

## Meeting with Gustavo Velasquez

April 21, 2021

**Participants:** Gustavo Velasquez, Melinda Coy, Megan Kirkeby, Paul McDougall, Keely Hanson, Shannan West, Nur Kausar, (HCD), Brian Hanlon, Leonora Camner, Chris Elmendorf, Louis Mirante, Anthony Dedousis, Jon Wizard

### Notes:

- Gustavo said that the Governor is committed to enforcing housing element law, cites new staffing for Housing Enforcement Unit in Governor's budget
  - Also said that he's reviewing draft of the AFFH technical memo
1. **“Likelihood of Development” and the assessment of housing elements’ realistic capacity for new housing during the planning period.**
- Chris explained why this matters. Only Sacramento has done a reasonable likelihood of development analysis, and no city has reported the development rate of 5th cycle inventory sites.
  - Leonora: Culver City is trying to do the right thing, but gets pushback from their own HE consultant who believes that HCD won't require a P(dev) analysis
  - Megan: we know that this is an important opportunity, and we're not going to let this slide. Many of the HEs you've reviewed have not yet been officially submitted as draft yet - our “intervention point” is when the city submits a formal draft to us. But we're open to feedback if we've missed problems with a formal draft.
    - Megan: “we can't admonish individual cities until they submit their draft HEs”
  - Megan: we don't disagree on the need for realistic capacity assessment. We've had “fake sites” included in past HEs, and we don't tolerate this. But when it comes to specific methodologies, “we don't disagree that some of what you've proposed would be effective for creating a site inventory”, but you need broader alignment with other HE advocates around “specific strategies”. “We're more holistic - we look at the combinations of things.”
    - ***BUT - surprising that she seems unfamiliar with P(dev), “Chris’ methodology”. HCD clearly doesn't believe that a quantitative assessment of likelihood of development is required.***
  - Chris: cities clearly don't believe that they have to assess realistic capacity. HCD should make it clear to cities that they have to provide **some adjustment** for realistic capacity; they don't have to mandate a specific methodology. This is also important for making mid-cycle adjustments work.
  - Brian: we understand that there are different acceptable methodologies, but we still want HCD to commit to requiring cities to **actually do a probability of development assessment**. The state law requires cities to assess redevelopment likelihood, but cities are still treating zoned capacity as equivalent to realistic capacity. You could convene a working group on this and make recommendations to cities on different methodologies.

- Melinda: we're unclear on definition of "likelihood". Some cities are looking at the universe of all available sites, and then using factors to limit the list to sites that have the best potential for development. **"That is one methodology to get to likelihood, because they've used our recommended factors, and identified the sites that have higher likelihood of redeveloping."**
- Megan: there's a risk of misinterpretation here. If cities believe that low-density parcels have a low likelihood of redevelopment, then they may exclude these sites and only include sites where multifamily development is already legal (i.e. places where there's a measurable track record of redevelopment), which could be an AFFH violation.
- Gustavo: yes, we will have to think about how to communicate to cities the requirement that they assess likelihood of redevelopment. "We should be able to figure this out...we will find a way to communicate this to jurisdictions."
  - **Need to hold them to this - AFFH memo was promised but a year delayed**
- Brian: will HCD require reporting of how many 5th cycle sites were developed, or not?
  - Paul: no

## 2. No Net Loss and quantification of initial / ongoing capacity

- Chris: when HCD approves a housing element, **HCD should provide a table in each certification letter summarizing HCD's understanding of the housing element's site capacity, ADU capacity, and "buffer"** (capacity minus RHNA) in each income bin.
  - These tables should be posted to HCD's website and updated annually using data from the APRs.
  - This will show cities how close they are to having an NNL violation
- Paul: we're amenable to this
- Melinda: the APR dashboard will help, this idea fits into the APR dashboard
- Louis: SB 9 is going to pass this year, and we're worried that cities are going to double-count R1 sites (count for a duplex **and** an ADU)
- No firm commitments from HCD team here

## 3. Legislative reinforcement for HCD's housing element review?

- Louis: we're all aligned on goals and priorities. But does HCD need additional statutory authority / legislative reinforcement? If so, we can help, but we need to know this from now.
- Chris: here are our 3 suggested changes:
  - Clarify that cities must report the share of 5th cycle sites that were developed during the planning period, and reasonably discount 6th cycle sites' capacity by an estimate of their likelihood of development during the planning period (excluding vacant sites counted a minimum zoned density).
  - Codify HCD's interpretation of the statutory standard of "substantial compliance" (i.e., a housing element is substantially compliant if and only if its "information,

programs, and timeframes are adequate to meet this article's goals and objectives").

- Clarify that if a city is out of compliance with the housing element law, and a developer proposes a project that's zoning exempt per 65589.5(d)(5) on account of the city's noncompliance (e.g. a 20% IZ project that has HAA protection), the developer can lock the project's zoning-exempt status through the vesting procedure of SB 330 (filing a "preliminary application"). This would foreclose arguments about whether the city must still approve the developer's project if the city gets its housing element certified before it acts on the developer's application.
- Paul: "certainly these are neat concepts, I wouldn't comment on specific legislation"
- Megan: the grey area between formal compliance / noncompliance is now larger due to tougher HE laws in 2017-18; this creates opportunities for HCD to push cities to create better housing elements, even if enforcement powers aren't perfectly defined/spelled out in legislation

### **Next Steps**

- Brian: who should we be working with at HCD on follow-up items (e.g. statewide guidance updates)?
  - Gustavo and Megan are happy to discuss statewide guidance updates, legislative actions
  - Shannan, Paul, Melinda will follow up on our comment letters on individual housing elements, administrative actions.
    - Shannan: "we'll be preparing a letter that will give you some tools to give to cities" to push back on bad practices, hinted that the letter will contain a short summary of the SIG to focus on its most important points
    - "We want you to be in the dogfight early, especially since we can't opine until the draft HE comes in for review."
- Paul: I have 4-5 ideas, we should circle up again soon - continue convo over email thread