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Pinot, Poverty and Politics

Voters reelect a supervisor who promises to use his position at ABAG to limit housing requirements in Napa—and the lawsuits fly

by [Rachel Dovey](#)



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I'M DRIVING DOWN Napa's scenic Highway 29, past tasting rooms that look like castles. Coupled with cobblestone bridges and Medieval names—Pope, Church, Alpha and Omega—their wrought-iron balconies and pointed turrets seem intentionally reminiscent of feudal Europe. Everywhere, fall-colored vines stretch to the horizon in rows straight and narrow as the path to salvation.

Later that day, I'll meet with farmworker-turned-activist Hector Olvera, who says hourly wages to pick in these fields can get as low as \$5.

Along with Santa Rosa-based lawyer David Grabill, Olvera founded Latinos Unidos del Valle de Napa, which advocates—and repeatedly goes to court—on issues of affordable housing for farmworkers; namely, that with roughly 1,100 units of low-income housing and 4,000 year-round farmworkers, there isn't enough of it.

This is the story of the state housing law that is supposed to address the needs of these farmworkers. It's the story of how this law is not only barely enforced, but is even, at times, bent to favor those who oppose it. It's the story of a system aimed at fixing things like regional inequity and in-commuting across the Bay Area, a system that, like the Napa landscape, isn't quite as benevolent as it seems.

LIKE MARIN, its costly, land-restricted sister county to the southwest, Napa has a commute problem. According to a report commissioned by the Napa Community Foundation, 31 percent of the county's native-born workforce and 39 percent of its immigrant workforce live outside Napa, which has a median monthly rent of \$1,300 and home price of nearly \$400,000. The study found that immigrants comprise 73 percent of all agricultural workers and contribute between

\$317 million and \$1.07 billion to the county's overall gross domestic product. Meanwhile, it states, Latino immigrants commuting in make an average of about \$20,000 a year.

If these workers paid Napa's median monthly rent, it would take up 78 percent of their income.

According to the state department of Housing and Community Development (HCD), this shouldn't be a problem. In 1969, the California department enacted housing element law, which mandates that local governments plan—and, more importantly, zone—for all economic segments of their community, even those with incomes too low to rent or purchase market-rate housing. Its reasoning includes public health and environmental issues from excessive in-commuting; jobs-housing imbalances that can occur in areas with high market-rate rents; and, ultimately, a desire to combat systemized discrimination, in which those with lower incomes are excluded from the wealthy regions where, in the case of Napa or Marin, they work.



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- **REPORT IN HAND** Hector Olvera says vineyard workers sometimes sleep in cars and under bridges for lack of affordable housing in Napa.

But there's a fiefdom-sized gap in the state's socially beneficent system. Although it requires local governments to submit housing elements that contain all their plans to zone for affordable housing, it doesn't require that any housing actually get built (such things, like independent expenditures, are the domain of the private market). And it doesn't exactly penalize local jurisdictions that don't cooperate. Between this state law created 43 years ago and Napa's low-income workforce today is a convoluted chain of agencies, officials and lawsuits—a chain that sometimes works against the very principles that housing element law was created to address.

"SO YOU'RE NOT a regulatory agency."

I'm sitting in a sparsely furnished office at the Association of Bay Area Governments (ABAG), and I'm stunned.

Senior regional planner Hing Wong sits across a table from me, which is covered in colorful printouts full of numbers. He's been explaining how a critical step in the housing element process works. Every seven years, the regional planning agency receives a number from HCD, reflecting how much the region is projected to grow in the coming years.

In the past, it has broken that number up for the various cities and unincorporated county governments in the bay area, based on projected household growth and census figures. That figure becomes known as the RHNA (regional housing needs assessment) number, and is given to each municipality to outline exactly how many units of above-moderate, moderate, low and very low income housing it should zone for, theoretically helping to match jobs and population growth with ample opportunities for apartments and homes to be built.

At Novato's heated public meetings, where I started covering issues related to housing law in early 2011, ABAG was often portrayed by those opposed to affordable housing as the long arm of Sacramento, forcing development policies on a town that didn't want them. The term "social engineering" came up a lot.

Arguments about town character were often coupled at the podium with allegations about the crime, graffiti, underperforming students and property-value plummets that would come with the low-income population the city was zoning for, which one community member described to me in an email simply as "immigrants." Meanwhile, affordable-housing advocates more generally saw ABAG as the good guys, using numbers and formulas to combat wealthy Marin NIMBY-ism and right a situation in which 60 percent of the county's workforce was forced to commute in.

But as Wong shows me the new system, I see that it's neither. The RHNA for 2014–2022 is based less on some kind of fixed, omniscient data set about future growth and is more open to influence, part of what the planner refers to as a "living thing." Over the course of meetings lasting roughly a year, dues-paying ABAG members—elected officials, planners and advocates from all over the bay—crafted a new formula to get those zoning numbers, and it's one in which choice plays a much bigger part.

For example, communities that decide they want a lot of growth can label themselves "priority development areas," or PDAs, zone for more housing and be rewarded with transportation grants and other incentives. But areas that don't want that don't have to, even if their projected job growth is substantial. It's a system that advocates for affordable housing have called arbitrary, because areas where low-income housing isn't welcome are allowed to stay that way.

That's an oversimplification, according to Wong.

"Most people in the methodology committee try to make it as low as possible for their jurisdiction," he says. "But they understand the whole ramification, that RHNA needs to be shared. And stakeholders like housing advocates push back."

Bits of the formula are set in place to check NIMBY zoning policies—there's a provision for jobs and another one to add more low-income housing to excessively wealthy areas that have a shortage of it.

But toward the end of our conversation, I ask about Novato, citing the violent opposition to low-income housing that I witnessed there, despite Marin's extremely high in-commuting rate.

"Novato has a third of the number they did last time," Wong says. "They have a councilmember who wanted very low numbers."



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- Napa County Supervisor Mark Luce

THE PRESIDENT OF ABAG's board is Napa County supervisor Mark Luce. When I speak to him on the phone, he describes this new system as more "bottom up," and thinks it will improve a broken process, in which, he says, costly and painful zoning battles at the city level don't actually lead to housing.

But Luce isn't just critical of a system in which potentially empty zoning decisions can be made—as in 2011, when Novato's city council chose sites to zone for low-income housing that had operating businesses on them. Although he presides over the board of ABAG, Luce is no fan of zoning as a regulatory measure at all—despite its central place in housing element law.

"It's not good for anyone when you enforce zoning when nobody wants it," he says.

Historically, the county supervisor has been a strong supporter of Napa's agricultural preserve, a collection of properties on the valley floor that have been designated for agricultural and open-space use. Many of these landowners receive tax relief in exchange for the designation, per the 1968 Williamson Act, and Luce's 2012 campaign donations show some of the same names as a list of those property owners who are part of the Land Trust of Napa County.

Luce's position of protecting open space against development has precedent in the same set of laws that mandate regulatory housing zones, specifying that, as much as possible, they should be placed in cities, near grocery stores and bus lines. He's also been in line with the spirit of the law,

helping to craft a workforce-housing program for low-income families to buy homes, though this program is targeted at incomes well above those of the county's many farmworkers.

But in this latest election cycle, Luce, like other local officials that Wong spoke of, campaigned on a promise to use his position in the planning agency to limit housing.

"Don't be fooled," a slogan on his campaign website reads. "Only one candidate is working to reduce the amount of housing the state requires of us and ensure slow growth in Napa County."

A sentence further down on the same page reads: "In my role as President of the Association of Bay Area Governments (ABAG), which will continue if I am reelected, I am in a position to better protect our county's interests."

In November, he was reelected to the second district with 52 percent of the vote.

Last summer, I interviewed the supervisor about his position on the controversial Napa Pipe development, a proposed market-rate site along the Napa River with some low-income units included. Instead of advocating the 945-unit zoning recommended by Napa's planning commission, he favored a much lower zoning of 350 for the site, which—much like Roseland in Santa Rosa—is an island of unincorporated county land surrounded by city. The figure, he told me, would fulfill the letter of housing element law.

However, he admitted that that number was too low to actually interest a developer and result in any housing being built.

NOT EVERYONE AGREES with ABAG's new practice of giving local officials a greater role in crafting the RHNA process. Last July, a group of lawyers, including Grabill, authored a response to the 2014-'22 method, critiquing the fact that most of the Bay Area's projected growth is placed in priority development areas, which, remember, are voluntary.

"This methodology is wholly inconsistent with the fundamental principle of housing element law that local governments all have a responsibility to accommodate their fair share of the regional need for lower income housing," the letter states.

When I meet with the housing lawyer and Olvera, on a Thursday afternoon at Starbucks in the city of Napa, he expresses frustration with a system that rewards voluntary compliance but, he says, doesn't do much to combat institutionalized NIMBY-ism toward lower-income housing.

"HCD doesn't have any enforcement capability," he says. "If a local government doesn't do it right, HCD can't go to court and say, 'Shape up.' There are some penalties that go along with it. Local governments can't apply for certain kinds of affordable-housing funding if they haven't complied with state laws, but that just makes it harder to do affordable housing in those jurisdictions that are reluctant. It's not a great system."

It's a system that, Luce will later point out in my interview with him, private lawyers like Grabill stand to profit from.

In 2003, Grabill and three other lawyers sued Napa County for failing to update its housing element. They won, and the settlement mandated that unincorporated Napa take part in the statewide process and zone for its allocation of low-income housing units. Luce points out that this was both costly for the county and ineffective, because no new housing has been built.

"We paid the private lawyer who sued us \$400,000 to settle, and were required to zone rural lands in Angwin, Lake Berryessa and Coombsville for housing anyway," he says on his website.

Grabill contends that the settlement fee was \$240,000, split between three of the four lawyers who instigated the case, for what he estimates to be 1,500 hours of work. Silva Darbinian with Napa County Counsel confirms that the settlement fee was indeed \$240,000, saying of the \$400,000 figure, "I don't know where that came from."

And Grabill believes that the lack of new housing in the county is less a fault of the zoning system itself and more of a pattern of discrimination on the part of county officials. He's said this in court, in a new lawsuit filed in 2009. A judge sided with Napa County on that one, and Grabill appealed earlier this year, part of a process that, needed or not, had cost Napa County \$700,000 as of last August, according to local newspaper reports.

Meanwhile, although three new low-income developments have been approved in the city of Napa, two of them have been legally challenged by neighborhood groups—potentially leading to more legal fees and cries of NIMBY-ism, and, most importantly, no new housing for the farmworkers who power Napa's economy.

"Rent is very expensive here," Olvera says in hesitant English on the afternoon when I meet with him. "And many people have to share apartments or drive two or three hours to come here."

Since immigrating to wine country 22 years ago and working as a picker, Olvera says he's seen other farmworkers sleeping in tents, in their cars, under bridges and on church porches.

To corroborate this story, he pulls out a document created by Napa Community Foundation, which shows the long commutes and crowded living conditions farmworkers deal with just to work in the county, an entire segment of the population falling through housing element law's many holes.

When he pulls it out, he says something that I don't understand. He spells it out on his palm for me, with his finger.

It says: "I don't lie."