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**TRANSMITTED VIA EMAIL**

Good Evening Honorable Mayor, Councilmembers, and City Staff,

Your jurisdiction is either preparing for the release or is reviewing the first draft of your 6th Cycle Draft Housing Element before it is submitted to the California Department of Housing and Community Development (HCD) for initial review. As you may have heard, the vast majority of cities in the first rounds of submissions have received substantial comments from HCD outlining deficiencies and are being required to complete additional work to adjust and improve their housing elements so that they move into compliance. We believe this current moment presents an opportunity to assess working drafts with an eye on how the HCD review team has described some common issues they have observed. As of April 2022, jurisdictions in three major regions had submitted their “final” Housing Elements by their given deadlines but have continued to work with HCD on developing compliant Housing Element Updates:

- **The San Diego Association of Governments’** Housing Element deadline was on April 15, 2021, of which only 7 of 19 jurisdictions were in compliance;
- **The Southern California Association of Governments’** deadline was on October 15, 2021, of which only 7 of 197 jurisdictions were in compliance; and
- **The Sacramento Council of Governments’** Housing Element deadline was on May 15, 2021, of which only 17 of 28 jurisdictions were in compliance.

On March 25, 2022, SV@Home hosted a discussion during our monthly Housing Action Coalition event with David Zisser and Melinda Coy, HCD’s leadership for the Housing Element review team, titled [“Making Housing Elements Work through State Enforcement” \(click here\)](#). David and Melinda discussed how they will enforce Housing Element law and provided local advocates guidance on what they can do to help jurisdictions meet Housing Element requirements. Therefore, we would like to share the event recording and presentation slides as resources for your jurisdiction to use as you draft, publish, edit, and submit your Draft Housing Elements to HCD ([available here](#)). We have included time stamps on key topics within the webpage to make it easier to navigate the recording.

HCD reinforced the fact that they no longer consider the Housing Element Update to be a paper exercise, but instead a contract between jurisdictions and the state on housing commitments for eight-and-a-half years. To this end, HCD’s new Housing Accountability Unit will be monitoring implementation and will hold jurisdictions to the commitments laid out in the Housing Element’s plan. The following are key take-aways from HCD’s presentation, which we felt were particularly useful to consider as drafts are being finalized and reviewed:

- **Most Common and Overarching Concerns** - HCD has found that Housing Elements overwhelmingly describe but do not analyze the data that is provided.

Whenever data is included into Housing Elements, they want jurisdictions to ask themselves: What does the data mean? How are these assumptions supported?

Further, HCD discussed they would like jurisdictions to “show their work” for the conclusions that are drawn, to avoid assumptions, and to use their analyses as tools that guide solutions, rather than simply explaining existing conditions. In this way, the various sections (e.g. needs assessment, sites inventory, constraints, etc.) should be reflective of and inform each other.

- **Affirmatively Furthering Fair Housing (AFFH)** - HCD is looking for an analysis of patterns and trends - a story about the jurisdiction over time and how it has changed - rather than a demographic “data dump”.

They provided an example of what jurisdictions can ask themselves when providing their analyses: has our community become more diverse? Less diverse? Where are the areas of poverty and how have they evolved? How does this help to highlight the housing needs of each jurisdiction?

HCD would also like to see strategies for how local jurisdictions can “move the needle” (i.e. make progress) and assess whether the metrics and milestones of their actions will be successful in eight-and-a-half years.

They recommended jurisdictions review the [City of Sacramento’s Housing Element](#) on how AFFH can be adequately addressed and the [City of Folsom’s Housing Element](#) for a good example of AFFH in a high resourced community.

- **AFFH: High-resourced and Lower-resourced neighborhoods** - Under AFFH guidelines, it is important to add affordable housing opportunities throughout the jurisdiction. They clarified, however, that AFFH is also about providing community development options or programs to increase resources in low-resourced areas, preventing displacement, and increasing housing opportunities in terms of both sites and mobility.
- **Site Inventory** - HCD recommended jurisdictions provide supporting data to the selection of their sites, including the underlying assumptions to pick a site, such as development trends and substantive site-specific analysis.

When choosing sites, HCD suggested that a discussion of the selection process be included, answering: Why were the factors that shaped the process chosen, and how did those assumptions relate to answering the question: “is this a development opportunity within the planning period?”

For non-vacant sites, they mentioned jurisdictions should specifically provide substantial evidence that an existing use is likely to be discontinued. Such evidence could include: 1) site specific

information on whether the use will be discontinued in an eight-and-a-half year period and explain the factors leading to that conclusion, 2) what market and development trends are there to support discontinued use, and 3) what programs and actions could be taken by the jurisdiction to address the constraints that might impede the redevelopment of non-vacant sites.

Further, HCD expects site inventories to be responsive to the AFFH analysis, rather than be considered independent.

- **Governmental and Market Constraints to the Development of Housing** - HCD discussed that constraints are to be analyzed and assessed for their potential impact, rather than simply noted and/or justified.

They also advised jurisdictions to consider the perspective of a potential developer and ask: how does the range of development standards, processing fees, various impact fees, etc. affect the development of housing? How long does it take to get planning and construction approvals, and what are the additional costs? What are the points of discretionary uncertainty in the process? Are there systems in place to process streamlined applications? How might substantial or minor changes in these elements of the development process have the cumulative impact of facilitating more development in your jurisdiction?

HCD delved into the need of a thorough assessment and a clear timeline for developing concrete policy or program changes in response to these analyzed constraints rather than referencing on-going or future assessments that need to be conducted. They want to see studies made within the Housing Element Update itself to construct a policy or program rather than prescribing a “study” as the policy or program itself.

Importantly, HCD recommended that the constraints analysis be reflected in the assessment of site-specific conditions that are identified in the site inventory.

- **Programs and Policies** - HCD explained how jurisdictions should present clear prioritization and provide specific actions and timelines for each policy and program, along with clearly explaining what a jurisdiction will do to make implementation more realistic and feasible.

They suggested jurisdictions avoid the use of general language like “explore”, “consider”, “evaluate”, or “study”. Instead, HCD would like to see a detailed discussion about what exactly is going to be explored, what will be done, to what end, and what the outcome(s) would be. HCD gave the example of replacing language such as “will explore providing incentives” with “we will develop an incentives program that will reduce fees/provide cost savings”.

Moreover, HCD deliberated on how a jurisdiction’s policies and programs should build on the assessment of existing measures and go beyond previous cycles. Policies and programs should support the narrative in the housing needs and development constraints analysis and be responsive to additional requirements of the AFFH analysis.

- **Funding** - HCD detailed how they will not accept the rationale that the lack of subsidies for affordable housing development is an insurmountable impediment to fulfilling housing commitments. Instead, they advised jurisdictions to find ways to spur development through land use reforms and additional financing mechanisms. These might include adopting a strong local density bonus program, an inclusionary housing ordinance with a robust in-lieu fee structure, or other impact fees as a mechanism to support affordable housing development. HCD also recommended looking into ways of lowering costs by deferring or waiving fees and taxes.
- **Non-Compliant Housing Elements** - HCD cautioned that jurisdictions with non-compliant Housing Elements will be ineligible for, or face delays in receiving, state funding. Jurisdictions would also be unable to use inconsistent zoning/general plan standards to deny affordable housing projects, and could be subject to additional legal ramifications and fines.
- **Implementation of RHNA through the 6th Cycle** - HCD re-emphasized that jurisdictions are required to monitor and adjust their site inventories to sustain capacity for their housing allocation throughout the planning period.
- **Enforcement** - HCD will review actions and inactions submitted in the Annual Progress Report by local jurisdictions and they will take action on jurisdictions that are inconsistent with their Housing Elements. HCD will also respond to public complaints if a jurisdiction's actions are in violation with state law.

We appreciate that additional guidance has been made available from multiple sources, including ABAG/MTC and the Santa Clara County Planning Collaborative - they have been instrumental in guiding us all through this complicated process. We know that the Housing Element Update has been a significant undertaking and that the HCD review process has been less central to the public and council's engagement to date. We hope that this letter provides constructive insight into what HCD will likely highlight and that it further enables local engagement throughout the next phases of the Housing Element process. We also hope that meaningful public participation will continue to be a priority as feedback is received from the state and incorporated into future drafts.

We appreciate your continued coordination on this Housing Element journey and we look forward to deepening our engagement as we move closer to January 2023.

Best,

**Kenneth Rosales**  
Planning Senior Associate

