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March 18, 2024

The Honorable Gregg Hart
Chair, Joint Legislative Audit Committee
Legislative Office Building
1020 N Street, Room 107
Sacramento CA, 95811

The Honorable John Laird
Vice Chair, Joint Legislative Audit Committee
Legislative Office Building
1020 N Street, Room 107
Sacramento CA, 95811

Dear Chair Hart and Vice Chair Laird,

I am writing to respectfully request the Joint Legislative Audit Committee to approve an audit to evaluate the housing element review process conducted by the California Department of Housing and Community Development (HCD). Serious concerns have been raised about the timeliness, consistency, and fair application of HCD's standards and procedures.

California law requires all local governments to adopt a housing element as part of their general plan that complies with state housing laws. Every eight years, cities and counties must submit updated housing elements to HCD for review and approval. Recently, local governments completed the fifth eight-year cycle, which occurred from 2013 to 2021. Cities and counties must submit a draft of their updated housing element to HCD at least 90 days prior to adopting it, and HCD has 90 days to complete an initial review. HCD ultimately determines whether a local government's housing element "substantially complies" with the law. Local governments are currently in the sixth update cycle and hundreds of cities are still out of compliance. While it may be due in part to cities failing to submit compliant housing elements, I am concerned a significant part of the reason is due to HCD's unclear and inconsistent guidance.

In December, I hosted a round table with city managers of cities in my district to discuss challenges cities were experiencing while complying with state policies. All cities I spoke with mentioned significant concerns about the lengthened review timelines for housing elements compared to past review cycles. The specific cities prefer to remain anonymous since they are still undergoing the HCD review process. Unfortunately, my district cities' experience is not an anomaly. My conversations with the League of California Cities revealed many cities statewide experienced these same roadblocks. The consistency of feedback from cities suggest there are structural problems with HCD's review process. A comprehensive audit will reveal the sources of these problems and how to cure them for current and future review processes.

Unclear timeline for submission

During the fifth update cycle, for example, City A received approvals in less than six months with little confusion or revisions. However, this sixth review cycle spanned over a year and forced the city to miss the statutory deadline to have a housing element that is compliant with state law. If a local government does not adopt a compliant housing element within 120 days of the statutory deadline, it is vulnerable to mandatory rezoning within one year of their housing element due date, rather than the three years the law normally allows. Local governments may also be subject to the Builder's Remedy. Under the Builder's Remedy, a local government may not disapprove a housing development that is inconsistent with both its general plan and zoning. In addition, missing the deadline makes local governments ineligible from receiving certain grants and other incentives because they are not substantially compliant with housing element law. Since local governments face severe consequences if they do not adopt a compliant housing element, timely reviews and clear communication on deadlines are critical.

Inconsistent and unclear feedback from reviewers who did not respond to city follow-up

The cities shared the bulk of HCD's comments were unclear and unspecific - making the comments difficult to incorporate in each set of revisions a city sent to HCD. For example, City B received the following comment: "AB 725: For jurisdictions that are considered Metropolitan, the element must identify at least 25 percent of the remaining moderate and above-moderate RHNA on sites that allow at least four units of housing (e.g., four plex or greater) (Gov. Code, § 65583.2, subd. (c)(4))." City B found this comment to be unclear and asked their first reviewer for assistance and clarification, but the first reviewer was unable to provide help and had never heard of AB 725. Therefore, HCD forced City B to wait until the second reviewer could provide assistance. While HCD promised City B a mid-review consultation each time they submitted a revised housing element, HCD did not meet with the city or return any communications until the review was complete.

Under the current review process, HCD has 60 days to review a revised housing element and send back comments. As City C put it, the comments force it to play a "guessing game" where the staff do their best to incorporate the comments, but they often must wait the full 60 days to hear back. Since the comments are obscure, it is common to take several rounds of revisions before HCD approves the housing element.

In addition, cities had multiple reviewers who gave inconsistent feedback. I understand HCD may be experiencing some staff issues, which may require them to assign multiple reviewers to a city. However, this cannot stop HCD from giving consistent feedback. Specifically, City E's first reviewer gave unclear comments the reviewer could not clarify. When the reviewer and the city staff met, the reviewer was unprepared to give feedback. While the second reviewer gave much more in-depth feedback, they were difficult to meet with to answer the city's questions about the reviewer's comments, which lengthened the city's review process. City D highlighted that they were not able to meet with the second reviewer for assistance until their attorney intervened. This situation is not unique to City D, and has been similar across the board, and proves that HCD's feedback between local governments is inconsistent.

Especially unclear feedback on new requirements for housing elements

The cities were particularly concerned about HCD's feedback on requirement for a housing element to promote and affirmatively further fair housing opportunities throughout their communities in accordance with state and federal law. The federal law is enforced through standards adopted by the US Department of Housing and Urban Development (HUD) to address segregation, promote fair housing choice, and eliminate other disparities in the state's communities. The federal standards were published last year, but HCD required they be incorporated into the current cycle that already begun and provided ambiguous feedback on how the new standards should be reflected in the housing element. City E also stated HCD treated cities and counties in Southern California than other cities and counties. Since Southern California's local governments were subject to earlier deadlines, HCD did not apply as strict Affirmative Furthering Fair Housing Standards.

Additionally, many cities reported especially confusing comments related to a new requirement in housing elements called site analysis. Similar to the Affirmatively Furthering Fair Housing standards, HCD's comments were especially difficult to understand and incorporate. Under existing law, local governments must show in their housing element how they will accommodate for their share of the Regional Housing Needs Assessment (RHNA). The housing element must show an inventory of sites zoned for housing, and if there are not enough sites to satisfy the RHNA requirements, the local government must rezone land within the first three years of the planning period. In addition, the local government must demonstrate the sites are suitable for housing. AB 1397 (Low, 2017) created additional site analysis standards to strengthen the suitability requirements under existing law.

To date, 220 cities are still out of compliance, and they are in danger of missing their statutory deadlines. In fact, the cities of South Gate, West Covina, Canyon Lake, and San Bernardino still have not received approval although they have been in the review process for almost three years.

Audit scope

I recommend the State Auditor select no fewer than 10 cities that are diverse in population and geography, and I recommend he select an equal proportion of cities whose housing elements are in compliance with HCD's standards, and cities whose housing elements are not in compliance. Adhering to those selection criteria will ensure the audit has a wide breath of data, and the results will better capture the experiences of all cities.

The audit's scope will include, but is not limited to, the following:

- (1) Review and evaluate the laws, rules, and regulations pertinent to the audit's objectives.
- (2) Scrutinize how clear HCD's standards and regulations are for housing elements to begin with. Are HCD's standards and regulations detailed enough for local governments to apply to their housing elements? Is HCD available for assistance when local

governments are completing their initial draft and, if so, what is the median amount of time local governments must wait for assistance?

(3) Assess how responsive HCD has been to local governments. What is the median amount of time and full range of time it takes for HCD to return a set of comments to a jurisdiction? What is the median amount of time and full range of time it takes for HCD to approve a housing element? How do these lengths of time compare to the fifth cycle review period? What is the median amount of occasions a jurisdiction can meet with their reviewer to ask questions?

(4) Measure how many different reviewers evaluate a jurisdiction's housing element. What is the median number and full range of reviewers?

(5) Determine the consistency of HCD's comments and reviews. How consistent is the feedback between all reviewers assigned to one jurisdiction? How consistent is the feedback on similar topics across multiple jurisdictions?

(6) Evaluate the clarity of HCD's feedback. Are the reviewer's comments precise and measurable? Do the comments follow any specific criteria?

(7) Focus on the Affirmatively Furthering Fair Housing standards and site analysis. In terms of clarity, do the comments related to these standards differ? Are the comments for these new standards precise, measurable, and following specific criteria?

(8) Assess how HCD communicated housing element submission deadlines to local governments. Is there a documented and clear line of communication from HCD on when a local government must submit its housing element for review? How far in advance of the deadline did HCD communicate this, and is it different than past cycles?

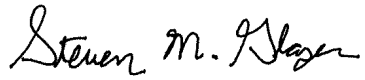
(9) Evaluate HCD staffing levels and the turnover rate. Compared to the fifth cycle review period, how many housing element reviewers does HCD have? What is the median amount of time that reviewers work at HCD and how does that compare to the fifth cycle? What is the median amount of time one reviewer stays assigned to the same local government to review their housing element, and how does that compare to the fifth cycle?

(10) Analyze how HCD trains its new and existing staff assigned to review housing elements. How long is a new employee's initial training and what procedures does training consist of? Does HCD offer additional training to existing staff and, if so, how often? What does the additional training consist of? Does HCD's training set reviewers up to adequately review housing elements and provide clear comments to local governments?

(11) Review and assess any other issues pertinent to the audit.

Having a transparent and accessible HCD review process is critical to bringing our cities into compliance with the housing element law and making progress on the housing crisis. Thank you for your consideration. For questions, please contact me directly or my legislative aide, Shoshana Levy, at (916) 651-4007 or Shoshana.Levy@sen.ca.gov

Sincerely,

A handwritten signature in black ink that reads "Steven M. Glazer". The signature is written in a cursive, flowing style.

Senator Steven M. Glazer