of Asian applicants and 14.3% of Black applicants. For other groups, denial rates were in the 10-11% range. Overall, disregarding income, about 9.8% of White applicants were denied a home loan compared to 15.9% of Black applicants, 14.5% of Asians and 12.7% of Latinos. These gaps indicate that households of color, particularly African American households, continue to have reduced access to homeownership – they are less likely to apply for mortgage loans than White households and less likely to have those loan applications approved. HMDA data also indicates that African American and Latino applicants withdraw loan applications or do not complete them at higher rates than White or Asian borrowers.

Overall, lending patterns in San Bernardino County as evidenced by the Home Mortgage Disclosure Act data indicate differences in access to homeownership by race and ethnicity. The data also suggests avenues for expanding access to homeownership, including homebuyer readiness classes or other assistance, down payment assistance programs, and support for households in the process of applying for a loan. The County of San Bernardino can also meet with local lenders to inform them of the goals for furthering fair housing and discuss lending patterns related to homeownership identified in this AI.

²⁹ The low-income category includes applicants with a household income at or below 80% of area median family income (MFI). The middle income range includes applicants with household incomes from 81% to 150% MFI, and the upper income category consists of applicants with a household income above 150% MFI.

Table 14. Loan Approval Rates by Race and Ethnicity in San Bernardino County, 2013 – 2017

Applicant Income		Applicant Race and Ethnicity					All Applicants
		Non-Latino				Latino	
		White	Black	Asian	Other		
Home Purchase Loans							
Low Income	Completed Applications	6,625	1,025	1,363	220	12,293	21,526
	Denial Rate	13.8%	21.0%	22.4%	18.2%	17.1%	16.6%
Middle Income	Completed Applications	15,636	2,569	4,030	590	21,290	44,115
	Denial Rate	9.2%	14.9%	13.4%	12.4%	10.9%	10.8%
High Income	Completed Applications	14,335	1,730	4,423	545	8,365	29,398
	Denial Rate	8.7%	14.3%	13.0%	10.8%	10.4%	10.2%
All Applicants	Completed Applications	36,596	5,324	9,816	1,355	41,948	95,039
	Denial Rate	9.8%	15.9%	14.5%	12.7%	12.6%	11.9%

Note: “Completed applications” includes applications that were approved but not accepted, denied, and approved with a loan originated. It does not include applications withdrawn by the applicant or closed for incompleteness.

Data Source: FFIEC 2013-2017 Home Mortgage Disclosure Act Data, Accessed via www.consumerfinance.gov/data-research/hmda

ZONING, AFFORDABILITY, AND HOUSING CHOICE

Comprehensive land use planning is a critical process by which communities address a myriad of public policy issues such as housing, transportation, health, recreation, environmental protection, commercial and retail services, and land values, and address how the interconnection and complexity of these issues can ultimately impact the entire municipality or political jurisdiction. “The land use decisions made by a community shape its very character – what it’s like to walk through, what it’s like to drive through, who lives in it, what kinds of jobs and businesses exist in it, how well the natural environment survives, and whether the community is an attractive one or an ugly one.”³⁰ Likewise, decisions regarding land use and zoning have a direct and profound impact on affordable housing and fair housing choice, shaping a community or region’s potential diversity, growth, and opportunity for all. Zoning determines where housing can be built, the type of housing that is allowed, and the amount and density of housing that can be provided. Zoning also can directly or indirectly affect the cost of developing housing, making it harder or easier to accommodate affordable housing.

The following sections will explore (I) how California state law impacts local land use and zoning authority and decision-making and (II) how the zoning and land use codes of San Bernardino County impact housing affordability and fair housing choice within the unincorporated areas of the County.

Intersection of Local Zoning with Federal and State Fair Housing Laws

From a regulatory standpoint, local government measures to control land use typically rely upon zoning codes, subdivision codes, and housing and building codes, in conjunction with comprehensive plans. Courts have long recognized the power of local governments to control land use, and the California Constitution and Government Code authorize incorporated counties and cities to regulate land use and zoning within their respective jurisdictions. This general grant of home-rule authority is limited by other state code sections—including for example the General Code, Health and Safety Code, and Public Resources Code—related to public hearings and procedures; density bonuses and incentives; environmental impact reviews; development impact fees; mediation and resolution of land use disputes; transportation management; affordable housing development approvals; subdivision maps; use of surplus land; supportive housing and residential care facilities, among others. The state’s planning and land use regulations also require that each jurisdiction adopt “a comprehensive, long-term general plan for [its] physical development.” The General Plan is the jurisdiction’s official policy regarding the location of housing, business, industry, roads, parks, and other land uses, protection of the public from noise and other environmental hazards, and conservation of natural resources. The general plan may be supplemented by “community plans” and “specific plans” to guide the land use decisions for particular areas or communities within the jurisdiction and describe allowable land uses, identify open space, and detail the availability of facilities, infrastructure and financing available for the community. The jurisdiction may then adopt zoning or development codes, subdivision codes, and other planning ordinances to carry out the policies of its general plan and consistent with other state mandates.³¹

³⁰ John M. Levy. *Contemporary Urban Planning, Eighth Edition*. Upper Saddle River, NJ: Pearson Prentice Hall, 2009.

³¹ See plan elements, available at: <http://countywideplan.com/theplan/>

One goal of zoning is to balance individual property rights with the power of government to promote and protect the health, safety, and general welfare of the overall community. Zoning codes regulate how a parcel of land in a community may be used and the density of development. Local governments may divide their jurisdiction into zoning districts by adopting a zoning map consistent with the general plan; define categories of permitted and special/conditional uses for those districts; and establish design or performance standards for those uses. Zoning may regulate the height, shape, and placement of structures and lot sizes or shapes. Jurisdictions also can expressly prohibit certain types of uses within zoning districts.³² In this way, local ordinances may define the type and density of housing resources available to residents, developers, and other organizations within certain areas, and as a result influence the availability and affordability of housing.

In San Bernardino County, the Development Code divides the County into primary districts and overlay zones, and describes allowable uses and development standards in each, to implement the long-range planning goals of the General Plan. The Development Code is administered by the County Board of Supervisors, the Planning Commission, the Director of Land Use Services, and the Land Use Services Department.

While local governments have the power to enact zoning and land use regulations, that power is limited by state and federal fair housing laws (e.g., the California Fair Employment and Housing Act (FEHA) and the Unruh Act, the federal FHAA, the Americans with Disabilities Act, constitutional due process and equal protection), which apply not only to private individuals but also to government actions. The FHAA prohibits both private individuals and government authorities from denying a member of a protected class equal access to housing, including through the enforcement of a local zoning ordinance that disproportionately limits housing choice for protected persons. In *Texas Department of Community Affairs v. The Inclusive Communities Project*, a 2015 landmark disparate impact case under the FHA, the Supreme Court affirmed that part of the FHA's central purpose is to eradicate discriminatory housing practices, including specifically unlawful zoning laws and other housing restrictions.

Besides intentional discrimination and disparate impact, discrimination on the basis of disability also includes

[A] refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling. FHA § 804(f)(3)(b).

This provision has been held to apply to zoning and land use decisions by local governments.

California has adopted a parallel version of the federal Fair Housing Act (FHAA) known as the *Fair Employment and Housing Act* ("FEHA") (CAL. GOV. CODE § 12900 - 12996). Both the FHAA and FEHA prohibit discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on sex (which under the FEHA also includes specifically pregnancy, childbirth,

³² Local government power to regulate land use derives from the State's expressly delegated police power, first to municipal governments and then to counties, as found in the various enabling statutes of the state constitution and Title 7 of the California Government Code, § 65000 et seq. State law requires local planning agencies to prepare and "the legislative body of each county and city shall adopt a comprehensive, long-term general plan for the physical development of the County or city." See Gov. Code § 65300 et seq.

breastfeeding or medical conditions related to pregnancy, childbirth or breastfeeding), race, color, disability (physical and mental), religion, national origin, or familial status (families with children). California has a broader definition of “disability” than federal civil rights acts. In California, disability includes physical or mental impairments that “limit a major life activity” as opposed to the federal definition which requires that the disabling condition “*substantially* limit” one or more major life activities. The FEHA also expands on the classes of persons protected against discriminatory housing practices to also prohibit discrimination in housing based on gender, gender identity, and gender expression, sexual orientation, marital status, age, source of income, genetic information, and retaliation for protesting illegal discrimination, or “or any other basis prohibited by Section 51 of the Civil Code,” which also includes as a basis of protection medical condition, citizenship, primary language, and immigration status.

“Source of income” is defined narrowly under the FEHA as “lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant” and under the definition “a landlord is not considered a representative of a tenant.” Accordingly, source of income under the FEHA has been adjudged to not include government rent subsidies, specifically Housing Choice Vouchers under Sec. 8 of the FHA. While the FEHA does not prevent a landlord from refusing to accept tenants who rely on Section 8 vouchers, the California Court of Appeals has found that a local ordinance that specifically protects against discrimination based on a tenant’s participation in the Section 8 program is not preempted by the state law. See City & County of San Francisco v. Post, 231 Cal.Rptr.3d 235, 22 Cal.App.5th 121 (2018). While there is movement among California jurisdictions to adopt greater protections for tenants utilizing housing subsidies or vouchers, as the number of voucher holders sometimes far outnumbers available rental units in an area, San Bernardino County has not adopted a local ordinance to do so.

The FEHA prohibits discrimination and harassment in all aspects of housing, including sales and rentals, evictions, terms and conditions, mortgage loans and insurance, and land use and zoning. California’s fair housing act has fewer exemptions than its federal counterpart. An owner-occupied single-family home, where the owner does not rent to more than one individual (as opposed to owner-occupied buildings with no more than four units under the FHAA), and the owner complies with FEHA’s prohibition against discriminatory statements, notices, or advertisements is one of the few exemptions under the FEHA. Exemptions also apply to housing operated by organizations and private clubs that limit occupancy to members, and statements indicating a preference for same-sex roommates in shared living situations. The FEHA explicitly prohibits discriminatory “public or private land use practices, decisions and authorizations” including, but not limited to, “zoning laws, denials of permits, and other [land use] actions . . . that make housing opportunities unavailable” to protected groups. Like the FHAA, it requires housing providers to make reasonable accommodation in rules and practices to permit persons with disabilities to use and enjoy a dwelling and to allow persons with disabilities to make reasonable modifications of the premises.

Under California’s *Unruh Civil Rights Act*, all persons are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all “business establishments,” including both private and public entities. The Unruh Act has been consistently construed to apply to rental housing, and is an additional claim often averred in housing discrimination cases. The *Unruh Civil Rights Act* protects all persons against arbitrary and unreasonable discrimination by a business establishment.

Despite state law generally leaving zoning and land use regulations to local decision-making, the FEHA explicitly preempts any local ordinance that conflicts with the categories of housing discrimination specifically set forth in the statute. San Bernardino County has not adopted a local nondiscrimination ordinance or expanded on the rights and obligations guaranteed by the FEHA or Unruh Civil Rights Act.

San Bernardino County Zoning Ordinance Review

Although comprehensive plans and zoning and land use codes play an important role in regulating the health and safety of the structural environment, overly restrictive codes can negatively impact housing affordability and fair housing choice within a jurisdiction. Examples of zoning provisions that most commonly result in barriers to fair housing choice include:

- Restrictive forms of land use that exclude any specific form of housing, particularly multi-family housing, or that require large lot sizes or low-density that deter affordable housing development by limiting its economic feasibility;
- Restrictive definitions of family that impede unrelated individuals from sharing a dwelling unit;
- Placing administrative and siting constraints on group homes for persons with disabilities;
- Restrictions making it difficult for residents with disabilities to locate housing in certain neighborhoods or to modify their housing;
- Restrictions on occupancy of alternative sources of affordable housing such as accessory dwellings, mobile homes, and mixed-use structures.
- San Bernardino County's treatment of these types of issues, mainly through its Development Code, is explored and evaluated in the table and narrative below.

Because zoning codes present a crucial area of analysis for a study of impediments to fair housing choice, the latest available zoning and land use ordinances of San Bernardino County were reviewed and evaluated against a list of ten common fair housing issues. Taken together, these issues give a picture of (1) the degree to which exclusionary zoning provisions may impact affordable housing opportunities within the jurisdiction and (2) the degree to which the zoning code may impact housing opportunities for persons with disabilities. The zoning ordinance was assigned a risk score of either 1, 2, or 3 for each of the ten issues and was then given an aggregate score calculated by averaging the individual scores, with the possible scores defined as follows:

1 = low risk – the provision poses little risk for discrimination or limitation of fair housing choice, or is an affirmative action that intentionally promotes and/or protects affordable housing and fair housing choice;

2 = medium risk – the provision is neither among the most permissive nor most restrictive; while it could complicate fair housing choice, its effect is not likely to be widespread;

3 = high risk – the provision causes or has potential to result in systematic and widespread housing discrimination or the limitation of fair housing choice or is an issue where the jurisdiction could take affirmative action to further affordable housing or fair housing choice but has not.

The following chart lists the ten issues reviewed and the scores for each issue. A complete report including citations to relevant statutes, code sections, and explanatory comments, are included as an appendix to this document.

Table 15. Zoning Code Risk Scores

Issue	Risk Score
1a. Does the jurisdiction's definition of "family" have the effect of preventing unrelated individuals from sharing the same residence? Is the definition unreasonably restrictive?	1
1b. Does the definition of "family" discriminate against or treat differently unrelated individuals with disabilities (or members of any other protected class)?	
2a. Does the zoning code treat housing for individuals with disabilities (e.g. group homes, congregate living homes, supportive services housing, personal care homes, etc.) differently from other single family residential and multifamily residential uses? For example, is such housing only allowed in certain residential districts, must a special or conditional use permit be granted before siting such housing in certain residential districts, etc.?	1
2b. Does the zoning ordinance unreasonably restrict housing opportunities for individuals with disabilities who require onsite supportive services? Or is housing for individuals with disabilities allowed in the same manner as other housing in residential districts?	
3a. Do the jurisdiction's policies, regulations, and/or zoning ordinances provide a process for persons with disabilities to seek reasonable modifications or reasonable accommodations to zoning, land use, or other regulatory requirements?	1
3b. Does the jurisdiction require a public hearing to obtain public input for specific exceptions to zoning and land-use rules for applicants with disabilities? If so, is the public hearing process only required for applicants seeking housing for persons with disabilities or required for all applicants?	
4. Does the ordinance impose spacing or dispersion requirements on certain protected housing types?	1
5. Does the jurisdiction restrict any inherently residential uses protected by fair housing laws (such as residential substance abuse treatment facilities) only to non-residential zones?	1
6. Does the jurisdiction's zoning and land use rules constitute exclusionary zoning that precludes development of affordable or low-income housing by imposing unreasonable residential design regulations (such as high minimum lot sizes, wide street frontages, large setbacks, low FARs, large minimum building square footage or large livable floor areas, restrictions on number of bedrooms per unit, and/or low maximum building heights)?	1
7. Does the zoning ordinance fail to provide residential districts where multi-family housing is permitted as of right? Are multifamily dwellings excluded from all single-family dwelling districts?	2
7b. Do multi-family districts restrict development only to low-density housing types?	
8. Are unreasonable restrictions placed on the construction, rental, or occupancy of alternative types of affordable or low-income housing (for example, accessory dwellings or mobile/manufactured homes)?	1

Issue	Risk Score
9a. Are the jurisdiction's design and construction requirements (as contained in the zoning ordinance or building code) congruent with the Fair Housing Amendments Act's accessibility standards for design and construction?	1
9b. Is there any provision for monitoring compliance?	
10. Does the zoning ordinance include an inclusionary zoning provision or provide any incentives for the development of affordable housing or housing for protected classes?	1
Average Risk Score	1.1

San Bernardino County's average risk score (calculated by taking the average of the 10 individual issue scores) is 1.1, indicating that overall there is low risk of the development code and other land use regulations contributing to discriminatory housing treatment or impeding fair housing choice. In most cases, the zoning and other land use code sections are reasonably permissive and allow for flexibility as to the most common fair housing issues. Remarkably, the County did not receive a "3" (high risk) score on any of the ten issues evaluated, and received a "2" (medium risk) score on only one issue where the development standards may have the potential to negatively impact fair and affordable housing. While San Bernardino County's code does not put it in jeopardy of violating the minimum fair housing and AFFH standards as they relate to local government land use regulations and policies, even well-scoring jurisdictions may find there are incremental improvements that can be made to rules and policies to more fully protect the fair housing rights and housing choice of all of its residents and to better fulfill the mandate to affirmatively further fair housing.

Restricting housing choice for certain historically/socio-economically disadvantaged groups and protected classes can happen in any number of ways and should be viewed on a continuum. The zoning analysis matrix developed for this report and the narrative below are not designed to assert whether the County's code creates a per se violation of the FHA or HUD regulations, but are meant as a tool to highlight significant areas where zoning and land use ordinances may otherwise jeopardize the spirit and intent of fair housing protections and HUD's AFFH standards for its entitlement communities.

The issues chosen for discussion show where zoning ordinances and policies could go further to protect fair housing choice for protected and disadvantaged classes, and yet still fulfill the zoning objective of protecting the public's health, safety, and general welfare. Specifically, the issues highlighted by the matrix inform, first, the degree to which the zoning ordinance may be overly restrictive and exclusionary to the point of artificially limiting the affordable housing inventory and directly contributing to higher housing and rental costs. And secondly, the matrix helps inform the impact the local regulations may have on housing opportunities for persons with disabilities, a protected class under state and federal fair housing law. This latter issue is discussed in detail in Chapter 8 of this report.

Impact of Zoning Provisions on Affordable Housing

Academic and market research have proven what also is intuitive: land use regulations can directly limit the supply of housing units within a given jurisdiction, and thus contribute to making housing more expensive, i.e. less affordable.³³ Exclusionary zoning is understood to mean zoning regulations which impose unreasonable residential design regulations that are not congruent with the actual standards necessary to protect the health and safety of current average household sizes and prevent overcrowding. Zoning policies that impose barriers to housing development by making developable land and construction costlier than they are inherently can take different forms and may include: high minimum lot sizes, low density allowances, wide street frontages, large setbacks, low floor area ratios, large minimum building square footage or large livable floor areas, restrictions on number of bedrooms per unit, low maximum building heights, restrictions against infill development, restrictions on the types of housing that may be constructed in certain residential zones, arbitrary or antiquated historic preservation standards, minimum off-street parking requirements, restrictions against residential conversions to multi-unit buildings, lengthy permitting processes, development impact fees, and/or restrictions on accessory dwelling units.

Zoning District Legend	
RL	Rural Living
RS	Single Residential
RM	Multiple Residential
CR	Rural Commercial
CN	Neighborhood Commercial
CO	Office Commercial
CG	General Commercial
CS	Service Commercial
CH	Highway Commercial
IC	Community Industrial
IR	Regional Industrial
IN	Institutional
SD	Special Development
SP	Specific Plan

Although these land use regulations may not be in direct violation of fair housing laws, or facially discriminatory, they may have the effect of artificially limiting the supply of housing units in a given area and disproportionately reducing housing choice for moderate to low-income families, minorities, persons with disabilities on fixed incomes, families with children, and other protected classes by making the development of affordable housing cost prohibitive. Legitimate public objectives, such as maintaining the residential character of established neighborhoods, environmental protection, or public health, must be balanced with housing needs and availability.

While zoning and development standards put artificial pressures on the cost of housing, the County's development code is not overly restrictive for current demands. Greater flexibility may be permitted through the Planned Development Permit process which is applicable in many zoning districts for single family or mixed-residential developments. Single family dwellings generally require a minimum lot size of 7,200 sq. ft. in the RS

residential zone, 2.5 acres in the RL zones, or 10,000 sq. ft. in the RM zone. Single family dwellings also are permitted in the CR (rural commercial) zone and SD-RES (special district- residential) zone, where

³³ See Gyourko, Joseph, Albert Saiz, and Anita A. Summers, A New Measure of the Local Regulatory Environment for Housing Markets: The Wharton Residential Land Use Regulatory Index (2007), available at real.wharton.upenn.edu; Randal O'Toole, The Planning Penalty: How Smart Growth Makes Housing Unaffordable (2006), available at independent.org/pdf/policy_reports/2006-04-03-housing.pdf; Edward L. Glaeser and Joseph Gyourko, The Impact of Zoning on Housing Affordability (2002), available at law.yale.edu/system/files/documents/pdf/hier1948.pdf; The White House's Housing Development Toolkit, 2016, available at whitehouse.gov/sites/whitehouse.gov/files/images/Housing_Development_Toolkit%20f.2.pdf.

“the actual number of units allowed will be determined by the County through subdivision or planning permit approval, as applicable.” In dense population areas, these minimums could present a barrier to supplying greater density and infill development, but in practice, this has not been seen as an issue in the County.

Most of the housing in the County is single-family detached and the development code does not specifically mention or encourage variety in dwelling types such as townhomes, rowhouses, duplex, triplex, quadplex, garden homes, zero-lot line dwellings, cluster housing, etc. However, attached or detached multi-family projects of 2-3 units (duplex-triplex) are permitted by right in the RM and CR districts. Multi-family developments of 4-19 units also are permitted by right in the RM district. Multi-family developments of 20-49 units may be approved in the RM district with a MUP (minor use permit) and in the CR (rural commercial) district with a CUP (conditional use permit). Multi-family developments of 50+ units require a CUP in the RM district. Residential units as part of a mixed-use development are allowed with a Planned Development Permit (PD) in most of the commercial zoning districts—CR, CO, CG, CS, and CH districts on minimum 5 acre sites and in the SD (special district) zoning district on a minimum 5 acre site area generally.

The development code provides that a variety of multi-family unit types is encouraged (i.e., efficiency, one-bedroom, two-bedroom, etc.) to provide a range of options for owners or renters in different income, age, and family sizes.

Because of the abundance of vacant land in the unincorporated county, housing density in many areas is not as important to affordability as it is in jurisdictions with less available developable land and higher populations. There are, however, some zoning factors that could increase development costs (and accordingly end costs for buyers and renters). For instance, RM zoning designations apply to a minimum site area of 10 acres, which limits the use of rezoning to RM designation to add affordable density or infill development in areas of the County with the necessary infrastructure (e.g. water/sewer) and desirable amenities (transportation, job centers, schools, medical facilities, etc.).

The development code also regulates the minimum unit size of multi-family dwelling units ranging from 450 sq. ft. for an efficiency unit to 1,200 sq. ft. for a 4-bedroom unit, rather than leaving this to market demands or as a matter of safety regulated by the building and occupancy codes. Regulating the minimum unit size of dwellings through the zoning code adds to the cost of development and thus higher rental and ownership costs. (If the goal is to provide for adequate unit sizes for larger families with children, the design requirement could be amended to require that a percentage of multifamily units in new developments can accommodate a certain number of bedrooms rather than a certain total unit size.) Also, the maximum height of residential buildings in the County is 60 ft. (approximately 4 stories) or less, which in combination with maximum floor area ratios and required setbacks limits density. As the County's population increases and income demographics become more diverse, these standards may limit the potential for affordable, multifamily housing to meet demand in those areas of the County with the infrastructure and amenities also needed for meaningful housing choice.

As for Issue 8 regarding alternative types of affordable housing, the County scored a “1/low risk” because it permits both manufactured housing and accessory dwelling units. Unincorporated San Bernardino County has a much larger share of affordable mobile home parks than the incorporated jurisdictions of

the County. Mobile home park/manufactured home land-lease communities are permitted with a CUP in the RL (minimum parcel 20 acres), RS (minimum parcel 10 acres), RM (minimum parcel 10 acres), CR, SD-RES, and SD-COM districts at a maximum density of 7 units per acre generally.

The Development Code's treatment of accessory dwelling units (ADUs) was amended in 2018 to comply with new state law mandates issued in late 2017. The primary effect of the new ADU regulations is that under state law, ADUs must be permitted by right wherever single-family dwellings are permitted, subject to local design and development conditions. The purpose of the new ADU regulations is to reduce barriers to housing options as a form of infill-development that can be affordable and offer important housing choices within existing neighborhoods. Accordingly, the County amended its Development Code to reflect that attached and detached ADUs are generally allowed on any site that contains a proposed or an existing single-family dwelling—specifically in the RC, AG, RL, RS, CR and SD-RES districts but not in the RM district. ADUs may be rented separately from the primary residence for a term longer than 30 days. ADUs are subject to development criteria related to location, parking, site permits, etc. but rules regarding minimum and maximum floor area size were removed subject to the California Residential Code ("tiny homes" are permitted and the existing dwelling may become accessory to new dwelling).

Inclusionary Zoning and Density Bonuses

Inclusionary zoning can be an important tool for affirmatively furthering fair housing choice. As for Issue 10, San Bernardino's Development Code does include inclusionary zoning incentives for the development of affordable housing and housing for older persons and other special needs populations, tracking the State's mandate for local governments to implement the state density bonus law. The County's Affordable Housing Incentives – Density Bonus Ordinance provides for incentives or concessions and a density increase, over the otherwise maximum allowable residential density, for housing developments of five or more units that meet the eligibility requirements for low-income, very low-income, senior, moderate income, and other special needs categories. Developments that also include a land donation or onsite childcare facilities may be eligible for an additional density bump and other incentives. The state and local rules regarding density bonuses use a sliding scale so that the greater the percentage of affordable units, the higher the density bonus (up to a maximum of 35%) and other development incentives and concessions, which may include reduction in site development standards (e.g. reduction in number of required parking spaces or increase in allowable building height), approval of compatible mixed-use zoning in conjunction with the housing project, and other incentives that result in identifiable and actual cost reductions to provide for affordable housing costs.

Since it was first adopted in 1976, the state statute has been amended many times to clarify the legislation, in response to legal and implementation challenges, and to add new provisions and standards, including a handful of bills adopted between 2014-2018. San Bernardino County's ordinance, however, has not been updated or amended since 2009, and now is inconsistent or less comprehensive compared to state law. For instance, the term of affordability for rental units has gone up from 30 to 55 years under state law and local governments must enforce an equity-sharing agreement at resale of owner-occupied units (involving sale of the home at fair market value and sharing of the profits with the city), but San Bernardino County's ordinance has not been amended to reflect these important changes. Other amendments to the state law that are not yet reflected in the local ordinance include an

update to the reduced off-street parking requirements as a development incentive; a density bonus option for commercial developments that include affordable dwelling units; other housing categories that are eligible for a density bonus like low-income student housing, transitional housing for foster youth, housing for veterans, and housing for persons experiencing homelessness; and rules clarifying the application and processing requirements, among others. It is recommended that the County adopt updates to the ordinance consistent with the State's recent amendments. Additionally, the County could go further than the state bonus law in ensuring the long-term affordability for ownership units. To avoid losing affordable owner-occupied units with the first resale, the County could adopt requirements for deed restrictions or other measures to protect long-term affordability of ownership units for a project to be eligible for a density bonus.

All together, these zoning tools could potentially allow for an increased supply of housing, both single-family and multifamily, which helps put downward pressure on rental and sale prices, so that moderate and low-income families have access to higher opportunity areas and all the congruent benefits that come with living in those zones such as access to better jobs, schools, public transportation, healthcare, cultural amenities, and public accommodations.

Zoning in the Cooperating Cities

The County's previous AI included a specific individual review of the zoning codes of cooperating cities within the County. The list of cooperating cities (which differs slightly from the current participants) and their assessed risk scores from the 2015 zoning code review are recapped below.

Cooperating City Zoning Code Risk Scores - 2015	
Municipality	Risk Score
Adelanto	1.27
Big Bear Lake	1.07
Chino Hills	1.13
Colton	1.13
Grand Terrace	1.27
Highland	1.40
Loma Linda	2.40
Montclair	1.87
Needles2	1.80
Rancho Cucamonga	1.07
Redlands	1.20
Rialto	2.00
Twentynine Palms	1.67
Yucaipa	1.07
Yucca Valley	1.07

In the course of preparing this analysis, the County contacted its cooperating cities and requested an update on actions they had taken over the 2015-2020 period to resolve any zoning code issues that could present impediments to fair housing choice. Most of the municipalities did not respond to that request, but the table below summarizes responses from those that did.

Cooperating City Zoning Code Risk Scores - 2015		
Municipality	Risk Score	Response
Adelanto	1.27	The City's 2019 Municipal Code provides that Emergency and Homeless Shelters may be constructed in the DL zone as a Permitted Use and in the LM, MI and ADD zones as a Conditional Use, thus constituting a reasonable accommodation.
Big Bear Lake	1.07	No response provided
Chino Hills	1.13	No response provided
Colton	1.13	No response provided
Grand Terrace	1.27	No response provided
Highland	1.40	No response provided
Loma Linda	2.40	No response provided
Montclair	1.87	The City is currently working on an update to its General Plan with tentative completion in spring 2020 and an update to the Housing Element beginning thereafter. In developing those updates, the City will ensure recommended zoning code modifications are incorporated.
Needles	1.80	No response provided
Rancho Cucamonga	1.07	No response provided
Redlands	1.20	No response provided
Rialto	2.00	No response provided
Twentynine Palms	1.67	No response provided
Yucaipa	1.07	No response provided
Yucca Valley	1.07	No response provided

CHAPTER 7.

PUBLICLY-SUPPORTED HOUSING

Publicly supported housing encompasses several strategies and programs developed since the 1930s by the federal government to ameliorate housing hardships that exist in neighborhoods throughout the country. The introduction and mass implementation of slum clearance to construct public housing projects during the mid-1900s signified the beginning of publicly supported housing programs. Government-owned and managed public housing was an attempt to alleviate problems found in low-income neighborhoods such as overcrowding, substandard housing, and unsanitary conditions. Once thought of as a solution, the intense concentration of poverty in public housing projects often exacerbated negative conditions that would have lasting and profound impact on their communities.

Improving on public housing's model of high-density, fixed-site dwellings for very low-income households, publicly supported housing programs have since evolved into a more multi-faceted approach overseen by local housing agencies. The Housing and Community Development Act of 1974 created Section 8 rental assistance programs. Section 8, also referred to as the Housing Choice Voucher (HCV) program, provides two types of housing vouchers to subsidize rent for low-income households: project-based and tenant-based. Project-based vouchers can be applied to fixed housing units in scattered site locations while tenant-based vouchers allow recipients the opportunity to find and help pay for available rental housing on the private market.

The Tax Reform Act of 1986 created the Low-Income Housing Tax Credit (LIHTC) program to incentivize development of affordable, rental-housing development. Funds are distributed to state housing finance agencies that award tax credits to qualified projects to subsidize development costs. Other HUD Programs including Section 811 and Section 202 also provide funding to develop multifamily rental housing specifically for disabled and elderly populations.

The now-defunct HOPE VI program was introduced in the early 1990s to revitalize and rebuild dilapidated public housing projects and create mixed-income communities. Although HOPE VI achieved some important successes, the Choice Neighborhoods Initiative program was developed to improve on the lessons learned from HOPE VI. The scope of Choice Neighborhoods spans beyond housing and addresses employment access, education quality, public safety, health, and recreation.³⁴

Current publicly supported housing programs signify a general shift in ideology toward more comprehensive community investment and de-concentration of poverty. However, studies have shown a tendency for subsidized low-income housing developments and residents utilizing housing vouchers to continue to cluster in disadvantaged, low-income neighborhoods. Programmatic rules and the point allocation systems for LIHTC are thought to play a role in this clustering and recent years have seen

³⁴ Department of Housing and Urban Development. *Evidence Matters: Transforming Knowledge Into Housing and Community Development Policy*. 2011. www.huduser.gov/portal/periodicals/em/EM-newsletter_FNL_web.pdf.

many states revising their allocation formulas to discourage this pattern in new developments.³⁵ The reasons for clustering of HCVs is more complicated since factors in decision-making vary greatly by individual household. However, there are indications that proximity to social networks, difficulties searching for housing, and perceived or actual discrimination contribute to clustering.³⁶ This section will review the current supply and occupancy characteristics of publicly supported housing types and its geographic distribution within the study area.

SUPPLY AND OCCUPANCY

Publicly supported housing provides affordable housing to very low-income families, the elderly, and disabled individuals through a variety of housing options. In its March 2019 report, the Housing Authority of the County of San Bernardino (HACSB) reported that it owned or managed nearly 13,000 housing units and vouchers, combined.³⁷ Of these 13,000 current units, the largest program is the tenant-based voucher rental assistance program, which has 10,120 units. The HACSB also reports that there are 2,322 public housing/housing authority-owned units and 538 units owned by limited liability companies or limited partnerships in which the HACSB is a member.

Table 16. Publicly Supported Housing Units by Program Category

Housing Units	San Bernardino County	
	#	%
Total housing units	286,772	-
Public housing	454	0.2%
Project-based Section 8	692	0.2%
Other multifamily	162	0.1%
HCV program	3,159	1.1%
LIHTC program	10,474	3.7%

Source: Decennial Census; APSH; HUD LIHTC Database

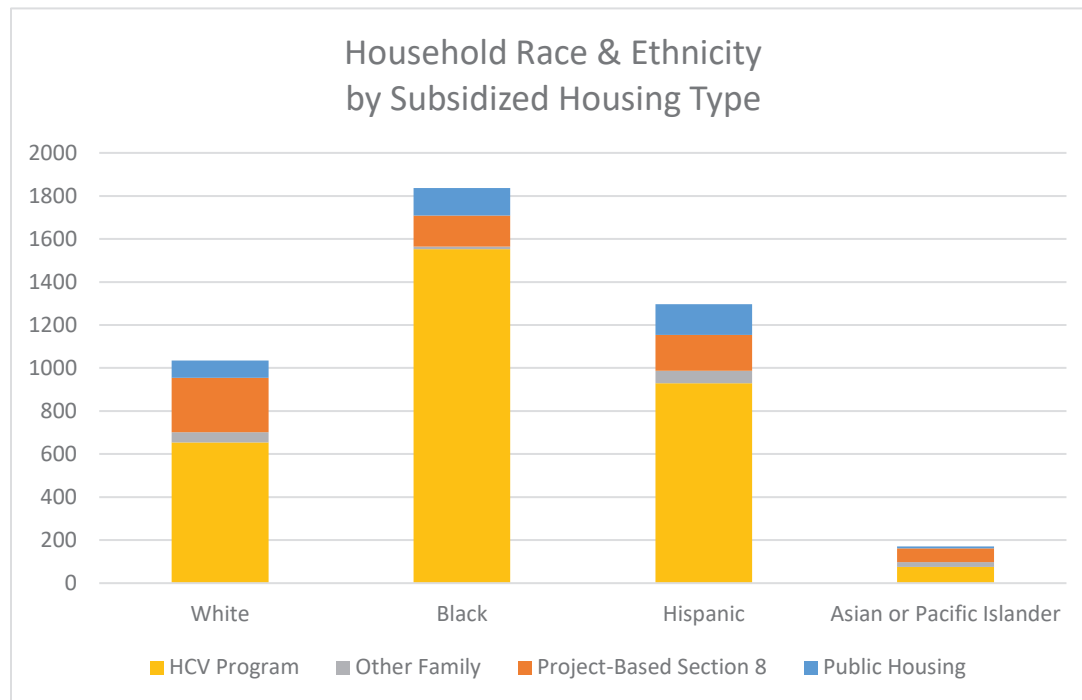
These figures are markedly greater than the unit counts reported by HUD through its “A Picture of Subsidized Households” (APSH) database. The HUD APSH data shows that the HACSB owns or manages 454 public housing units, 692 Project-Based Section 8 units, 3,159 housing choice vouchers, and 162 “other multifamily” units within the Section 811 and Section 202 programs serving the elderly and people with disabilities. Additionally, another 10,474 units in Low Income Housing Tax Credit-funded developments (which may or may not involve the HACSB as a partner; LIHTC units are more typically developed by the private sector) across the County. This publicly supported housing – as shown in Table

³⁵ Dawkins, Casey J. *Exploring the Spatial Distribution of Low Income Housing Tax Credit Properties*. US Department of Housing and Urban Development, www.huduser.gov/publications/pdf/dawkins_exploringliht_assistedhousingrcr04.pdf.

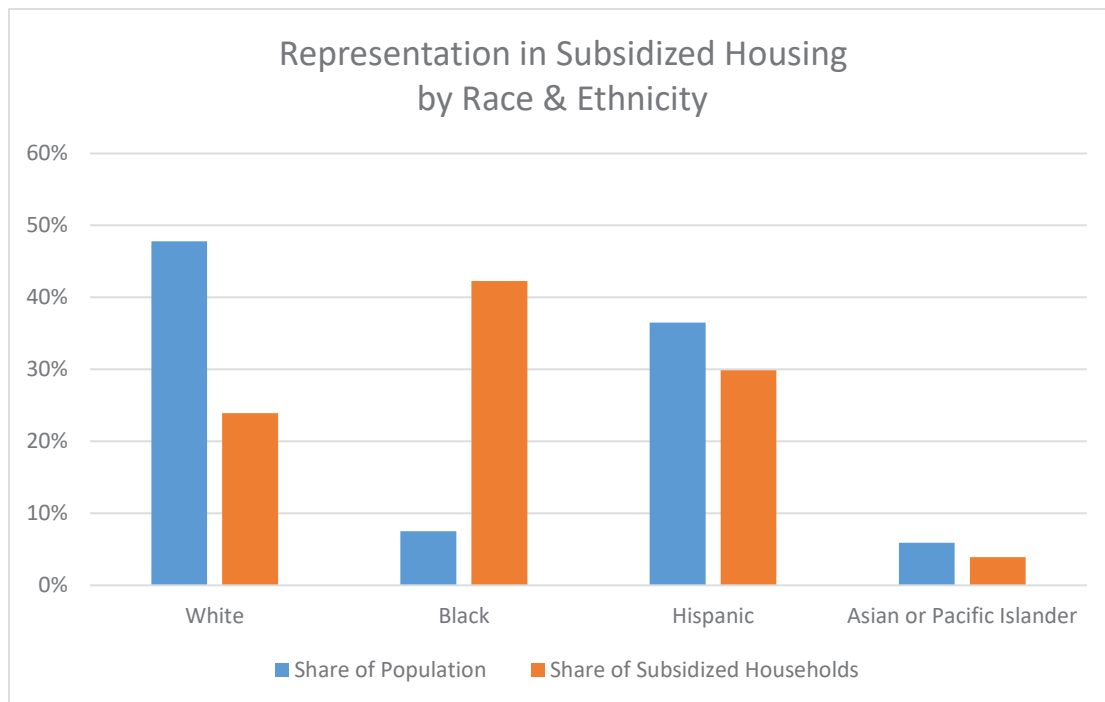
³⁶ Galvez, Martha M. *What Do We Know About Housing Choice Voucher Program Location Outcomes? A Review of Recent Literature*. What Works Collaborative, 2010. www.urban.org/sites/default/files/publication/29176/412218-What-Do-We-Know-About-Housing-Choice-Voucher-Program-Location-Outcomes-.PDF.

³⁷ “Housing Authority of the County of San Bernardino: Who We Are Fact Sheet.” <http://ww2.hacsb.com/files/pdf/news-reports/fact-sheets/hacsb-who-we-are-2019.pdf>

15 – accounts for 5.2% of all housing units in the County; considering the HACSB’s own figures counting many more units than HUD, the percentage of the County’s housing units supported by a subsidy of some type is just over 8%.



Residents in publicly supported housing span all races and ethnicities, though different programs may reflect larger or smaller populations of one race/ethnicity than another. By their numbers alone, all groups have their largest number of participants in the housing choice voucher program, since this is the largest program offered. Hispanic and Black households represent 40% and 36% of public housing residents according to the data in Table 16. White households are the greatest share of Project-Based Section 8 residents at 40%. African Americans represent 48% of housing choice voucher participation. However, given that African Americans are only 6.2% of the County’s population, their representation across all publicly supported housing programs is disproportionately high. In the region, which is nearly half Hispanic, Hispanic households are a greater percentage of all publicly supported housing types except housing choice vouchers, representing 43% of public housing residents, 47% of Project-Based Section 8 residents, and 37% of other types of family housing. African Americans in the region are 45% of housing choice voucher recipients.



The racial and ethnic demographics of each housing development also reflect the data in Table 16. Eight of the 19 project-based Section 8 locations have a White population of greater than 50%. “Other multifamily housing” developments have varied populations - the TELACU Buena Vista development is 66% Asian, Fern Lodge is 70% White and the TELACU Sierra Vista and Montclair Senior Housing are respectively 59% and 56% Hispanic. At the time of data collection, public housing sites were also varied based on race. The Needles Housing Authority is reported to be 69% White. Scattered sites were 60% Hispanic. One of the largest public housing sites in the County, Waterman Gardens, was 43% Hispanic prior to its transition to mixed-income housing. Now called Arrowhead Grove, the Waterman Gardens conversion is ongoing.

Table 17. Publicly Supported Housing Residents by Race and Ethnicity

Housing Type	Race and Ethnicity							
	White		Black		Hispanic		Asian or Pacific Islander	
	#	%	#	%	#	%	#	%
San Bernardino County								
Public Housing	80	22.1%	129	35.6%	143	39.5%	9	2.5%
Project-Based Section 8	254	39.5%	144	22.4%	166	25.8%	64	9.9%
Other Family	47	33.6%	11	7.9%	59	42.1%	22	15.7%
HCV Program	654	20.3%	1,553	48.2%	929	28.8%	76	2.4%
0-30% AMI	15,189	48.5%	3,392	10.8%	10,577	33.8%	1,134	3.6%
0-50% AMI	24,717	40.2%	5,478	8.9%	22,246	36.2%	2,244	3.7%
0-80% AMI	44,675	43.9%	7,895	7.8%	37,923	37.3%	3,689	3.6%
Total Households	121,553	54.7%	14,042	6.3%	70,552	31.8%	10,293	4.6%

Housing Type	Race and Ethnicity							
	White		Black		Hispanic		Asian or Pacific Islander	
	#	%	#	%	#	%	#	%
Riverside-San Bernardino-Ontario Region								
Public Housing	108	17.5%	203	32.8%	265	42.8%	42	6.8%
Project-Based Section 8	1,245	24.2%	1,055	20.5%	2,439	47.4%	366	7.1%
Other Family	672	31.9%	252	12.0%	770	36.5%	404	19.2%
HCV Program	4,542	24.9%	8,293	45.4%	4,965	27.2%	386	2.1%
0-30% AMI	61,410	38.8%	18,475	11.7%	65,705	41.5%	7,940	5.0%
0-50% AMI	101,180	32.2%	30,355	9.6%	137,770	43.8%	13,890	4.4%
0-80% AMI	192,920	36.0%	45,500	8.5%	237,820	44.4%	23,430	4.4%
Total Households	615,660	47.8%	96,380	7.5%	469,370	36.5%	75,739	5.9%

Note: Data presented are number of households, not individuals.

Source: Decennial Census; CHAS; APSH

Demographic data by income shows that despite the presence of publicly supported housing programs, these programs serve a small percentage of low- to moderate-income households in the County. The 1,837 African American households in publicly supported housing represent 23% of all low- to moderate-income African American households. However, for all other groups publicly supported housing represents negligible amounts of each group's low-income population. Only 4.6% of low-income Asian households, 3.4% of low-income Hispanic households and 2.3% of low-income White households are counted as receiving publicly supported housing. These figures are nearly identical in the region; 21.5% of African American low-income households, 5.1% of Asian low-income households,

3.5% of Hispanic low-income households and 3.4% of White low-income households are represented in publicly supported housing programs. These figures indicate the limited ability of publicly supported housing to meet the housing needs of low-income households. While 2019 data from the HACSB indicates a substantially larger number of publicly supported units in the County, the difference would remain insufficient to meet the scale of present need for affordable housing options for low- and moderate-income households.

GEOGRAPHY OF SUPPORTED HOUSING

The locations of publicly supported housing developments are dispersed widely across developed areas of the County. The two maps below show the location of these housing developments, as well as Housing Choice Voucher use and racial/ethnic demographics. The uneven distribution of publicly supported housing across the County generally reflects the distribution of the County's population; 82% of the County's 20,000 square miles is vacant, with vast areas owned or managed by the federal government.³⁸

Figure 30 below features a small number of dark blue and light blue markers, which indicate the locations of public housing. On the western side of the County, there are two public housing developments: the Los Olivos site in Upland and the Bighorn Complex in Barstow. The Upland site is predominantly Hispanic (54%), with 22% Asian, 12% African American and 12% White residents. The Barstow site is in a highly diverse community, and its residents are 42% African American, 32% Hispanic and 22% White. The Needles Housing Authority represents the only public housing development on the eastern side of the County. It is in a largely White and Hispanic community; its residents are 69% White and 18% Hispanic. Scattered site public housing units also exist in Adelanto, Colton and the City of San Bernardino. The former Waterman Gardens development in the City of San Bernardino is being redeveloped from 252 public housing units to 411 mixed income units.³⁹

Project-based Section 8 units are indicated with orange markers on Figure 30. Although these units are available in most cities, HUD data identifies jurisdictions and their respective numbers of Project-based Section 8 units. The City of San Bernardino has 6 sites housing a total of 708 households. Fontana has the second greatest number of units with 355 units on 4 sites. Other cities such as Chino, Montclair, Ontario, Upland, Rancho Cucamonga, and Victorville tend to have 1-2 sites, typically not exceeding 200 units. There is also one Project-based Section 8 site in Barstow with 75 households on the property and one site in Needles with 51 households.

Low Income Housing Tax Credit (LIHTC) developments are indicated on Figure 30 in purple. The LIHTC program is the primary source of subsidy for development of affordable housing by the private market. Created by the Federal Tax Reform Act of 1986, the LIHTC program makes available an indirect federal subsidy for investors in affordable rental housing. The value of the tax credits awarded to a project may be syndicated by the recipient to generate equity investment, offsetting a portion of the development cost. As a condition of the LIHTC subsidy received, the resulting housing must meet certain affordability

³⁸ San Bernardino County. "San Bernardino County Community Indicators Report 2018."
http://www.sbcounty.gov/Uploads/CAO/Feature/Content/SB_2018_REPORT_-3.pdf

³⁹ "The New Waterman Gardens: Changing the Face of San Bernardino One Community at a Time." The Inland Empire Voice.
<http://theievoice.com/changing-the-face-of-san-bernardino-one-community-at-a-time/>

conditions. The greatest number of LIHTC properties is in cities such as Victorville (10 sites), Fontana (9), Rancho Cucamonga (8), San Bernardino (8), Hesperia (7), and Rialto (6 sites). There is also a cluster of 3 sites just north of Loma Linda University in Loma Linda. LIHTC developments can also be found in Twentynine Palms (1), Yucca Valley (1), Joshua Tree (1), and in Needles, where there are 3 LIHTC sites. The table above displays the count of units within LIHTC developments by municipality.

LIHTC Units by Municipality	
Adelanto	192
Barstow	376
Big Bear Lake	42
Bloomington	106
Chino	527
Colton	415
Fontana	799
Grand Terrace	120
Hesperia	844
Highland	185
Joshua Tree	49
Loma Linda	214
Montclair	328
Needles	239
Ontario	262
Rancho Cucamonga	1,113
Redlands	85
Rialto	935
San Bernardino	1,418
Twentynine Palms	213
Upland	367
Victorville	1,342
Yucaipa	145
Yucca Valley	158
Total	10,474

Data Source: HUD LIHTC Database,
<https://lihtc.huduser.gov/>

Figure 31 indicates the usage of housing choice vouchers in the County by census tract. The rates at which Housing Choice Vouchers (HCVs) are used are represented by the shading on the map. HCVs are issued to households and may be used at a rental unit of the tenant's choosing to reduce the tenant's share of rent payments to an affordable level. Therefore, unlike the publicly supported developments marked on Figure 30, HCVs are portable and their distribution throughout San Bernardino County is subject to fluctuate over time. The darkest shading on the map is used in areas where HCVs make up at least 17.3% of the housing stock; these areas frequently have larger shares of racial & ethnic minorities than areas with lower levels of HCV utilization. For example, the Mount Vernon and Shirrells neighborhoods within the City of San Bernardino tend to be both predominately Hispanic and Black and have among the County's highest levels of HCV use. Other communities with high rates of voucher placement are more diverse, such as north Redlands and the Cypress/Harlem Springs/San Andreas neighborhoods of Highland.

When the map of publicly supported housing locations is compared with the maps of opportunity index scores in Chapter 5 of this report, different housing locations all carry with them different positive and negative opportunity attributes. Public housing, LIHTC and Project-based Section 8 sites tend to be in areas with lower school proficiency scores and are lower on the labor market engagement index, indicating lower rates of bachelor's degree attainment and higher unemployment. However, communities containing publicly supported housing developments also tend to have lower transportation costs and higher transit trip scores, especially in the cities of San Bernardino, Rancho Cucamonga, and Ontario. High desert cities such as Adelanto and Victorville tend to have lower transit trip scores near their publicly supported housing developments.

According to 2017 Census estimates, most county residents commute to work by car. Although there are 10 publicly supported housing developments in Victorville, 78% of Victorville's residents commute to work by car and only 0.6% use public transit. Transit use for commuting to work is estimated at 1.6% for Rancho Cucamonga, 2.3% for Ontario, and 2.4% for San Bernardino. Lastly, publicly supported housing sites in high desert cities such as Adelanto, Victorville

and Hesperia and also in Needles have higher environmental health hazard exposure than cities in the Inland Empire.

Evaluating tradeoffs in access to opportunity is an important exercise because it demonstrates that no one neighborhood has all the markers of high opportunity – and neither are high scores on all the opportunity indices likely to be imperative for any one person or household to be successful. A family with children may opt for an affordable housing option in a neighborhood with access to better schools, even if it offers lower proximity to jobs and a longer, costlier commute. Conversely, a retiree who is no longer employed and does not have school-aged children may choose a neighborhood with many services nearby over one with good schools or jobs proximity.

The HACSB participates in HUD's Rental Assistance Demonstration (RAD) program. Under RAD, HUD allows public housing authorities to convert some or all of their public housing units to long-term project-based Section 8 contracts. Properties converted under RAD are thus no longer considered public housing and can access private sources of capital financing. Frequently the public housing properties that undergo a RAD conversion have extensive needs for repair and rehabilitation that the annual allotments of capital funds from HUD are insufficient to cover. After conversion, the public housing authority can seek financing from banks and other lenders to fund renovations with the Project-Based Section 8 rental contracts constituting a steady revenue stream upon which the lender can underwrite its loan.

The HACSB plans to convert all its existing public housing to other forms of publicly supported housing. Using the RAD program, many of the existing public housing units will be converted to Project-based Section 8 units. This policy is designed to reduce the housing authority's expenditures and allow the authority to put more revenue towards additional housing. A primary example is the conversion of Waterman Gardens, a former public housing site with 252 units. This site is currently being converted into a larger, mixed-income development which is expected to have 411 units.⁴⁰ The site will retain the baseline 252 units of public housing as voucher units and will add the remaining units at market rate or for sale.

The HACSB is also in the process of expanding Valencia Grove, the oldest public housing site in the County, through a LIHTC-financed development. The project will eventually replace all 115 public housing units with 189 affordable LIHTC units and 39 homes for sale to first-time, moderate income buyers.^{41, 42} These projects are expanding the housing stock in existing communities where the HACSB has ownership or control instead of dispersing these units amongst market-rate apartments or purchasing new land.

⁴⁰ Victoria, Anthony. "CA – San Bernardino – Housing in San Bernardino [Part 3]". Inland Empire Community News. Dated September 2, 2016. <http://ww2.hacsb.com/files/pdf/news-reports/press-releases/arrowhead-grove-neighborhood-updates-09.08.16.pdf>

⁴¹ Housing Authority of the County of San Bernardino. "HACSB Fact Sheet – Valencia Grove Housing Community". <http://www.hacsb.com/files/pdf/news-reports/fact-sheets/valenciagrove-fs-final-2.pdf>

⁴² Housing Authority of the County of San Bernardino. "Valencia Grove Housing Community Informational Sheet". <http://ww2.hacsb.com/files/pdf/news-reports/fact-sheets/valencia-grove-fs-09.22.2016.pdf>

Figure 27a. Publicly Supported Housing and Race / Ethnicity in San Bernardino County

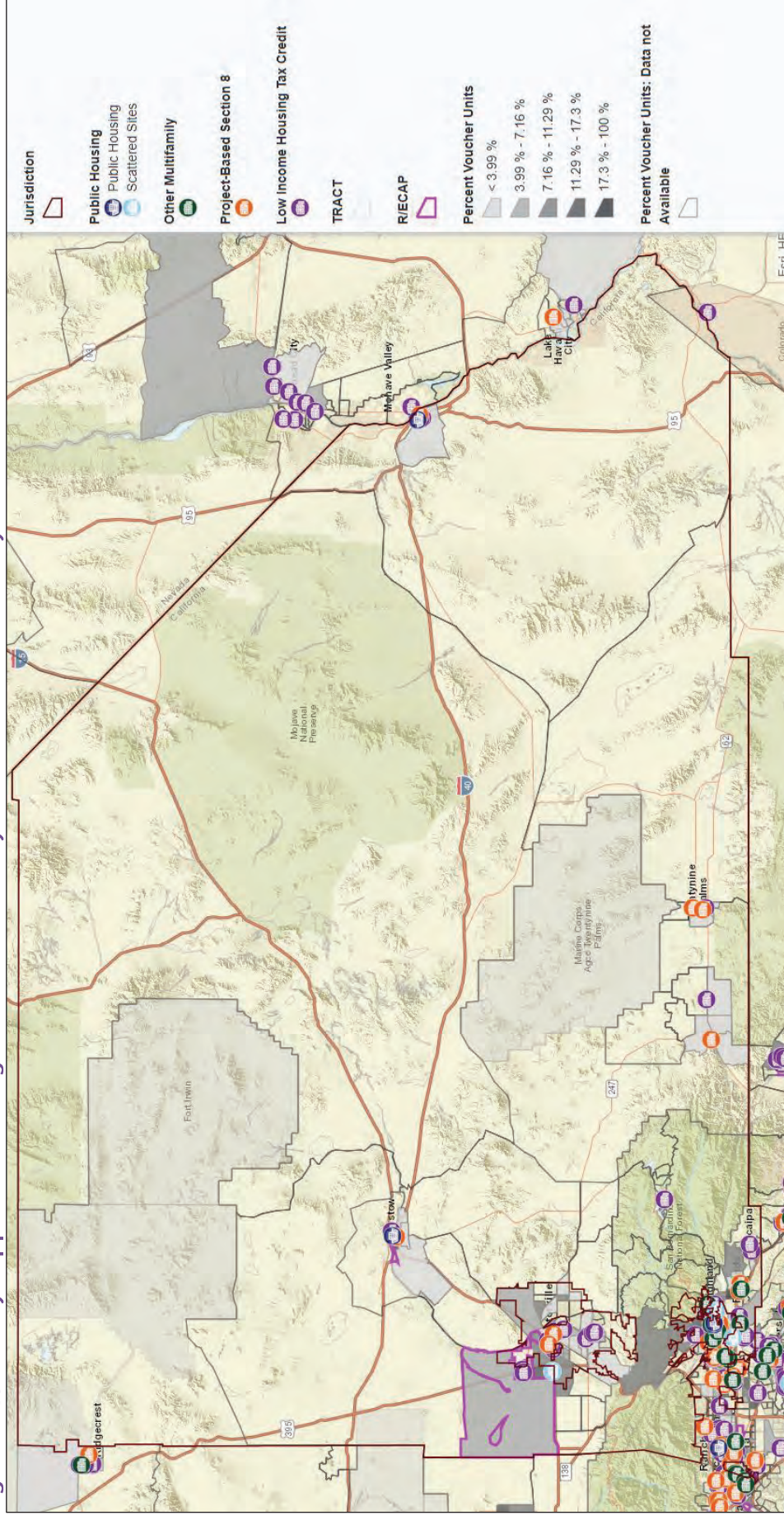


Figure 28b, Publicly Supported Housing and Race / Ethnicity in San Bernardino County (Detail)

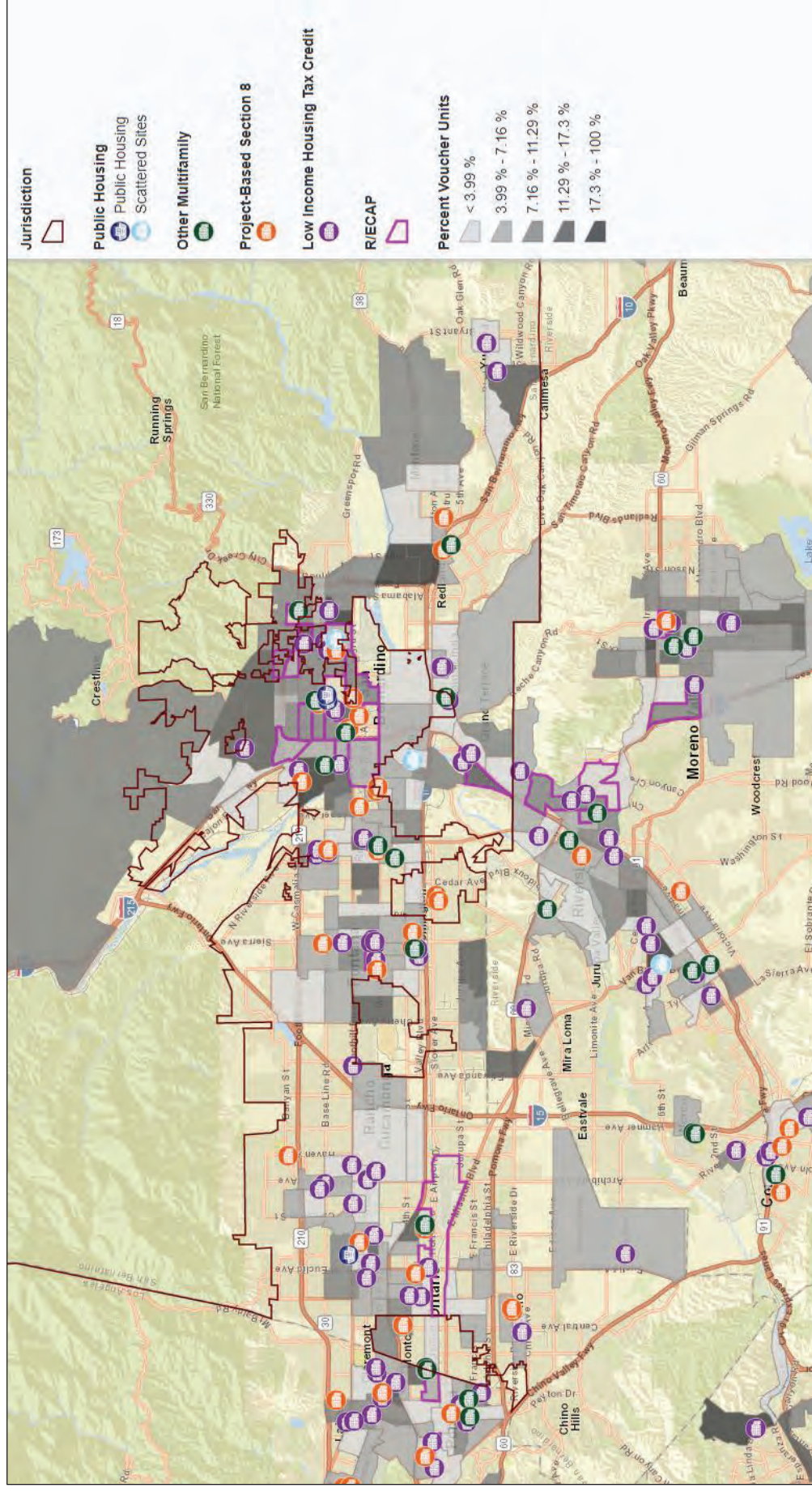


Figure 29a. Voucher Units and Race/Ethnicity in San Bernardino County

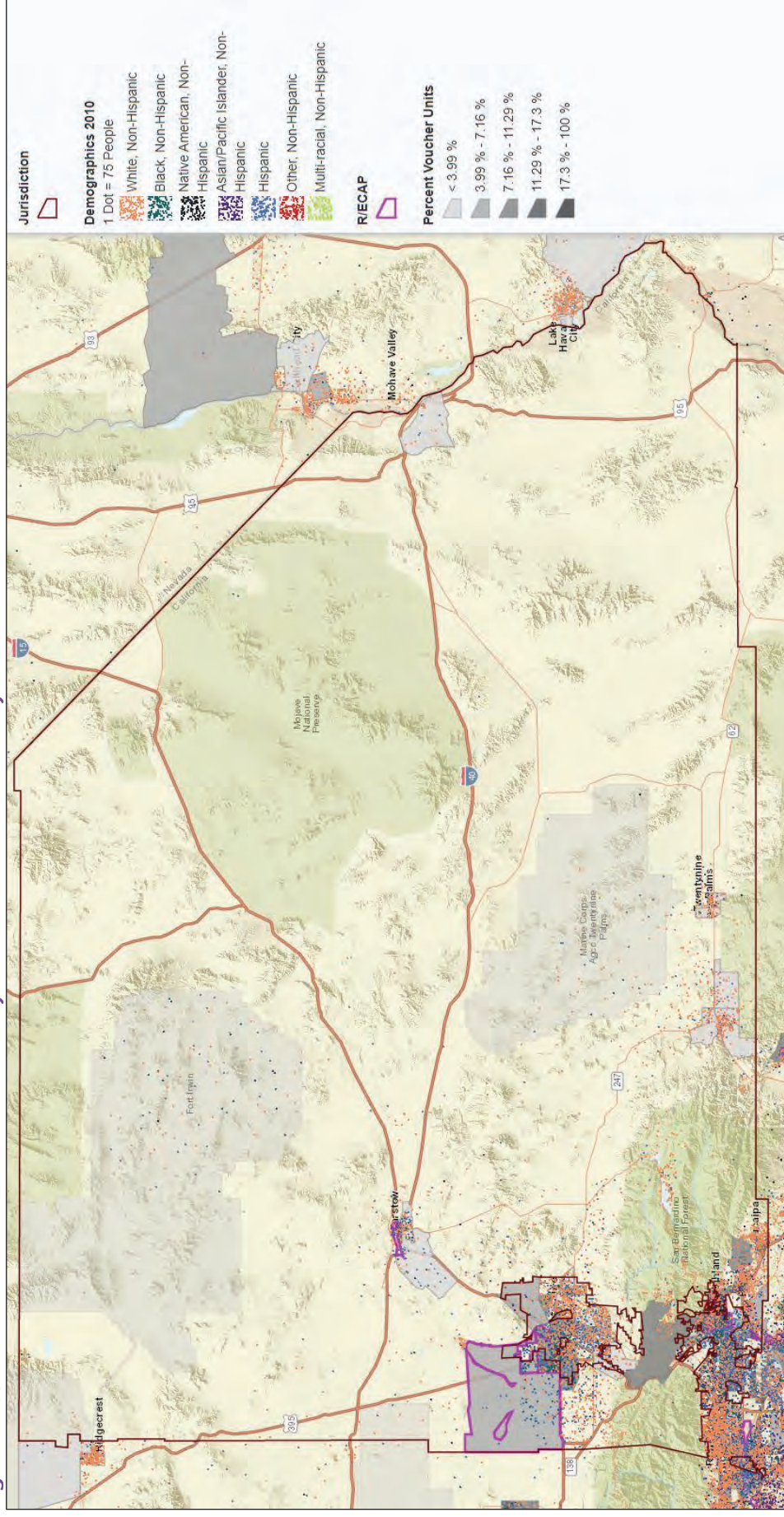


Figure 30b. Voucher Units and Race/ Ethnicity in San Bernardino County (Detail)

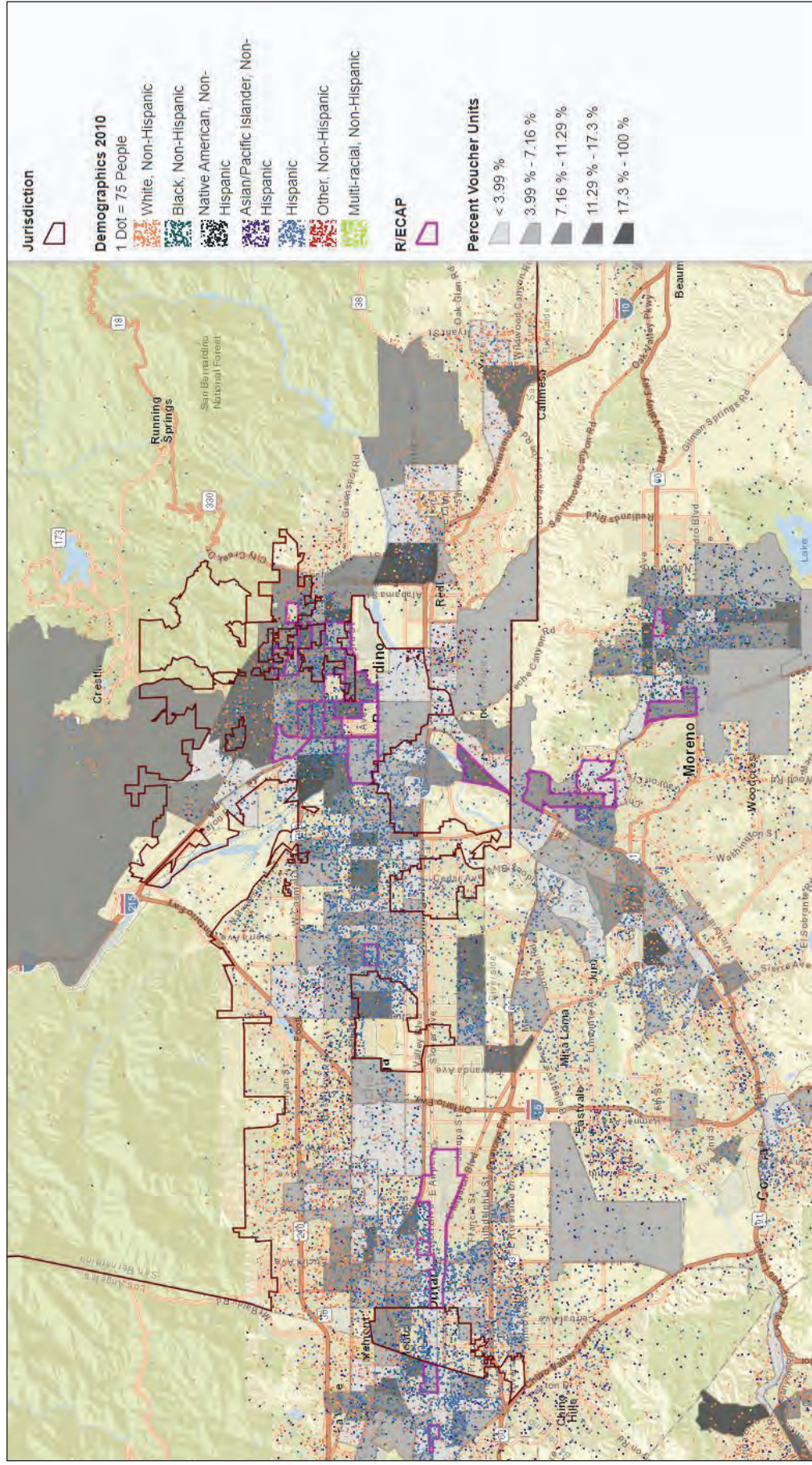


Table 18. RECAP and Non-RECAP Demographics by Publicly Supported Housing Category

Housing Type and Location	Total Occupied Units	% White	% Black	% Hispanic	% Asian or Pacific Islander	% Families with Children	% Elderly	% with a Disability
San Bernardino County								
Public Housing	RECAP Tracts	-	0.0%	-	-	-	-	-
	Non-RECAP Tracts	366	22.1%	35.6%	39.5%	2.5%	29.6%	12.8%
Project-Based Section 8	RECAP Tracts	38	56.4%	7.7%	25.6%	10.3%	17.5%	80.0%
	Non-RECAP Tracts	618	38.4%	23.3%	25.8%	9.9%	29.6%	13.6%
Other HUD Multifamily Housing	RECAP Tracts	-	-	-	-	-	-	-
	Non-RECAP Tracts	143	33.6%	7.9%	42.1%	15.7%	98.6%	2.0%
HCV Program	RECAP Tracts	370	8.0%	70.4%	19.4%	1.9%	11.9%	23.8%
	Non-RECAP Tracts	2,500	22.1%	44.9%	30.3%	2.4%	28.8%	23.0%

Note: Disability information is often reported for heads of household or spouse/co-head only. Here, the data reflect information on all members of the household.

Source: APSH

POLICY REVIEW

The Housing Authority of the County of San Bernardino (HACSB) is responsible for administering approximately 13,000 housing units and is one of 39 housing authorities across the country that is part of HUD's Moving to Work demonstration project.⁴³ As such, the HACSB enters into an agreement with HUD wherein the Authority is given latitude to design and test innovative strategies aimed at promoting self-sufficiency among residents and increasing housing choice and opportunity in exchange for accountability through annual reporting and planning requirements. As a Moving to Work (MTW) participant, HACSB is focused on assisting clients in achieving self-sufficiency, expanding housing choice, and providing more cost-efficient programming. This unique designation positions the HACSB to be a leader for its region in proactively working to mitigate barriers to housing choice.

As one example of a successful MTW initiative implemented by HACSB, the Authority conducts a market study to establish local payment standards for nine individual submarkets within the county rather than rely on the HUD-published Fair Market Rents. This policy keeps payment standards better aligned with actual rent amounts in areas of higher opportunity, making those submarkets more available to low-income households. Since implementation, HACSB has met its benchmarks under this particular program, with a 14% decrease in the number of tenant households living in the two submarkets with the highest rates of poverty. Because of HACSB's innovation under the MTW program, significant numbers of tenant families are now living in lower poverty areas of the county with better job prospects, transportation, and schools.

To increase resident self-sufficiency, the HACSB has established a Term-Limited Assistance program wherein participating non-elderly and non-disabled HCV families are provided housing assistance and supportive services for a period limited to no more than five years. Because the assistance is limited to a specific period of time and not open-ended, the HCV households are incentivized to maintain steady employment and income. A hardship exception may be triggered for those families that reach the end of their term but are unable to successfully transition, however, only a small number of households have requested such exceptions with the majority successfully transitioning out of housing assistance. A related program releases the funds accumulated in the tenant family's Family Self-Sufficiency Services escrow account only upon their voluntary exit from the HCV program creating yet another self-sufficiency incentive.

As part of the MTW program, the HACSB produces an annual Moving to Work plan and report. The HACSB must also abide by programmatic policies as outlined in the "Public Housing Admissions and Continued Occupancy Policies" or ACOP.⁴⁴ The selection process for tenants in publicly supported housing is described below.

⁴³ Housing Authority of the County of San Bernardino. "Who We Are Fact Sheet." <http://ww2.hacsb.com/files/pdf/news-reports/fact-sheets/hacsb-who-we-are-2019.pdf>

⁴⁴ Housing Authority of the County of San Bernardino. "Public Housing Admissions and Continued Occupancy Policies." <http://www.hacsb.com/files/pdf/public-housing/acop-sept-9-14-board-approved-clean.pdf>

Tenant Selection Process

Applicants for affordable housing programs must be at least 18 (or emancipated), meet Section 214 citizenship criteria, complete a background check, and have gross income not to exceed federal income limits per person. Applicants must apply for housing in person or by mail.

The HACSB operates 3 types of affordable housing programs:

- Streamlined Fixed Lease Assistance for Elderly/Disabled Families
- Streamlined Tiered Lease Assistance for Career Focused Families
- Transitional Assistance for Moving to Work Families

Applicants to the Streamlined Fixed Lease Assistance program for Elderly or Disabled Families must have at least one head of household who is 57 or older or disabled. The Transitional Assistance for Moving to Work Families is a program serving tenants who are approaching five years living in publicly supported housing. Some applicants may have to meet credit or rental history criteria.

After the authority reviews each application, eligible families will be placed on a waiting list for housing. The HACSB places families on the waiting list based on bedroom size. Ineligible families are removed from the waitlist but may contest their determination of ineligibility in an in-person interview.

In selecting families for housing, the HACSB uses local preferences to give priority to certain family types. Preferred family types include homeless families, veteran families and families that already reside in San Bernardino County. The authority must also abide by strict HUD rules. Forty percent of admitted families must be extremely low income (i.e. up to 30% of the AMI) and 75% must be very low income (i.e. up to 50% of the AMI). The authority must also strive to deconcentrate poverty through its housing placements. Higher-income tenants are placed in lower income areas, and lower income tenants must be placed in higher income areas. Families are selected by preference. If two families meet the same preference criteria, families will be served in the order that their application was received or based on how well they fit the features of the available housing unit.

Once families are selected for housing, they must participate in an eligibility interview. At the interview, the head of household must bring all pertinent documents to demonstrate eligibility for housing. The HACSB verifies the income of the applicants using a hierarchy of review methods called the "Simplified Income Determination."⁴⁵ In order of preference, these methods include income verification using HUD's online system called Enterprise Income Verification, documentation of income from the applicant, third-party written verification, and third-party oral verification. Assets are not counted against an applicant's income as they enter the program. However, new income from employment for any tenant (other than full-time students) can be counted toward their rent calculation. Other types of income such as foster care income, adoption income and TANF are also included in rent calculations.

Once the authority has reviewed a family's eligibility documents, it will make a final determination of eligibility in writing. The HACSB makes a one-time offer on the housing unit suitable for that family, which the applicant must accept within 3 business days.

⁴⁵ Housing Authority of the County of San Bernardino. "2018 Moving to Work Annual Report."
<http://ww2.hacsb.com/files/pdf/news-reports/mtw/reports/hacsb-2018-annual-mtw-report-122118.pdf>

The ACOP speaks largely to the selection process for project-based or public housing units, not housing choice vouchers. For housing choice voucher recipients who must identify their own housing, it may be difficult finding a unit that will accept their voucher. The HACSB reports that search times of 120 days, or approximately 4 months, are not unusual. Due to the long search times, the HACSB may select recipients from the waiting list earlier in their process than usual so that recipients will have time to find housing and place their vouchers. As of 2018, the housing choice voucher waitlist was closed. However, waitlists for Project-based Voucher units and public housing were still partially open. When waiting lists re-open the authority must publish the opening dates in local newspapers at least 10 business days prior to opening.

The authority uses local market rents to determine the assistance given to tenants instead of HUD's published fair market rents. By using local rental rates instead of HUD estimates, the HACSB can exceed typical voucher caps to facilitate families moving to areas of opportunity where housing units would have otherwise been unaffordable, even with the assistance of an HCV. Based on their enrolled program, tenants in publicly supported housing pay a percentage of their gross income as rent. Tenants in the Term-Limited Assistance Program typically participate for five years but may be extended to seven years with a hardship extension. Tenants pay 30% of their gross income as rent and are subject to be transitioned out of housing if their gross income exceeds 80% AMI. Participants in the Streamlined Lease Assistance Program may pay 24% of their gross income if there is an elderly or disabled householder. Households that do not have an elderly or disabled householder may pay 30% of their income, which increases 3% at each recertification up to 36%. The minimum rent for HACSB tenants is \$125 per month.

CHAPTER 8.

HOUSING FOR PEOPLE WITH DISABILITIES

According to the U.S. Census Bureau, 19% of the population reported having a disability in 2010. Research has found an inadequate supply of housing that meets the needs of people with disabilities and allows for independent living. The U.S. Department of Housing and Urban Development identified that approximately one third of the nation's housing stock can be modified to accommodate people with disabilities, but less than 1% is currently accessible by wheelchair users.⁴⁶

Identifying and quantifying existing accessible housing for all disabilities is a difficult task because of varying needs associated with each disability type. People with hearing difficulty require modifications to auditory notifications like fire alarms and telecommunication systems while visually impaired individuals require tactile components in design and elimination of trip hazards. Housing for people that have difficulty with cognitive functions, self-care, and independent living often require assisted living facilities, services, and staff to be accessible.

Modifications and assisted living arrangements tend to pose significant costs for the disabled population, which already experiences higher poverty rates compared to populations with no disability. Studies have found that 55% of renter households that have a member with a disability have housing cost burdens, compared with 45% of those with no disabilities.⁴⁷

RESIDENTIAL PATTERNS

In San Bernardino County, an estimated 82,535 people aged 5 years and older have a disability, representing 13.1% of the population. In the larger Riverside-San Bernardino-Ontario region, 11.6% or 452,734 people aged 5 years and older have a disability. In both the County and region, people aged 18-64 have the largest number of individuals with a disability.

Ambulatory disabilities are the most common type of disability. In San Bernardino County, 7.2% of county residents have an ambulatory disability, as do 6.2% of residents in the region. The second most prevalent disability is independent living difficulty, of which 5.2% of the County and 4.4% of the region experiences this disability.

⁴⁶ Chan, S., Boshier, L., Ellen, I., Karfunkel, B., & Liao, H. . L. (2015). Accessibility of America's Housing Stock: Analysis of the 2011 American Housing Survey. U.S. Department of Housing and Urban Development: Office of Policy Development and Research.

⁴⁷ America's Rental Housing 2017. (2017). Joint Center for Housing Studies of Harvard University.

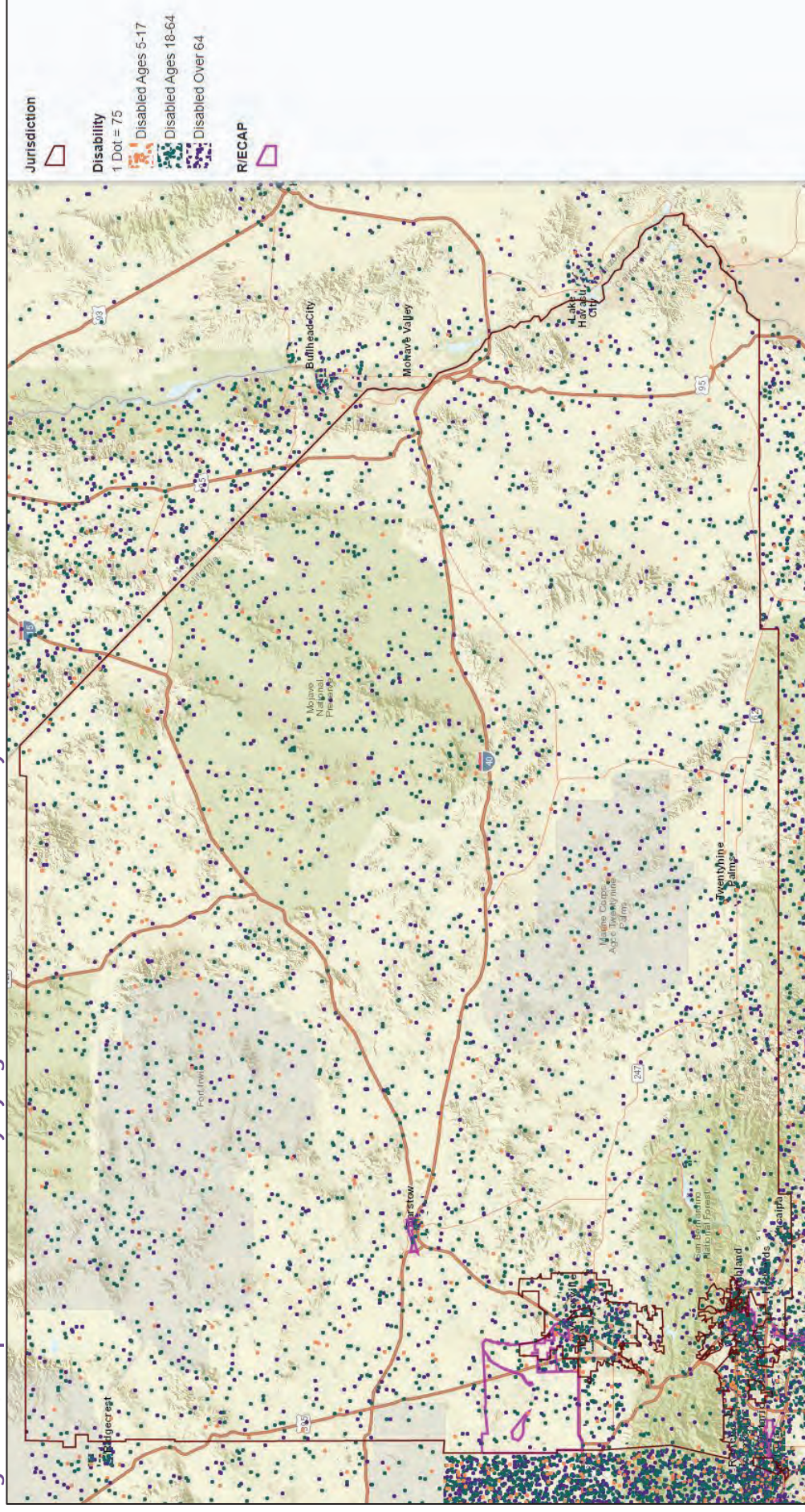
Table 19. Disability by Type and Age Group

	San Bernardino County		Riverside-San Bernardino-Ontario Region	
	#	%	#	%
Disability by Type				
Hearing difficulty	22,809	3.6%	125,033	3.2%
Vision difficulty	16,760	2.7%	86,934	2.2%
Cognitive difficulty	31,180	4.9%	170,114	4.4%
Ambulatory difficulty	45,234	7.2%	241,262	6.2%
Self-care difficulty	18,867	3.0%	102,841	2.6%
Independent living difficulty	32,444	5.1%	170,490	4.4%
Disability by Age Group				
Age 5-17 with disabilities	5,608	0.9%	37,092	0.9%
Age 18-64 with disabilities	45,824	7.3%	241,640	6.2%
Age 65+ with disabilities	31,103	4.9%	174,002	4.5%

Note: All % represent a share of the total population within the jurisdiction or region.

Source: ACS

Figure 31. People with a Disability by Age in San Bernardino County



ACCESSIBLE HOUSING SUPPLY AND AFFORDABILITY

A search using HUD's Resource Locator was conducted to identify affordable rental properties in San Bernardino County designed to serve individuals with special needs. The search returned 48 HUD, LIHTC, or USDA-assisted multi-family properties serving elderly and disabled residents. A similar point-in-time search on Apartments.com for affordable, wheelchair accessible apartments available on the private market found 135 rental units of which only nine were advertised as available. Publicly supported housing developments such as the multi-family properties listed on HUD's website require approximately 30% of the tenant's gross income as rent. Nearly a quarter of housing choice voucher recipients (23.1%) had a disability. Project-based Section 8 and public housing had a smaller share of residents with disabilities, with 17.6% and 12.3% of households having at least one disabled household member. Regionally, 27.5% of all housing choice vouchers were held by persons with disabilities. Compared to the County, a smaller percentage of Project-based Section 8 units were occupied by persons with disabilities in the region (10%).

Accessible and affordable housing for persons with disabilities in the region is a critical need. The Social Security Administration reports that a single, disabled person in California receives \$931.72 monthly in Supplemental Security Income (SSI).⁴⁸ However, the Zillow rent research tool estimates the median rent for a 1-bedroom unit in San Bernardino County at \$1,650. High rents in market-rate housing make publicly supported housing a critical option for persons with disabilities who desire to live independently.

Table 20. Disability by Publicly Supported Housing Program Category

Housing Type	People with a Disability			
	San Bernardino County		Riverside-San Bernardino-Ontario Region	
	#	%	#	%
Public Housing	47	12.3%	82	12.8%
Project-Based Section 8	118	17.6%	520	9.9%
Other Multifamily Housing	3	2.0%	73	3.3%
HCV Program	788	23.1%	5,235	27.5%

Note: The definition of "disability" used by the Census Bureau may not be comparable to reporting requirements under HUD programs.

Source: ACS

Supportive housing, a typically subsidized long-term housing option combined with a program of wrap-around services designed to support the needs of people with disabilities, is another important source of housing for this population. Unique housing requirements for people with an ambulatory difficulty may include accessibility improvements such as ramps, widened hallways and doorways, and installation of grab bars, along with access to community services such as transit. For low- and

⁴⁸ Social Security Administration. "Supplemental Security Income (SSI) in California." <https://www.ssa.gov/pubs/EN-05-11125.pdf>

moderate-income households, the costs of these types of home modifications can be prohibitive, and renters may face particular hardships as they could be required to pay the costs not just of the modifications, but also the costs of removing or reversing the modifications if they later choose to move.

ACCESS TO OPPORTUNITY

Figure 33 indicates the predominant areas where persons with disabilities live in San Bernardino County. The dots on the map indicate that persons with disabilities tend to live in clusters near areas with publicly supported housing, especially in the Inland Empire. Proximity to publicly supported housing leaves persons with disabilities with similar access to opportunity. Persons with disabilities in the high desert region are evenly distributed throughout the area, as shown in Figure 34.

Figure 32. People with a Disability by Age in the Inland Empire

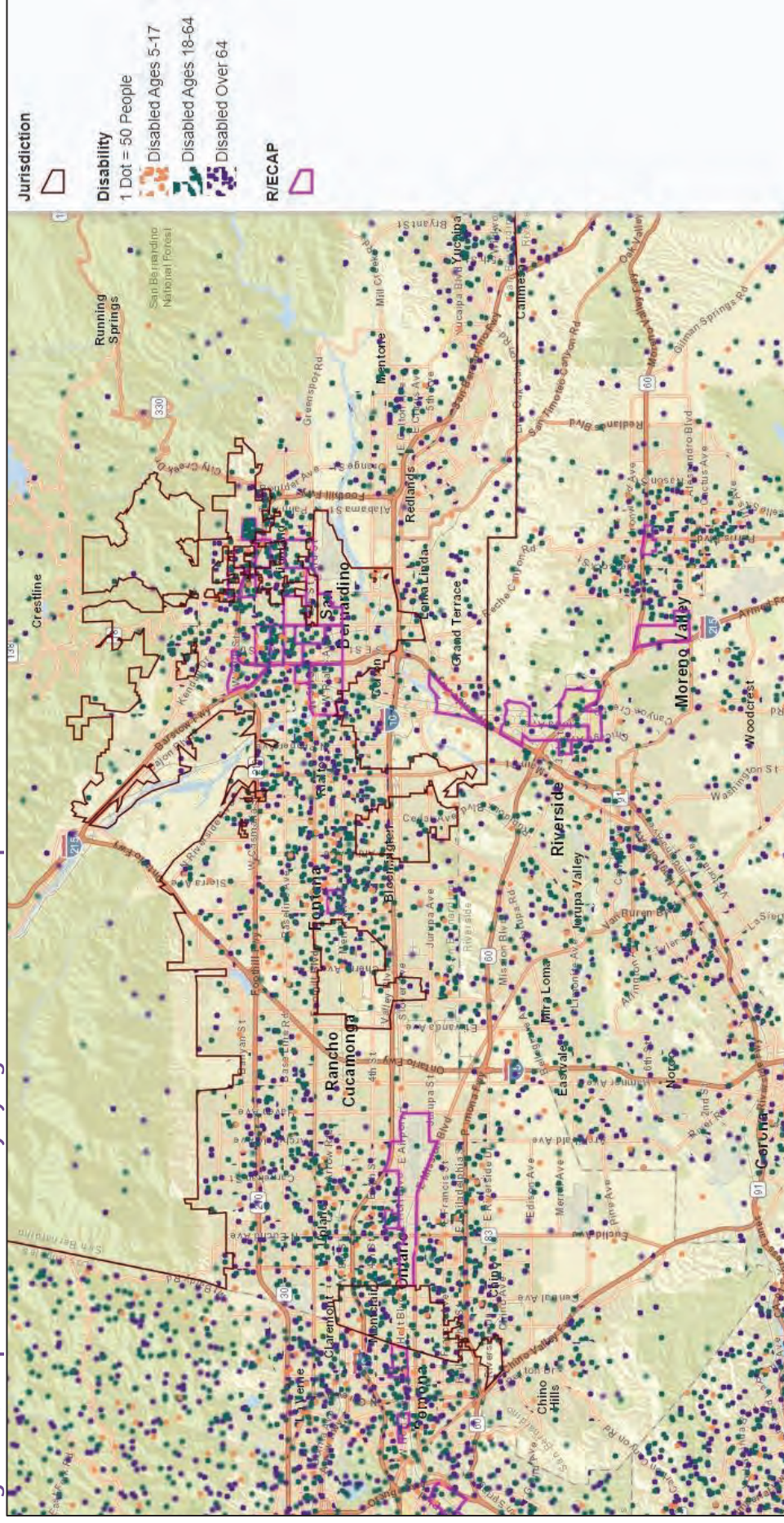


Figure 33. People with a Disability by Age in the High Desert

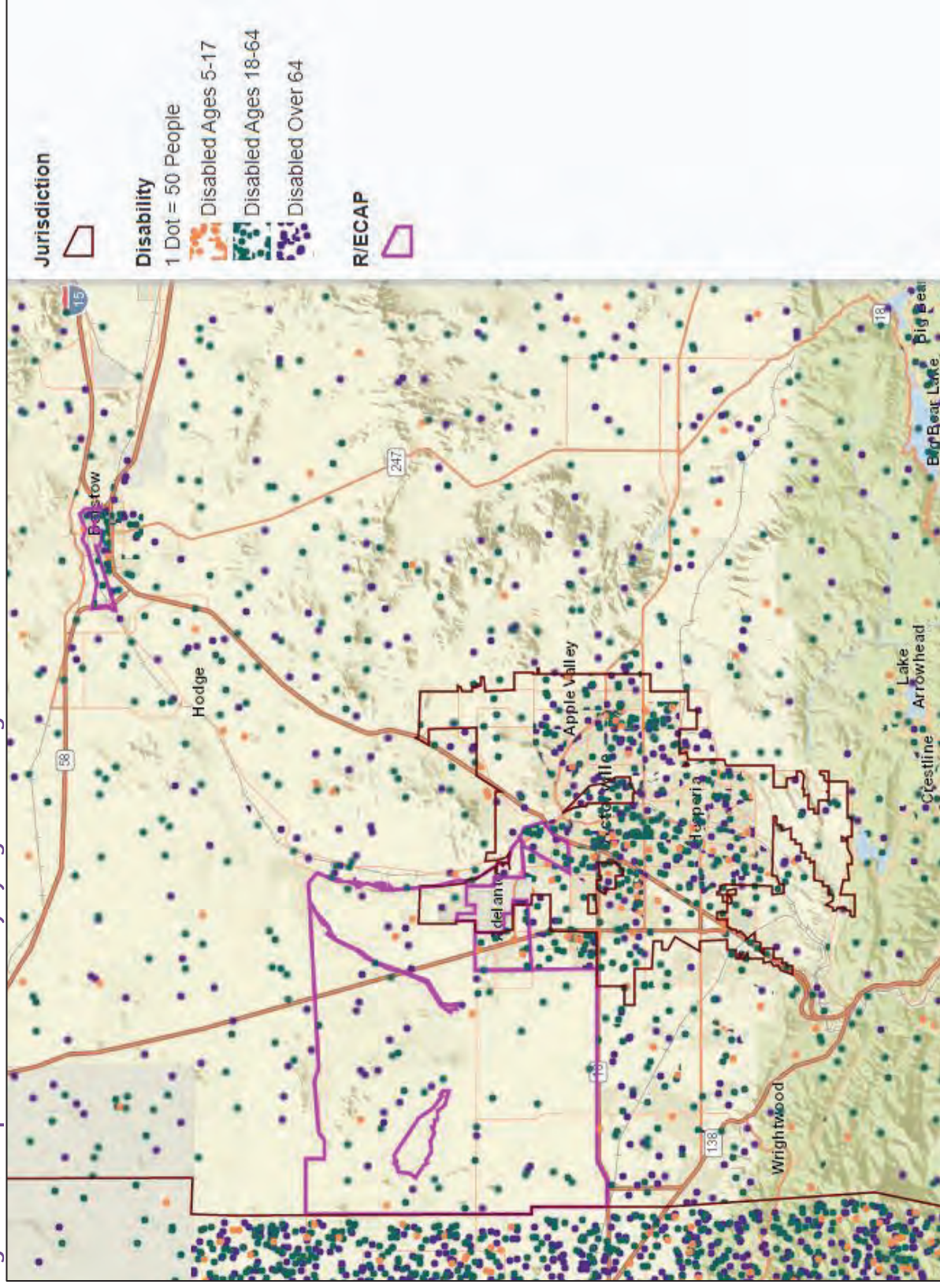


Figure 34. People with a Disability by Age in the Morongo Basin

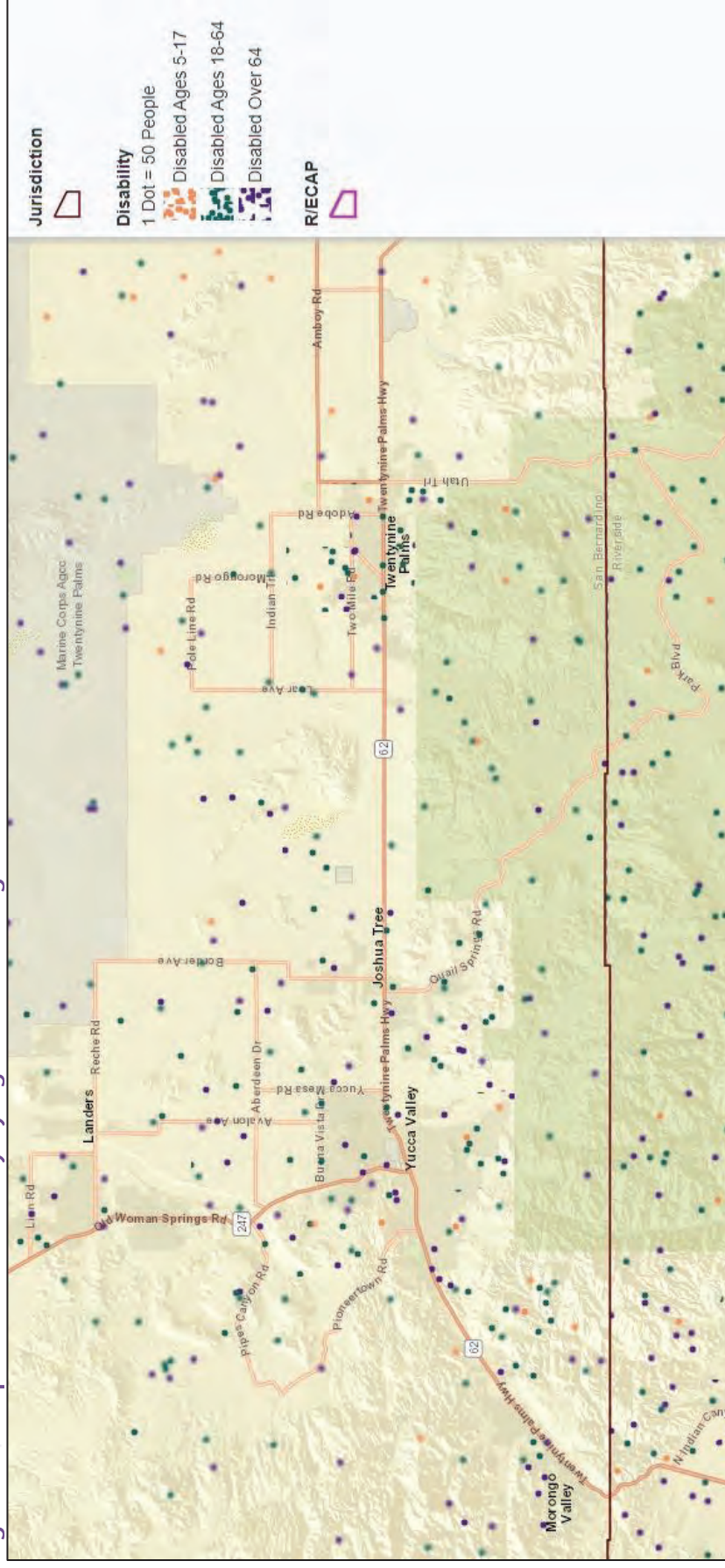
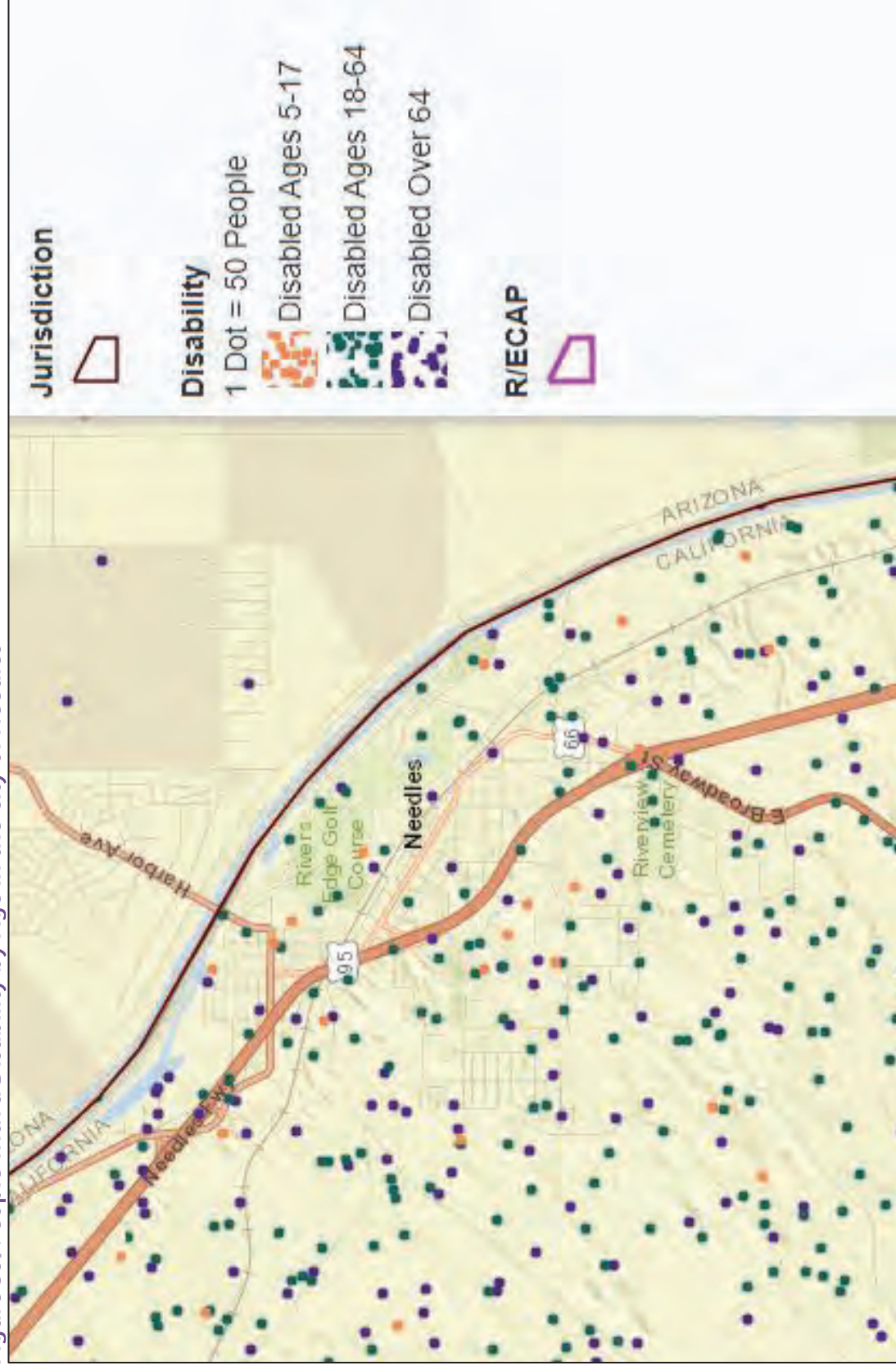


Figure 35. People with a Disability by Age in the City of Needles



ZONING AND ACCESSIBILITY

Fair housing laws do not preempt local zoning laws where zoning is administered in a way that does not conflict with the rights and protections guaranteed by federal and state fair housing laws. Fair housing laws do apply to municipalities and local government units—not just private housing providers, lenders, and real estate agents—and prohibit them from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons. This includes a local government’s affirmative obligation to provide reasonable accommodations to land use or zoning policies when such accommodations may be necessary to allow persons with disabilities to have an equal opportunity to use and enjoy housing. It also includes the affirmative obligation not to segregate housing for protected classes into lower-opportunity, less desirable areas of the jurisdiction. Even where a specific zoning decision does not violate a fair housing law, HUD entitlement communities must certify annually that they will set and implement standards and policies that protect and advance fair housing choice for all. After all, one priority of the FHAA is to dismantle segregation of protected groups and protect and foster integration.

What follows is an analysis and discussion of elements of scored zoning code review originally presented in Chapter 6 that relate specifically to accessible housing and availability of housing options for people with disabilities. Referring back to the review elements and scores in Chapter 6 may be helpful for interpreting the following analysis.

Definition of “Family” and Group Housing for People with Disabilities

Often one of the most scrutinized provisions of a jurisdiction’s zoning code is its definition of “family.” Local governments use this provision to limit the number of unrelated persons who may live together in a single dwelling as a means of preserving the stable, traditional character of their neighborhoods. Unreasonably restrictive definitions may have the unintended consequence (or intended consequence, depending on the motivations behind the drafting of the jurisdiction’s definition) of limiting housing for nontraditional families and for persons with disabilities who reside together in congregate living situations. While the Supreme Court has recognized as constitutionally permissible a local government’s right to limit the number of unrelated individuals who may live together, the restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family.

San Bernardino County has a permissive definition of “family,” defining family in terms of a “single housekeeping unit” rather than an arbitrary number of persons. Single housekeeping unit is defined as:

The functional equivalent of a traditional family or one household, whose members are an interactive group of persons jointly occupying a single dwelling unit, including the joint use of and responsibility for common areas, and sharing household activities and responsibilities (e.g., meals, chores, household maintenance, expenses, etc.) and where, if the unit is rented, all adult residents have chosen to jointly occupy the entire premises of the dwelling unit, under a single written lease or rental agreement with joint use and responsibility for the premises, and the makeup of the household occupying the unit is determined by the residents of the unit rather than the landlord or property manager.

A single housekeeping unit, whether related or unrelated, live together as a functionally equivalent family sharing joint use of and responsibilities for the household. Maximum occupancy is then left to the building and safety codes, rather than the zoning ordinance just as the development code does not limit the number of related household members. Accordingly, the County received a “1/low risk” score on Issue 1 of the zoning review.

The County received a “1/low risk” score on Issues 2 and 5 of the zoning review as well regarding supportive housing for persons with disabilities, including those recovering from alcohol or drug abuse. As long as the housing for persons with disabilities otherwise meets the development code’s definition of a “single housekeeping unit,” such housing should be permitted in the same manner as other single-family housing regardless of the number of unrelated persons residing there. The County follows California state law’s directives under the Health and Safety Code to protect housing for persons with disabilities from exclusionary zoning criteria. State law requires that licensed community care facilities serving six or fewer persons be: (1) treated as a residential use, (2) allowed by right in all residential zones, and (3) treated the same with respect to regulations, fees, taxes, and permit processes as other residential uses in the same zone. This protection applies to community care facilities for persons with disabilities, to residential care facilities for the elderly, to alcoholism or drug abuse recovery or treatment facilities, and to congregate care facilities.

Zoning District Legend	
RL	Rural Living
RS	Single Residential
RM	Multiple Residential
CR	Rural Commercial
CN	Neighborhood Commercial
CO	Office Commercial
CG	General Commercial
CS	Service Commercial
CH	Highway Commercial
IC	Community Industrial
IR	Regional Industrial
IN	Institutional
SD	Special Development
SP	Specific Plan

For supportive housing for persons with disabilities that does not function as a “single housekeeping unit,” the Development Code defines such use as a “residential care facility” (RCF) and applies different siting and development standards based on whether the home is for 6 or fewer residents, 7 or more residents, is licensed, or is unlicensed. As stated above, state-licensed residential care facilities for 6 or fewer residents with disabilities, including substance abuse treatment facilities for residents recovering from alcohol or drug addiction, are required by state law to be treated as a single housekeeping unit under and subject to the same land use and development standards, whether or not the residence actually functions as equivalent to the local jurisdiction’s definition of “single housekeeping unit.” Accordingly, under the County’s code, licensed residential care facilities for 6 or fewer residents are only required to conform to the property development standards for the residential zoning district in which it is located like any other residential use in those zones. Under the development code, licensed RCFs of 6 or fewer residents are permitted by right in the residential districts

and require a minor use permit in the CR, CG, CS, CH, IC, SD-RES, and SD-COM districts; and are otherwise not permitted in the other zoning districts.

Licensed RCFs for 7 or more residents that do not function as a single housekeeping unit are subject to additional oversight, standards, and safety features. Licensed RCFs for 7 or more residents are not permitted in the RL or RS single-family residential districts; require a minor use permit in the RC, AG, CR,

CG, CS, CH, IC, SD-RES, and SD-COM districts; and require a CUP in the RM and AV/RC, and AV/AG districts.

Unlicensed RCFs of 6 or fewer residents, including “sober living facilities” for persons who are recovering from drug and/or alcohol addiction, require a residential care facility permit in the residential districts and in the CG, CS, CH, IC, SD-RES, and SD-COM districts, and are not permitted in any other commercial, industrial, or mixed-use districts. The Unlicensed Residential Care Facilities Permit procedure is intended to provide a less complex and more streamlined review than the review required for a Conditional Use Permit or Minor Use Permit. Unlicensed RCFs for 7 or more residents require a minor use permit in the RC, AG, CR, CG, CS, CH, IC, SD-RES, and SD-COM districts; a CUP in the RM, AV/RC, and AV/AG districts; and are not permitted otherwise. Operators of residential care facilities also may seek a reasonable accommodation for this use.

Issue 4 of the code review evaluates whether and to what extent the local government imposes spacing or quota requirements on protected housing. Spacing requirements for protected classes, like persons with disabilities, are generally inconsistent with the FHAA unless the jurisdiction can make a showing that the ordinance was passed to protect a compelling governmental interest (e.g. over-concentration of supportive housing could adversely affect individuals with disabilities and would be inconsistent with the goal of integrating persons with disabilities into the wider community) and that the spacing requirement is the least restrictive means of protecting that interest.⁴⁹

The state gives local governments discretion in preventing “overconcentration” of residential care facilities, which under state law means residential facilities that are separated by a distance of 300 feet or less. The state may withhold a license for a new facility if there is less than 300 feet of separation from the proposed facility and an existing facility (homes for foster children, residential care facilities for the elderly, transitional shelter care facilities, and temporary shelter care facilities are exempt from the overconcentration presumption). However, that presumption of overconcentration may be overcome with approval from the local jurisdiction based on special local needs and conditions. The County’s development code provides, “The separation of licensed residential care facilities shall be as provided by state law,” suggesting additional approval would be needed to site a licensed facility within 300 feet of another facility. The Code further provides that “no more than two unlicensed residential care facilities serving 6 or fewer residents shall be located on the same block within a Single Residential (RS) Land Use Zoning District. Additional facilities may be sited within said block through the reasonable accommodation process. In no case shall the County require a facility to be sited more than 300 feet from a preexisting facility through the reasonable accommodation process.”

Federal case law goes both ways on minimum spacing requirements—some separation requirements have been upheld by the courts and some have been invalidated as too restrictive or on grounds that the jurisdiction failed to make a reasonable accommodation under the FHAA. How much accommodation is “reasonable” may depend on the individual facts of the case, the impact on both the residents seeking housing, and on the government and community. Because state and local law explicitly includes the justification of preventing overconcentration and because there is a reasonable accommodation process to rebut the presumption by a showing of the significant need for more

⁴⁹ See JOINT STATEMENT OF THE DEPT. OF HOUSING AND URBAN DEVELOPMENT AND DEPT. OF JUSTICE, *State and Local Land Use Laws and Practices and the Application of the Fair Housing Act*, Nov. 10, 2016.

supportive housing for persons with disabilities, San Bernardino County received a “1/low risk” on this issue. However, it could still be open to a legal challenge depending on individual facts of a case.

Reasonable Accommodations

Adopting a reasonable accommodation ordinance is one specific way to address land use regulations’ impact on housing for persons with disabilities. Federal and state fair housing laws require that municipalities provide individuals with disabilities (or developers of housing for people with disabilities) flexibility in the application of land use and zoning and building regulations, practices, and procedures or even waive certain requirements, when it is reasonable and necessary to eliminate barriers to housing opportunities, or “to afford persons with a disability the equal opportunity to use and enjoy a dwelling.” (The requirements for reasonable accommodation under the Americans with Disabilities Act (ADA) are the same as those under the FHAA). The FHAA does not set forth a specific process that must be used to request, review, and decide a reasonable accommodation, and accordingly many local jurisdictions across the country apply their respective zoning code’s variance or special use permit procedure to evaluate and process requests for reasonable accommodation. Variance and special permit procedures are imperfect models for processing reasonable accommodation requests because: (1) they generally require a showing of special circumstances or conditions applying to the land rather than to the individual’s special circumstances or condition due to a disability that affects his or her ability to use and enjoy the dwelling and (2) they subject the applicant to the public hearing process where there is the potential that community opposition based on stereotypical assumptions about people with disabilities and unfounded speculations about the impact on neighborhoods or threats to safety may impact the outcome.

California recognized these issues as barriers to housing for persons with disabilities and in 2011, the State Attorney General recommended that cities and counties implement standardized reasonable accommodation procedures to comply with their affirmative duty to further fair housing and to meet the requirements of the Housing Element of the General Plan, that mandates that local governments “remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.”

In 2012, San Bernardino County adopted a Reasonable Accommodation Ordinance outlining the formal procedure by which a person with a disability (or representative or housing provider of housing for persons with disabilities) may request a reasonable accommodation in the application of various land use, zoning, or building laws, rules, policies, practices and/or procedures of the County. The Planning Director has authority to render decisions on minor reasonable accommodation requests without requiring a public hearing, or to refer the matter to the Zoning Administrator or to the Planning Commission, who shall render a decision on the application in the same manner as it considers an appeal, i.e. through the public hearing process. A reasonable accommodation does not require approval of any variances but may be subject to conditions. The ordinance includes criteria for the County to consider in making its determination.

Although it should be recognized that the County has taken an important, affirmative step of putting protocols in place for evaluating and determining reasonable accommodation requests, the County should consider amending the ordinance to remove public hearing and disclosure requirements and instead handle all requests in a confidential manner. Land use and zoning procedures are typically

based on public disclosure and input; however, in the case of a reasonable accommodation request, the evaluation and decision-making process should include safeguards to protect confidential information regarding a person's disabilities.

DRAFT

CHAPTER 9.

FAIR HOUSING ACTIVITIES

FAIR HOUSING RESOURCES

California's fair housing protections contained within the Fair Employment and Housing Act ("FEHA") meet or exceed federal standards contained within Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, (the "Fair Housing Act" or "FHA"). Accordingly, HUD has certified the FEHA as "substantially equivalent" to the substantive rights, procedures, remedies, and judicial review processes of the FHA, which makes California eligible for annual funding through the Fair Housing Assistance Program (FHAP) for fair housing enforcement activities and programs. The California Department of Fair Employment and Housing, created by the state legislature and certified by HUD as a participating agency, partners with HUD to enforce federal and state fair housing laws.

Under its Fair Housing Initiatives Program (FHIP), HUD also awards grant money to local fair housing advocacy organizations who assist persons believed to have been harmed by discriminatory housing practices; to help people identify government agencies that handle complaints of housing discrimination; to conduct preliminary investigation of claims; to carry out testing and enforcement activities to prevent or eliminate discriminatory housing practices; and to educate the public and housing providers about equal opportunity in housing and compliance with the fair housing laws. For FY 2018, HUD awarded Inland Fair Housing and Mediation Board (IFHMB), which serves San Bernardino County, an Education and Outreach Initiatives (EOI) grant of \$125,000 to use towards educating the public and housing providers about their rights and responsibilities under federal, state, and local fair housing laws.

The FY 2018 EOI grant is in addition to a multiyear Private Enforcement Initiatives (PEI) grant of \$300,000 awarded to IFHMB in FY 2016 to carry out testing and enforcement activities. IFHMB has pledged to use its grant to continue the enforcement work of its previous multi-year grant including matched-pair testing and referrals of systemic discrimination cases to HUD for additional review and enforcement. The organization will also investigate three pattern-and-practice housing discrimination cases in a region that ranks in the top 10 of the FBI's Mortgage Asset Research Institute report for predatory housing discrimination activity.

FAIR HOUSING COMPLAINTS

An individual in San Bernardino County who believes he or she has been the victim of an illegal housing practice under the FHA or FEHA may seek assistance from the California Department of Fair Employment and Housing (DFEH) or file a complaint with the appropriate HUD Regional Office of Fair Housing and Equal Opportunity (FHEO) within one year of when the discriminatory practice occurred. Typically, once certified, HUD will refer complaints of housing discrimination that it receives to the state or local FHAP agency for investigation, conciliation and enforcement activities. HUD policy favors having fair housing professionals based locally where the alleged discrimination occurred because it

has found that a state or local agency's closer proximity to the site of the alleged discrimination provides greater familiarity with local housing stock and trends and may lead to greater efficiency in case processing. Because the DFEH is a certified FHAP agency, most complaints filed with the HUD FHEO office will be referred back to the DFEH for investigation and enforcement.

The FEHA provides an alternative procedure to the administrative complaint process. Persons who believe they have experienced housing discrimination may file a pre-complaint inquiry with the DFEH. The Department accepts cases based on possible violations of the FEHA, the Unruh Civil Rights Act, the Ralph Civil Rights Act, the Disabled Persons Act, and the federal FHA under a work-sharing agreement with HUD. Complaints must be filed with DFEH within one year from the date of the alleged discriminatory act. If the investigator determines that the complaint meets the criteria for federal dual-filing status, the complaint will be assigned a federal identification number as well. If a complaint is accepted for investigation by the Department, the investigator will draft the complaint. Complaints originally filed with DFEH that are dual-filed with HUD are investigated by DFEH. DFEH receives funding from HUD for handling these cases. During the investigation phase, DFEH has the authority to issue subpoenas and take depositions. If the investigation does not show a violation of the law, DFEH will close the case. Before DFEH issues a finding, it may facilitate voluntary dispute resolution through conciliation or mediation. After DFEH issues a merit finding, the opposing parties are required to participate in mandatory dispute resolution. A no-fault resolution can be negotiated at any time during the process. If dispute resolution fails, the DFEH may elect to file a complaint to be heard before the Fair Employment and Housing Commission (FEHC) or in civil court on behalf of the aggrieved complainant.

If the HUD FHEO Office receives and retains a complaint, it will notify the alleged discriminator (respondent) and begin an investigation. During the investigation period, the agency will attempt through mediation to reach conciliation between the parties. If no conciliation agreement can be reached, the FHEO must prepare a final "Determination" report finding either that there is reasonable cause to believe that a discriminatory act has occurred or that there is no reasonable cause. If the agency finds reasonable cause, HUD must issue a "Charge of Discrimination." If the investigator determines that there is no reasonable cause, the case is dismissed. If a charge is issued, a hearing will be scheduled before an administrative law judge. The ALJ may award the aggrieved party injunctive relief, actual damages, and impose civil penalties; but unlike federal district court, the ALJ may not impose punitive damages. Administrative proceedings are generally more expedited than the federal court trial process.

The advantages of seeking redress through the administrative complaint process are that the DFEH/FHEO takes on the duty, time, and cost of investigating the matter for the complainant and conciliation may result in a binding settlement. However, the complainant also gives up control of the investigation and ultimate findings.

Unlike an employment discrimination case, it is not necessary for an aggrieved party to exhaust all administrative remedies before filing a housing discrimination lawsuit in court. Persons wishing to file a lawsuit directly in court may bypass the administrative process with the Department as they do not need a "right-to-sue" recommendation from the DFEH. Aggrieved persons retain the right to bring their own civil action within the statute of limitations (generally two years) under either the federal FHA or the FEHA. The Department of Justice ("DOJ") may bring suit on behalf of individuals based on referrals from HUD.

Though the FHA and FEHA are not identical, they are congruent, and accordingly California courts have historically been guided by both state and federal law in deciding claims of housing discrimination. “FEHA in the housing area is thus intended to conform to the general requirements of federal law in the area and may provide greater protection against discrimination.” *Brown v. Smith*, 55 Cal. App. 4th 767, 780 (1997).

Cases brought in state superior court generally proceed more quickly and are less costly in terms of litigation expenses than cases adjudicated in federal district court, which provides a strong incentive for complainants to seek relief under state fair housing laws. Housing discrimination claims may be brought against local governments and zoning authorities and against private housing providers, mortgage lenders, or real estate brokers.

Complaints Filed with HUD

Region IX of HUD’s Office of Fair Housing and Equal Opportunity (FHEO) receives complaints by households regarding alleged violations of the Fair Housing Act for cities and counties throughout California (as well as Arizona, American Samoa, Guam, Hawaii, and Nevada). The mission of the FHEO is to eliminate housing discrimination, promote economic opportunity, and achieve diverse, inclusive communities. To achieve this mission, the FHEO receives and investigates complaints of housing discrimination, and leads in the administration, development, and public education of federal fair housing laws and policies.

The San Francisco Regional Office of the FHEO maintains data reflecting the number of complaints of housing discrimination received by HUD, the status of all such complaints, and the basis/bases of all such complaints. The office responded to a request for data regarding complaints received affecting housing units in unincorporated San Bernardino County for the five-year period August 1, 2014 through August 31, 2019.

HUD maintains data by jurisdiction and zip code, and for the requested time period, reported it had received a total of 198 formal complaints of alleged housing discrimination occurring within the jurisdictions of San Bernardino County: 26 originating from the City of San Bernardino; 19 from Ontario; 18 from Fontana; 17 from Upland; 14 from Rancho Cucamonga; 12 from Victorville; 11 from Rialto; 10 from Hesperia, and other jurisdictions and communities in the County responsible for fewer than ten complaints each over the five year period. The complete data tables provided by HUD are included as an appendix to this report with the HUD case file number, violation city, filing date, closure date, basis of complaint, issues cited, closure reason, and monetary relief provided.

At the time of response, 168 cases had been closed and 30 were open and pending. Of the closed cases, 110 cases were closed after investigation and a no cause determination; 40 were successfully resolved by conciliation and settled; 9 were withdrawn by the complainant after resolution; 3 were withdrawn by the complainant without resolution; 4 were administratively closed because the complainant failed to cooperate in the process; 1 was dismissed for lack of jurisdiction; and 1 was closed because complainant could not be located. In the cases resolved by settlement or conciliation, the respondents did not necessarily admit liability, but may have settled to avoid further expense, time, and the uncertainty of litigation. No monetary damages were reported in any of the closed cases.