



Traffic Reducing Housing Preference (TRHP) TDM Program Research Memo, 7/2/23

For new apartments and condominiums, Traffic Reducing Housing Preference (TRHP) selects residents with fewer cars who will drive less. TRHP is the most cost-effective residential auto trip reduction policy, resulting in the largest commute mode shift from solo commuting. The policy is regularly used by Below Market Rate (BMR) projects such as Santa Barbara's Casa de Las Fuentes (42 housing units require only 20 cars) and market-rate university apartments such as Stanford West Apartments (95.5% of 628 apartments have one or more commutes of less than two miles). The 800-condominium Redwood City Peninsula Park proposal (641 Turnbuckle Drive) offered market-rate TRHP as an enticement for entitlement, but the city did not accept the developer's offer to set a national precedent. There is extensive legal guidance on how to craft housing preference policies that comply with the Fair Housing Act and avoid "discriminatory disparate impact disfavoring a protected category of persons." Such guidance advises developers to have cities make findings of "manifest business purpose" in favor of TRHP.

The housing and ground transportation markets are economically inefficient because [negative externalities](#) such as traffic, pollution, and greenhouse gas emissions are not accurately priced into each market. TRHP creates more efficient market pricing by internalizing the negative externalities.

1. TRHP Examples:

[Stanford West - 628 Mostly Market-Rate Apartments](#)

- Preference is given to new residents who will drive less. Such green travel preference is legal under the Fair Housing Act and eliminates one or more SOV commutes per home – a very cost-effective residential TDM policy. Apartments are priced just below market to ensure a waiting list of applicants. Residents that lose green commute status by taking a job outside of Stanford are permitted to stay but experience a 10 percent monthly rent increase. Of the Stanford West units, 95.5% work and live at Stanford.

Peninsula Park Redwood City condominiums. The 800 condominiums offered TRHP with four preference tiers:

- Households that have no adult members who commute.
- Incoming households where all employed adults agree to commute to work via commute alternatives 80% of the time.
- Incoming households where one employed adult agrees to commute to work via commute alternatives 80% of the time.
- Incoming households with one adult member with a 4.0 mile or shorter commute.

Santa Barbara's [Casa de Las Fuentes](#). "The main objective of Casa de Las Fuentes is to provide housing for downtown workers in a location that allows them to walk to work or use alternative modes of transportation." For 42 affordable downtown apartments (requiring only 20 cars) with excellent access to jobs, shops, recreation, and transit, Santa Barbara adopted green commute housing preferences:

- First priority: for residents who work downtown who do not own a vehicle and agree to not own one during their occupancy. Rent is \$50 per month less for residents who do not park a car. All employed household members must work only in the downtown area.
- Second priority: for residents who work downtown

2. Important Points Concerning Housing Admission Preferences

From Paul Smith, Chief, Intake Branch, Office of Fair Housing and Equal Opportunity, HUD

There is a discriminatory disparate impact where facially-neutral, equally-applied policies have the effect of disfavoring a protected category of persons significantly more than others. To prevail, the defendant must show that the defendant has a compelling reason ("manifest business purpose") for the policies and that there is no lesser discriminatory alternative. [Arlington Heights v. Metropolitan Housing Development Corp.](#) [under 14th Amendment, but the Court did not reach Title VIII; note that all of the Circuit Courts of Appeals have accepted variations of the disparate impact rule under Title VIII].

Preferences for admission to housing are analyzed for discriminatory disparate impact by comparing the racial (or another protected category) composition of those preferred to the composition of the relevant housing market. [Hazelwood School District v. United States](#), 433 U.S. 299, 308 (1977); [Wards Cove Packing Co. v. Atonio](#) 490 U.S. 642, 656 – 658 (1989) [not overruled by the 1991 Civil Rights Act for Title VIII]. For example, housing for SF teachers may be acceptable given the diversity of SF teachers, but housing for West Marin residents may not be acceptable given the much broader diversity of the market area from which that housing draws.

City Councils may find a "manifest business purpose" in reducing traffic and CO2. Such findings make TRHP programs more robust legally.

There have been no legal challenges to "green commute" housing preference programs to date, and it is more likely that other kinds of housing preferences will be challenged.

One detailed TRHP reference: *Meeting Local Housing Needs: [A Practice Guide for Implementing Selection Preferences and Civil Rights Requirements in Affordable Housing Programs](#)* (requires \$75 membership), Citizens' Housing and Planning Association (CHAPA) of Massachusetts, September 2004, 101 pages. *This practice guide focuses on four themes associated with designing and implementing selection preferences (especially local resident selection preferences) in affordable housing programs, including rental and homeownership programs. Part I discusses general program eligibility requirements. Part II examines program requirements directly associated with selection preferences. Part III introduces essential fair housing principles and civil rights standards in affordable housing programs. Part IV presents the analytical techniques a housing provider might use to understand the civil rights effect of selection preferences that favor local residents and discusses methods of designing selection preferences in light of civil rights considerations.*

3. Isn't this Discriminatory?

First, housing preferences are best implemented under the guidance of expert legal advice, where the attorneys (Goldfarb Lipman had a specialty in this) are skilled in municipal law. Such attorneys will be able to most creatively meet traffic-reduction (or other) objectives while observing applicable fair housing laws. Note that each state has its own set of laws in addition to federal Fair Housing and non-discrimination laws. In addition to expert legal advice, expert demographic analysis may also be required.

3A) Housing preference for residents of elite (non-diverse) suburbs, such as Novato, that participate in the Bay Area real estate market (with its diverse population) can be problematic, because such housing preferences serve to prevent protected groups (Latinos and African Americans, in the Novato case) from access to housing. Thus, in the Novato case, the housing preference was limited to 1/3 of the housing units.

3B) For "commute distance" based preferences (such as: incoming households with one adult member with a 4.0 mile or shorter commute), the test is complicated.

First, we have to examine the "qualified population" for this housing. There are no discrimination implications for private sector developers as far as selling condominiums for \$2,000,000 or \$15,000. Market forces control pricing. Thus, for \$600,000 market-rate condominiums, we examine the universe of buyers with sufficient assets for the downpayment and sufficient income to meet mortgage payments. The fact that there may be disproportionately more wealthy white folks who may buy these condominiums is not the problem of the housing market. The Supreme Court has ruled that this is a problem of our educational system in not producing enough well-educated minorities. Educational achievement is generally required for sufficient wealth accumulation to purchase expensive housing.

Given the wealthy universe of folks who can afford \$600,000 condominiums, we compare the racial composition of these wealthy folks within the 4.0-mile commute radius, and compare against the entire Bay Area population of wealthy folks. If there is a statistically significant difference in the wrong direction, there could be discrimination.

This analysis is not readily created from public data sources¹. Inexact approximations are required. Detailed "per worker" data by place of work, race/ethnicity, and earnings/income are only available down to the county or to geography that lumps a few cities together (such as Palo Alto, Mtn View, Los Altos, and part of Sunnyvale). Depending on where the preference commute radius is applied, you might find a good or bad geographic match. From this inexact data, you might decide that workers making \$150,000 per year or more would qualify for \$600,000 condominiums. This is inexact because: a) there is no test of wealth to cover a down payment, and b) this data is for workers and does not comprehend two-earner families that would also qualify for mortgages, c) the increments in higher annual incomes are provided at too coarse of a grain to be matched for "expensive" housing (\$600,000 condominiums, etc.).

Hypothetically, for an ideal, very accurate analysis, you would need to work with one of the credit rating companies (Equifax, etc.) to find families that qualify for a \$600,000 mortgage, then you would somehow need to ascertain the racial distribution of those families. It is not possible to conduct this hypothetical analysis.

For Below Market Rate (BMR) housing, the qualified population is those with incomes below a certain level. Thus the TRHP analysis for BMR housing flips the income universe upside down. From there, the analysis is the same.

3C) For some preferences, there is no difference between the composition of the preferred market and the relevant housing market:

- For example, a preference such as "Incoming households where all employed adults agree to commute to work via commute alternatives 80% of the time." Commute alternatives include transit, carpool/vanpool, telecommuting, biking, and walking.

In this example, any individual or family can live anywhere and work anywhere up to the point of obtaining TRHP. Then, when they move into TRHP, they have a green commute, though it might only be a "slightly green, very long" **carpool** commute. Thus, this preference example is very robust legally.

4. Manifest Business Purpose

A city may adopt a formal finding of a compelling reason ("manifest business purpose") to reduce traffic and greenhouse gas emissions. Such findings make preferences more robust in the face of a legal challenge. A related example: in the face of natural disasters such as Katrina, housing preference for first responders might

¹ Not readily created as of 2005. New datasets have been made available since. The analysis may now be easier.

be racially discriminatory but could still be allowed because of a municipal finding of a compelling reason in support of natural disaster preparation.

In the face of potential legal challenges, thorough bookkeeping for each resident selected is essential.

How likely is it that a well-crafted TRHP preference policy will be challenged? Not likely. There is a high burden/cost for litigants to challenge such preferences and undertake the necessary demographic/geographic analysis. It is far more likely that other preferences like teacher housing will be challenged.

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For 25 pages of TRHP case studies and details, please see: [Traffic Reducing Housing - case studies](#)