



CITY OF NEWPORT BEACH

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March 3, 2020

Doug McCauley, Acting Director
Department of Housing and Community Development
Division of Housing Policy Development
2020 W. El Camino Avenue
Sacramento, CA 95833-1829

Re: Request for Assistance Related to the 6th Cycle Housing Element

Dear Mr. McCauley:

The City of the Newport Beach is in receipt of California Department of Housing and Community Development's ("HCD") letter dated January 13, 2020 to the Southern California Association of Governments ("SCAG") approving the Draft Regional Housing Needs Allocation ("RHNA") Methodology adopted by the SCAG Regional Council on November 7, 2019 for the 6th Cycle Housing Element covering the period 2021-2029 ("6th Cycle Housing Element"). In anticipation of the significant obligations for this 6th Cycle Housing Element, the City seeks HCD's assistance to ensure compliance with the State of California's housing goals. Specifically, the City requests HCD:

- expedite preparation and dissemination of a guidance memorandum as to how cities may demonstrate substantial evidence criteria to identify adequate sites pursuant to California Government Code Section 65583(c)(1);
- expedite preparation and dissemination of a guidance memorandum establishing objective standards for cities to identify accessory dwelling units ("ADU") as adequate sites and affordable units;
- authorize vessels used for human habitation pursuant to a "live-aboard" permit issued by the City in accordance with Chapter 17.40 (Live-Aboards) of the Newport Beach Municipal to apply towards the City's inventory of adequate sites and affordable units; and
- support the City's request to amend California Government Code Section 65588(e)(3) extending the deadline to submit the 6th Cycle Housing Element to HCD for two (2) years.

The reasoning behind the City's requests, along with a more detailed explanation of the aforementioned request is detailed below.

Legal and Geographic Constraints on Cities

The City anticipates the draft RHNA Methodology approved by HCD will be approved by SCAG as the Final RHNA Methodology. For Newport Beach, this figure is a 175% increase, as compared to the proposed methodology that was vetted and originally recommended by SCAG staff.

While Newport Beach's draft RHNA allocation may appear small in comparison to other jurisdictions' within SCAG's boundaries, the City faces legal and geographic constraints in meeting this RHNA allocation. For example, Newport Beach neighbors an international airport, oversees the largest recreational boat harbor west of the Mississippi, contains substantial Environmentally Sensitive Habitat Areas, contains wetlands, borders state lands that have been recently described as high-risk fire zones, is home to a number of State parks and beaches, has a vacant landfill bordering a tolled highway system, and more. The Potential Development Constraints Map, included as Attachment A, provides a visual of the geographic constraints alone the City faces in developing and/or zoning for development within the City.

These environmental concerns are all governed by comprehensive state and federal laws and regulations. To that latter point, cities in the SCAG region must submit a compliant housing element by October 2021. That affords us only 19 months to comply with the stretch-goal figures. Of that 19 months, at least 12 months will be taken up by the lengthy environmental review process under CEQA. In effect, Newport Beach must find 40 years of growth in a process that will include engaging the public, establishing environmental impacts, engaging consultants and technical experts to prepare studies and the environmental document, issuing public notices, reviewing and responding to public comments and holding public hearings before approving the environmental document and the 6th Cycle Housing Element. Additionally, Newport Beach – like other cities in our area such as Costa Mesa – may be subject to voter approval of the 6th Cycle Housing Element in light of initiatives passed by local voters which are codified in the charter and/or municipal code.

Other state laws with differing objectives constrain cities' ability to comply with state housing laws. For example, in 2008, the City approved the Banning Ranch project which would have allowed for the development of 1,375 residential units including 252 acres of permanent open space. However, the California Coastal Commission denied the project and the property remains fenced off. So while the City is fully supportive of meeting its housing obligations, the geographic and legal constraints identified above demonstrate the need for assistance from HCD.

State of California Mandates in Furtherance of Meeting Housing Goals

In addition to the legal and geographic limitations in complying with the proposed RHNA allocation identified above, the housing-oriented bills passed by the California Legislature and signed by the

Governor last year, presents both opportunities and challenges for the City to complete the City's 6th Cycle Housing Element.

Chief among those bills are AB1397 and SB166, which establish the "No Net Loss" provisions to ensure that housing elements identify sufficient sites to accommodate the jurisdiction's RHNA or include programs to ensure that sites will be available throughout the planning period. Under the "No Net Loss" requirements, a city may not reduce residential density or allow development at a lower residential density unless the city makes findings supported by substantial evidence that the reduction is consistent with the general plan and there are remaining sites identified in the housing element adequate to meet the city's outstanding RHNA. The combination of a significantly larger RHNA allocation, together with new substantial evidence requirements for underutilized sites, results in extraordinary level uncertainty in the ability to obtain a legally compliant Housing Element.

Additionally, AB881, AB68, SB13, and AB671, a sweeping legislative overhaul of the production of accessory dwelling units, allows up to three (3) units per single-family lot (principal unit, accessory dwelling unit, and a junior accessory dwelling unit) or additional ADUs for multi-family development to be permitted ministerially subject to meeting minimal criteria. Although the market potential and zoning capacity for development of ADUs has increased exponentially, the City is severely limited in its ability to identify ADUs within its inventory of land available for residential development as required by California Government Code Section 65583.

Specifically, Government Code Section 65583.1 authorizes HCD to allow cities to identify ADUs as adequate sites based upon the number of accessory dwelling units developed in the prior housing element planning period. However, relying upon production within the prior housing element planning period does not consider the development potential introduced by AB881, AB68, SB13 and AB71 thereby significantly underestimating the true number of ADU that will be developed.

The legislation identified in this correspondence are specific to the City's request of HCD. However, it is important to recognize that these pieces of legislation are just a fraction of housing legislation that the City must implement.

Summary of City's Requests of HCD

The City of Newport Beach is proud to have obtained Housing Element Certification in the 4th and 5th Cycle Housing Element Update. To this end, the City is committed to updating its 6th Cycle Housing Element for compliance. Therefore, the City of Newport Beach is requesting your consideration and support to assist all cities and counties achieve Housing Element compliance.

Below are four (4) recommendations that would significantly reduce the barriers to achieving local government compliance while still supporting the Legislature's objective of increased housing production:

1. **Expedited preparation and dissemination of a guidance memorandum as to how cities may demonstrate “substantial evidence” to identify adequate sites pursuant to California Government Code Section 655839(c)(1).**

Given the short timeframe to update and adopt a Housing Element, taking into account the unprecedented increase in the City’s RHNA allocation, it is imperative that the City begin preparing the update as soon as possible. However, one of the most difficult components of the 6th Cycle Housing Element process will be the requirement to demonstrate “adequate sites” with realistic development potential that could accommodate the jurisdiction’s RHNA allocation at each income level (very low, low, moderate and above moderate).

In Newport Beach, there is no vacant land available for development, with the exception of the Banning Ranch site; a majority of which site remains within the jurisdiction of the County of Orange and a development of the site was previously denied by the Coastal Commission. Therefore, achievement of RHNA will need to occur through redevelopment of non-vacant and underutilized sites. Of the approximately 29,000 sites located within the City, half are currently impacted by one or more constraints that limit the potential intensification of residential development. These development constraints include the coastal zone, flood zones, very high fire hazard severity and fuel modification zones, seismic hazard zones, environmentally sensitive habitat and protected open space areas, and airport noise exposure levels of 65dBa CNEL or greater as depicted in Attachment A.

Recent amendments to Housing Element law establishes additional criteria that will make it difficult for underutilized sites in the City to be considered suitable for “RHNA credit.” Under Section 65583.2(g)(2), if a city or county relies upon underutilized sites to provide 50 percent or more of its capacity for lower-income housing, then an existing use shall be presumed an impediment to additional residential development, absent findings based on “substantial evidence” that the use is likely to be discontinued during the planning period.

Existing statute and HCD guidance have not provided clear, objective criteria regarding what such substantial evidence must include. Further, given that actual, market-driven housing production in recent years has been significantly lower than RHNA growth estimates, the substantial evidence requirement that development is “likely” to occur on all of the underutilized sites in the Housing Element inventory results in the inability to demonstrate adequate sites. Essentially, current law provides the standards that cannot be met by most jurisdictions, due to the onerous and non-objective criteria.

Previous HCD guidance on this issue has suggested that cities consider the status of existing leases and their expiration dates to determine whether a property is “underutilized” and likely to be redeveloped with new housing during the 8-year Housing Element cycle. However, cities do not have the legal authority to compel property owners to disclose lease terms. Further, current law grants HCD full discretion to determine whether a site is “underutilized” based upon subjective criteria chosen by HCD. In many cities with little vacant land, high property values and

very few blighted or vacant buildings, the new substantial evidence criteria poses an insurmountable obstacle to achieving Housing Element compliance.

Demonstration of adequate sites and future housing production would be enhanced with clear, objective criteria for the review and certification of Housing Elements by providing guidance to local governments in the selection of appropriate sites to encourage housing development while minimizing local governments' administrative time and cost.

HCD can assist by preparing a guidance memorandum that provides objective, simple and market-friendly standards to assist cities and counties when identifying underutilized sites to accommodate RHNA goals and facilitate future housing development.

Attachment B includes a more detailed analysis and recommended methodology.

2. Expedited preparation and dissemination of a guidance memorandum establishing objective standards for cities to identify accessory dwelling units towards adequate sites and affordable units.

As explained above, the market potential and zoning capacity for development of ADUs have increased exponentially with the passage of AB881, AB68, SB13, and AB671. However, since Government Code Section 65583.1 relies upon past production for the purpose of identifying accessory dwelling units as adequate sites, the City is severely limited in its ability to identify ADUs within its inventory of land available. HCD can assist by preparing a memorandum that provides clear and objective standards that jurisdictions can utilize when determining the extent to which future ADUs count towards RHNA site requirements and to establish reasonable assumptions for determining the percentage of ADUs that count towards lower-income requirements.

A recommended methodology included as Attachment C would establish objective measures for estimating both ADU production and affordability levels for RHNA purposes. Since cities and counties are most familiar with the development trends within their jurisdictions, the City proposes HCD apply local estimates of future ADU production for purposes of their Housing Element sites inventories. With regard to ADU affordability levels, the City proposes that HCD apply the same ratio as all renter households in the jurisdiction as reported by the Department of Housing and Urban Development to ADUs unless more specific evidence is available.

Attachment C includes a more detailed analysis and recommended methodology.

3. Authorize vessels used for human habitation pursuant to a "live-aboard" permit issued by the City in accordance with Chapter 17.40 (Live-Aboards) of the Newport Beach Municipal Code to apply towards the City's inventory of adequate sites and affordable units.

Newport Beach is one of the largest recreational harbors in the United States. Currently, the City has issued over 50 live-aboard permits pursuant to Chapter 17.40 (Live-Aboards) of the Newport Beach Municipal Code to allow occupancy of a vessel as a full-time home or domicile. Live-aboards serve an important role in providing affordable housing opportunities for the community's marine workers and lower-income residents. However, currently, live-aboard permits are unaccounted for in the City's housing stock. Given resistance to housing development projects with increased density in the coastal zone by the California Coastal Commission, the expansion of live-boards serves as a viable solution to increasing the available housing stock in coastal communities without the need to develop any vacant land that may be sensitive to coastal resources. The City requests HCD provide criteria to allow live-aboards and similar water-related type living units to apply towards the City's inventory of adequate sites.

4. Support the City's request to amend California Government Code Section 65588(e)(3) extending the deadline to submit the 6th Cycle Housing Element to HCD for two (2) years.

As discussed above, in order for cities in built out or highly urbanized areas with little vacant and developable land to accommodate the significant increase in 6th Cycle Housing Element allocations, an enormous amount of community outreach and planning is advisable and diligent when amending a community's Housing, Land Use and Circulation Elements of the General Plan to accommodate potentially significant increases in density or traffic. Furthermore, these amendments will need to be prepared and adopted in compliance with the California Environmental Quality Act (CEQA). Preparation of the required programmatic CEQA documents alone will take approximately nine to twelve months to complete at an approximate cost of \$350,000. The community outreach and planning efforts needed to increased density and housing capacity are anticipated to take an additional 12 months. Newport Beach – like other cities in our area such as Costa Mesa – also has a provision in its Charter that may well require voter approval of these significant changes.

Therefore, it is recommended that for local governments within the regional jurisdiction of the Southern California Association of Governments, an extension be granted for the 6th Cycle Housing Element to October 21, 2023.

In conclusion, I want to thank you in advance for your consideration of the aforementioned requests. While the proposals are drawn from Newport Beach's experience, in my experience working with other cities, it is my belief that they would not only benefit Newport Beach but cities throughout the State of California.

If you have any questions or would like to meet discuss in more detail, please do not hesitate to contact Newport Beach Community Development Director, Seimone Jurjjs or me.

Sincerely,



Will O'Neill
Mayor

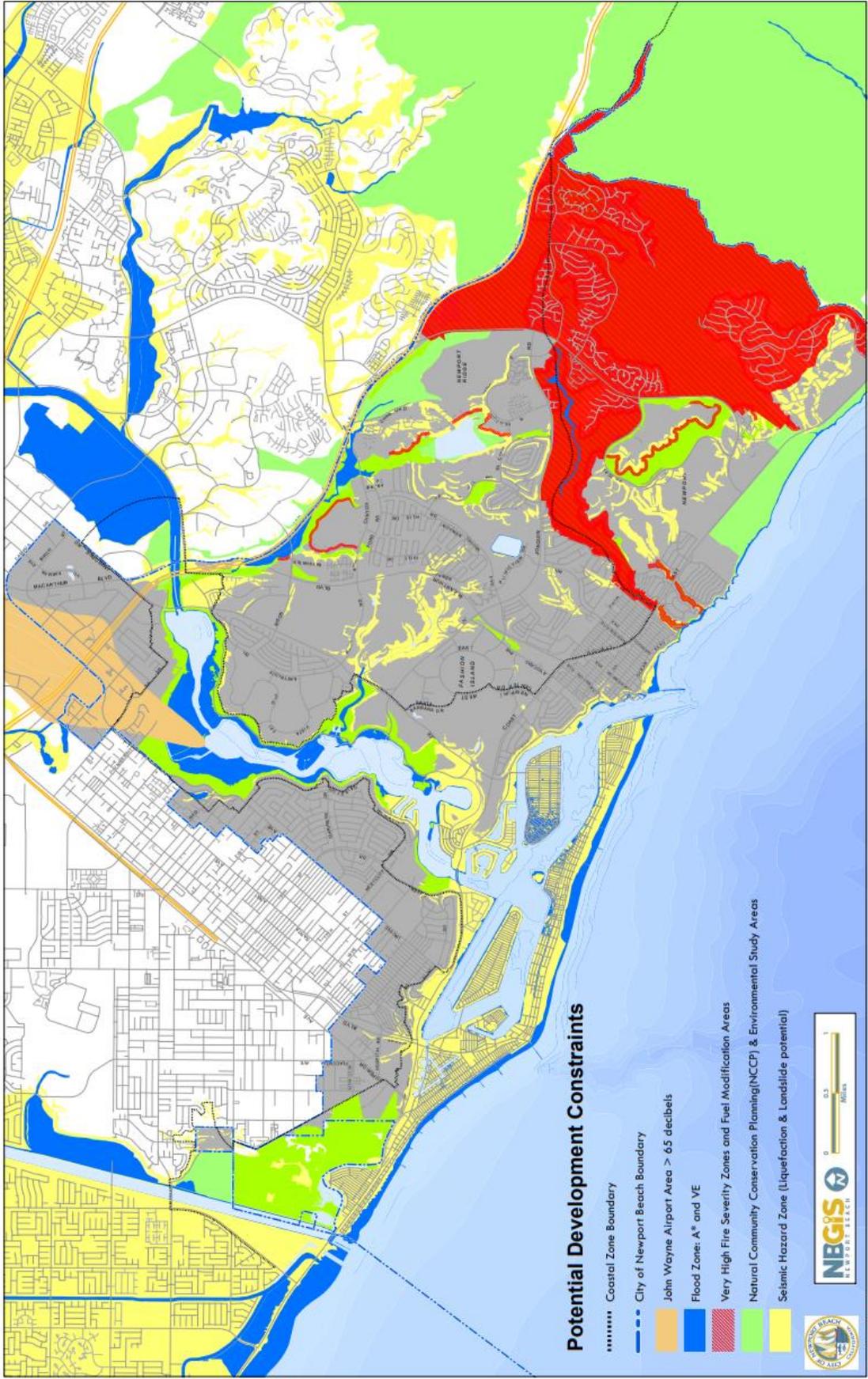
CC. City Council Members
Grace Leung, City Manager
Seimone Jurjis, Community Development Director
League of California Cities

Attachments:

- A- Potential Development Constraints Map
- B- Proposed recommendations related to Government Code Section 65583.2(g) to provide objective standards for what constitutes “substantial evidence.”
- C- Proposed recommendations related to Government Code Section 65583.1 to provide objective standards for counting accessory dwelling units (ADUs) towards RHNA requirements.

ATTACHMENT A

Potential Development Constraints Map



Potential Development Constraints

- Coastal Zone Boundary
- - - City of Newport Beach Boundary
- John Wayne Airport Area > 65 decibels
- Flood Zone: A* and VE
- Very High Fire Severity Zones and Fuel Modification Areas
- Natural Community Conservation Planning (NCCP) & Environmental Study Areas
- Seismic Hazard Zone (Liquefaction & Landslide potential)



0 0.5 Miles

ATTACHMENT B

**Proposed recommendations related to
Government Code Section 65583.2(g) to provide
objective standards for what constitutes
“substantial evidence.”**

Proposed recommendations related to Government Code Section 65583.2(g) to provide objective standards for what constitutes “substantial evidence.”

Proposed Recommendations for Substantial Evidence

Existing conditions that should constitute substantial evidence that the existing use is likely to be discontinued during the planning period:

1. The existing improvement-to-land-value (I/L) ratio is less than 1.0 for commercial and multi-family properties or less than 0.5 for single-family properties according to the most recent available property assessment roll; or
2. The site is designated a Moderate, High or Highest Resource area in the most recent Tax Credit Allocation Committee of the California Treasurer’s office (TCAC) Opportunity Map; or
3. Zoning for the site allows residential development of at least 100 percent additional floor area than existing structures on the site and housing developments in which at least 20 percent of the units are affordable to lower-income households are permitted by-right; or
4. The use of non-vacant sites are accompanied by programs and policies that encourage or incentivize the redevelopment to residential use.

Justification

One of the most important aspects of Housing Element law is the requirement to demonstrate “adequate sites” with realistic development potential that could accommodate the jurisdiction’s RHNA allocation at each income level (very-low, low, moderate and above-moderate). Recent changes to State law have resulted in much higher RHNA allocations than in past cycles due to the addition of “existing need” to the allocation. For example, HCD’s 6th cycle RHNA allocation to the SCAG region is more than three times the 5th cycle and nearly double the 4th cycle. As a result, many highly urbanized cities will have RHNA allocations that far exceed their capacity for housing development on vacant land, and redevelopment of existing uses on non-vacant (or “underutilized”) sites would be required in order to accommodate their RHNA allocations.

Recent amendments to Housing Element law establishes additional criteria for underutilized sites to be considered suitable for “RHNA credit.” Under Sec. 65583.2(g)(2) if a city relies upon underutilized sites to provide 50 percent or more of its capacity for lower-income housing, then an existing use shall be presumed to an impediment to additional residential development, absent findings based on “substantial evidence” that the use is likely to be discontinued during the planning period (emphasis added). Existing statute and HCD guidance have not provided clear, objective criteria regarding what such substantial evidence must include. Further, given that actual, market-driven housing production in recent years has been significantly lower than RHNA

growth estimates, the substantial evidence requirement that development is “likely” to occur on all of the underutilized sites in the Housing Element inventory results the inability to demonstrate adequate sites. Essentially, current law provides the standards of measure that cannot be met by most jurisdictions, due to the onerous and non-objective criteria.

The combination of much higher RHNA allocations, particularly for cities in highly urbanized areas with little vacant developable land, together with new substantial evidence criteria for underutilized sites, results in a very high level of uncertainty and potential financial risk for many cities.

One of the important legislative initiatives for increasing housing production has been to limit local government discretion in the review and approval of housing developments. SB 330, the Housing Crisis Act of 2019, describes the Legislature’s intent to “Suspend certain restrictions on the development of new housing during the period of the statewide emergency” and “Work with local governments to expedite the permitting of housing...” In adopting SB 330 and other recent housing bills, the Legislature has recognized the importance of establishing clear, objective criteria for housing developments to reduce processing time and cost, and increase the certainty of housing approvals.

By the same token, demonstration of adequate sites and future housing production would be enhanced with clear, objective criteria for the review and certification of Housing Elements by providing guidance to local governments in the selection of appropriate sites to encourage housing development while minimizing local governments’ administrative time and cost. This approach would be similar to existing law regarding “default density” for lower-income housing. In metropolitan areas, zoning densities of either 20 or 30 units/acre (depending on population) are deemed suitable for lower-income housing, but jurisdictions may use alternative densities in their sites analysis subject to HCD approval (Government Code 65583.2(c)).

In short, it is appropriate for cities and counties to have a clear path to achieving a certified Housing Element if they are following objective, simple and market friendly State guidance for implementing reasonable local policies that facilitate housing development.

A HCD memorandum providing clear, objective standards to assist cities and counties when identifying underutilized sites to accommodate RHNA goals would contribute substantially to the effectiveness of Housing Elements. Several of the proposed standards build upon on the analysis and recommendations of leading housing experts in California, including University of California researchers and the Tax Credit Allocation Committee of the California Treasurer’s office.

References

Landis, Hood, Li, Rodgers & Warren (2006) “The Future of Infill Housing in California: Opportunities, Potential, and Feasibility” in *Housing Policy Debate*, Volume 17, Issue 4, p. 687 (https://repository.upenn.edu/cgi/viewcontent.cgi?article=1038&context=cplan_papers)

(This landmark study by University of California, Berkeley researchers identified the metric of “improvement-to-land-value (I/L) as a means of identifying infill development potential of underutilized sites.)

California Fair Housing Task Force (2018) “Opportunity Mapping Methodology” (<https://www.treasurer.ca.gov/ctcac/opportunity/final-opportunity-mapping-methodology.pdf>)

(This study, initiated by HCD and the California Tax Credit Allocation Committee (TCAC), was conducted by a group of independent organizations and research centers that would become the California Fair Housing Task Force. The purpose of the study was to provide research, evidence-based policy recommendations, and other strategic recommendations to HCD and other related state agencies/departments to further fair housing goals. TCAC and HCD asked the Task Force to create a statewide opportunity mapping tool that could be adopted into TCAC regulations to accompany regulations to incentivize development of large-family, new construction developments with 9 percent LIHTCs in neighborhoods whose characteristics have been shown by research to support childhood development and economic mobility for low-income families.)

ATTACHMENT C

Proposed recommendations related to Government Code Section 65583.1 to provide objective standards for counting accessory dwelling units (ADUs) towards RHNA requirements.

Proposed recommendations related to Government Code Section 65583.1 to provide objective standards for counting accessory dwelling units (ADUs) towards RHNA requirements.

Recommendation

For the purposes of determining the affordability level of potential accessory dwelling units and/or junior accessory dwelling units that can accommodate a jurisdiction's RHNA need affordable to lower-income households, the department shall take into account the jurisdiction's need for these units in the community, the resources or incentives available for their development, and any other relevant factors, justified by a local jurisdiction. At minimum, it shall be presumed that very low- and low-income renter households would occupy accessory units in the same proportion of very low- and low-income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database.

Justification

In light of recent changes in state law related to accessory dwelling units that require jurisdictions to now allow up three units per single-family lot (principal unit, accessory dwelling unit, and a junior accessory dwelling unit) or additional ADUs for multi-family development equal to 25 percent of the total number units in the development, the market potential and zoning capacity for development of ADUs has increased exponentially subsequent to the passing of recent statutes. Furthermore, the waiver of parking and owner occupancy requirements has eliminated the most significant barriers to the development of ADUs and increased the realistic development capacity of every jurisdiction. Therefore, it is essential that jurisdictions be allowed to utilize the development potential of ADUs towards accommodating their RHNA.

Currently Government Code Section 65583.1 provides HCD full discretion in determining how ADUs count towards RHNA and includes criteria based on past production. In most cities and counties, regulations for ADUs were much more restrictive prior to recent changes in law were adopted. Therefore, past production should not be utilized as the primary factor in estimating future ADU development potential. Revisions to the law are necessary to provide objective standards for HCD to utilize when determining the extent to which future ADUs count towards RHNA site requirements.

ADU capacity should be based on the existing site capacities when applying development standards required pursuant to state law. Because the current methodologies used to determine ADU yields do not reflect the considerable increase in ADU potential and the new limitations cities and counties have in restricting new ADU development, a new methodology is justified.

In the absence of affordability information, it is recommended that the statute establish reasonable assumptions for determining the percentage of ADUs that count towards a jurisdiction's lower-income requirements. The suggested method is currently required under SB330 (Government

Code Section 66300(d)(2)) and Density Bonus Law (Government Code Section 65915) when reviewing the replacement housing requirements for housing development projects regulated by these laws. The laws state that when any existing dwelling units are occupied by lower-income households, a proposed housing development shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database.

Given that this methodology for determining the affordability of households is currently utilized in both Density Bonus Law and SB330, it is recommended that this same methodology be utilized for determining the likely occupancy of ADUs. For example, if a jurisdiction's realistic capacity for ADUs is determined to be 1,000 new ADUs in the eight-year planning period, for the purposes of determining of many of these units may count towards accommodating the low and very-low income housing needs, a jurisdiction would utilize the percentage of existing very low- and low-income households compared to the jurisdiction's total renter households based on the HUD database. In the example below, a jurisdiction could count the capacity of up to 260 units towards the very low-income RHNA need and up to 146 units towards the low-income RHNA need.

The HUD database can be accessed at the following link: <https://www.huduser.gov/portal/datasets/cp.html>

Example Breakdown of a Jurisdiction's Renter Household Income Distribution

Income Level	Renter Households	Percentage of Total Renter Households
Very Low Income	4,400	26%
Low Income	2,400	14.6%
Moderate Income	1,100	6.7%
Above Moderate Income	8,500	52%
Total	16,400	100%

Total Determined ADU Capacity	ADU Capacity Assumed to Accommodate Very Low-Income Housing Need	ADU Capacity Assumed to Accommodate Low-Income Housing Need
1,000	260 (26%)	146 (14.6%)