

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



June 2, 2022

Miles Slattery, City Manager
City of Eureka
531 K Street
Eureka, CA 95501-1146

Dear Miles Slattery:

RE: Letter of Inquiry on the Status of Housing Element Program IMP H-34

Under Government Code section 65585, the California Department of Housing and Community Development (HCD) must review any action or failure to act by a city that it determines to be inconsistent with an adopted housing element or Government Code section 65583 generally, and it must issue written findings to the city prior to revocation of housing element compliance. (Gov. Code, § 65585, subd. (i).) Additionally, HCD must notify the city and may notify the California Office of the Attorney General when a city takes actions that are inconsistent with an adopted housing element or Government Code section 65583, among other laws. (Gov. Code § 65585, subd. (j).)

HCD is inquiring about the status of implementation of Program IMP H-34 and requests that the City provide a written response by July 5, 2022. HCD will review the City's response before taking any of the actions authorized by section 65585, subdivisions (i) and (j). The written response should include a detailed plan with benchmarks and timeframes for corrective action, including (1) actions implementing housing element Program IMP H-34, (2) actions mandated by the Surplus Land Act (SLA) (Gov. Code, § 54220 et seq.), and (3) submission of a revised draft 6th cycle housing element.

Background

On March 16, 2020, HCD found the City's 6th cycle housing element substantially complied with State Housing Element Law. HCD's letter emphasized the importance of successful implementation of multiple program actions identified in the element in its determination of housing element compliance.¹ Among other program actions, HCD identified commitments made under Program IMP H-34—Affordable Housing on Publicly-Owned Properties. Specifically, Program IMP H-34 includes a schedule for the City to issue Requests for Proposal (RFP) on multiple City-owned sites each year, beginning July 1, 2020, selling or leasing the property for the purpose of accommodating affordable housing. The objective of the program is to “utilize an RFP process which will

¹ HCD's letter cites Programs IMP H-35, IMP H-34, IMP H-3, and IMP H-5.

specify a minimum number and type of affordable units to be included in the proposal” in order to “build 315 units of deed-restricted affordable housing by 2028.”²

The 2020 RFP was highly successful. While the housing element anticipated 60 units for lower-income households on the three sites identified in the RFP, the winning bid proposed 104 units affordable to lower-income households plus three market-rate (manager) units.

In May 2021, the City reached out to HCD to request reorganization of the schedule of sites to be released for RFPs. The excess units realized in the first RFP allowed HCD flexibility to approve the request. On May 18, 2021, HCD issued a letter approving the reorganization of sites identified for the 2021 and 2022 RFPs as well as the addition of a new site.³ A timely release of the 2021 RFP on July 1, 2021, was anticipated.

In a letter dated August 5, 2021, the City advised HCD that its July 1, 2021, RFP was delayed. The City is considering a land exchange involving three of the sites identified in the housing element (and scheduled for RFPs)⁴ with four sites not currently identified in the housing element site inventory.⁵ The City requested HCD’s opinion regarding the exchange. Additionally, the August 5, 2021, letter advised HCD that sites 8 and 12 were not available to accommodate RHNA. The City discovered previously-unidentified deed restrictions on the sites that prohibit residential development. The element projected 20 units on Site 8 and 80 units on Site 12. The combined loss was capacity to accommodate 100 units for lower-income households.

During a meeting with City staff on August 25, 2021,⁶ HCD informed the City of the following:

- After the City adopted its housing element, the SLA was amended significantly by Assembly Bills (AB) 1486 and 1255.⁷ The amendments to the SLA affect RFPs for all City-owned sites, not just the three sites currently being considered for the land exchange. HCD provided a link to the April 2021 SLA Guidelines⁸ and recommended the City contact HCD’s Public Lands Team⁹ for direction and guidance.
- The City’s housing element must be updated to eliminate Sites 8 and 12, add Site A, and update program IMP H-34. If the City decided to move forward with the land exchange, the element would also require analysis of the new sites to establish their adequacy to accommodate RHNA for lower-income households.

² City of Eureka’s 2019-2027 Housing Element, “Goals and Policies | Our Community,” p.59.

³ Sites 9 and 10 were reallocated from the 2023 RFP to the 2021 RFP. A new site “A” replaced Site 5 in the 2021 RFP. Sites 4 and 6 were reallocated from the 2021 RFP to the 2022 RFP.

⁴ Sites 6, 7, and 9.

⁵ Sites B, C, D, and E.

⁶ HCD followed up the meeting with an email memorializing the items discussed.

⁷ Gov. Code, § 54220 et seq., as amended by Statutes of 2019, Chapters 661 and 664.

⁸ https://www.hcd.ca.gov/community-development/docs/sla_guidelines_final.pdf

⁹ publiclands@hcd.ca.gov

- The City should immediately move forward in satisfying the requirements of the SLA and Program IMP H-34 by pursuing an RFP for Sites 10 and A as these sites are not identified as being affected by the land exchange. In its August 5, 2021, letter, the City indicated that it anticipated release of the RFP for Sites 10 and A “no later than October 1, 2021.”
- HCD additionally reminded the City of its obligations under No Net Loss Law.¹⁰

Subsequently, the City reached out to HCD’s Public Lands Team. HCD responded with correspondence on February 24 and March 4, 2022, confirming multiple sites¹¹ do not qualify as “exempt surplus land” until the City takes additional action. The actions include and are not limited to:¹²

- The City must first update its Housing Element’s Site Inventory to remove the three Parking Lost Properties, add the four PPD-Properties, and designate the latter sites for low- or very low-income housing;
- The City must submit the draft revisions to HCD for review for compliance with State Housing Element Law per Government Code section 65585, subdivision (b);
- The City Council must adopt the updated Housing Element; and
- HCD must find the Housing Element continues to be in substantial compliance with State Housing Element Law (see Government Code sections 65580-65589.11) and No Net Loss Law (see Government Code section 65863).

The City submitted a revised draft 6th cycle housing element on March 9, 2022. The submission was rescinded on April 21, 2022. Subsequently, HCD emailed technical assistance to the City on May 2, 2022. City staff acknowledged receipt of the email and advised they would reach out with any questions. On May 18, 2022, HCD sent an email to the City requesting a status update on the submission of another draft housing element and any updates on implementing Program IMP H-34, and again offered to provide technical assistance. As of the date of this letter, the City has not submitted another housing element for review nor has it released RFPs for 2021 or 2022.

Status of Housing Element Program IMP H-34

As stated earlier, HCD’s letter finding the City’s housing element compliant with State Housing Element Law emphasized the importance of timely implementation of Program IMP H-34.¹³ Program IMP H-34 includes a schedule for the City to issue RFPs on multiple City-owned sites each year, beginning July 1, 2020. Specifically, RFPs are to be issued on July 1 of each year with the final RFP being issued July 1, 2023. The City

¹⁰ Gov. Code, § 65863.

¹¹ APNs: 001142007, 001142005, 001192001, 008052027, 008052024, 008052025, 008052026, 002114002, 001136001, 001136002, 001103003, 001192004, and 008112031.

¹² “HCD’s Response to the City of Eureka’s Determination of Public Parking Lot Properties (APNs 001142007, 001142005, 001192001) as Exempt Surplus Land,” February 24, 2022, p. 3.

¹³ In addition to implementing Eureka’s housing element, implementation of Program IMP H-34 has the added benefit of affirmatively furthering fair housing, which is required of all jurisdictions in California pursuant to Government Code section 8899.50.

issued an RFP in 2020; however, the City has failed to issue an RFP for 2021 and there is no indication an RFP will be issued by the July 1, 2022 due date.

Failure to issue RFPs in 2021 and 2022 is a failure to implement Program IMP H-34. The failure to implement Program IMP H-34 is an action that is inconsistent with the adopted housing element, which may result in the City's housing element being found that it no longer substantially complies with State Housing Element Law. (Gov. Code, § 65585, subd. (i).)

Failing to implement Program IMP H-34 also fails to implement multiple housing element goals and policies, which may also result in a failure to act consistently with the adopted housing element. For example, Program IMP H-34 explicitly states that the program's actions implement housing element policies H-2.19, H-6.1, H-6.2, H-6.3, H-6.4, and H-7.2¹⁴:

- Policy H-2.19: Public Private Partnerships. Explore public private partnerships where such arrangements are favorable to the creation of housing and that satisfy other goals/policies.¹⁵
- Policy H-6.1: Safe and Stable Housing. Work towards safe and stable housing for all members of the community.¹⁶
- Policy H-6.2: Prohibit Discrimination. Continue to support the prohibition of discrimination in the sale or rental of housing with regard to race, color, religion, age, sex, familial status, marital status, disability/medical conditions, national origin, citizenship, status as a student, source of income, political affiliation, gender identity, or sexual orientation.¹⁷
- Policy H-6.3: Non-Profit Service Providers. Support non-profit service providers that help meet the diverse housing and supportive service needs of the community.¹⁸
- Policy H-6.4: Fair Housing Choices. Continue to further fair housing choices by actively expanding housing opportunities and removing impediments to fair housing.¹⁹
- Policy H-7.2: End Homelessness. Seek to end homelessness in Eureka through support for, and participation in, multiple strategies including housing-first principles, Substance Use Disorder programs, counseling and support services, income assistance programs, job training/counseling services, and other proven methods of reducing the incidence and effects of homelessness. Support non-profit organizations and public agencies with a proven track record of accomplishing these sorts of strategies, principals, programs, and services.²⁰

¹⁴ City of Eureka's 2019-2027 Housing Element, "Goals and Policies | Our Community," p.64.

¹⁵ *Id.* at p. 19.

¹⁶ *Id.* at p. 24.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at p. 25.

In addition, by failing to implement Program IMP H-34, HCD also identifies the following housing element goals that have not been implemented as associated policies have not been implemented:

- Goal H-2: The City government actively facilitates the creation of a range of new affordable and market rate housing units to accommodate future growth and to address the needs of all socioeconomic segments of the community.²¹
- Goal H-6: All residents of Eureka have equal access to housing options.²²
- Goal H-7: The rate of homelessness in Eureka is substantially lower than it has been in the past.²³

Consequences of Lack of Compliance with State Housing Element Law

It is critical that Eureka take timely action to implement Program IMP H-34 to ensure the City maintains substantial compliance with Housing Element Law. Housing availability is a critical issue with statewide implications, and most housing decisions occur at the local level. Housing elements are essential to developing a blueprint for growth and are a vital tool to address California's prolonged housing crisis. As such, state law has established clear penalties for local jurisdictions that fail to comply with State Housing Element Law.

First, noncompliance will result in ineligibility or delay in receiving state funds that require a compliant housing element as a prerequisite, including, but not limited to, the following:

- Permanent Local Housing Allocation,
- Local Housing Trust Fund Program,
- Infill Infrastructure Grant Program,
- SB 1 Caltrans Sustainable Communities Grants, and
- Affordable Housing and Sustainable Communities Program.

Second, jurisdictions that do not meet their housing element requirements may face additional financial and legal ramifications. HCD may notify the California Office of the Attorney General, which may bring suit for violations of State Housing Element Law. Further, statute provides for court-imposed penalties for persistent noncompliance, including financial penalties. Government Code section 65585, subdivision (l)(1), establishes a minimum fine of \$10,000 per month and up to \$100,000 per month. If a jurisdiction continues to remain noncompliant, a court can multiply the penalties up to a factor of six. Other potential ramifications could include the loss of local land use authority to a court-appointed agent.

²¹ *Id.* at p. 16.

²² *Id.* at p. 24.

²³ *Id.* at p. 25.

In addition to these legal remedies available in the courts, under the Housing Accountability Act, jurisdictions without a substantially compliant housing element cannot use inconsistency with zoning and general plan standards as reasons for denial of a housing project for very low-, low-, or moderate-income households.²⁴ (Gov. Code, § 65589.5, subd. (d).)

Conclusion

As mentioned above, HCD provides the City until July 5, 2022, to provide a written response to this letter before taking any of the actions authorized by section 65585, subdivision (i) and (j), including issuance of formal written findings which could result in revocation of housing element compliance and referral to the California Office of the Attorney General. The City's response should include, at a minimum, a commitment to take immediate corrective action, including (1) actions implementing housing element Program IMP H-34, (2) actions mandated by the SLA (Gov. Code, § 54220 et seq.), and (3) submission of a revised draft 6th cycle housing element.

If you have questions, would like to discuss the contents of this letter, or would like technical assistance regarding updating the City's 6th cycle housing element, please contact Robin Huntley, of our staff, at Robin.Huntley@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a long horizontal flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

Enclosures

²⁴ For purposes of the Housing Accountability Act, housing for very low-, low-, or moderate-income households is defined as having at least 20 percent of units set aside for low-income residents or 100 percent of units set aside for moderate- or middle-income residents. (Gov. Code, § 65589.5, subd. (h)(3).)

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March 16, 2020

Greg Sparks, City Manager
City of Eureka
531 K Street
Eureka, CA 95501

Dear Greg Sparks:

RE: Eureka's 6th Cycle (2019-2027) Adopted Housing Element

Thank you for submitting the City of Eureka's (City) housing element adopted December 3, 2019 and received for review on December 18, 2019. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review. In addition, HCD considered comments from Janelle Egger pursuant to Government Code section 65585, subdivision (c).

HCD is pleased to find the adopted housing element in full compliance with State Housing Element Law (Article 10.6 of the Gov. Code). The adopted element addresses the statutory requirements described in HCD's September 13, 2019 review. HCD's finding was based on various program commitments including (in order of importance):

- IMP H-35 – Implementation Program Monitoring.
- IMP H-34 – Affordable Housing on Publicly-Owned Properties
- IMP H-3 – Revision of Specific Development Regulations; and
- IMP H-5 – Process Improvement Action Plan

IMP H-35 is of particular importance to compliance with State Housing Element Law. The City must complete its evaluation of the effectiveness of implementation programs in promoting housing development and accommodating its Regional Housing Need Allocation (RHNA) by December 31, 2023. If the City's new strategies do not demonstrate sufficient progress toward the RHNA, the City must take immediate action to accommodate the RHNA, such as rezoning pursuant to Government Code section 65583.2, subdivisions (h) and (i). Alternative strategies or rezoning must be completed and implemented by August 31, 2024. The City must also immediately amend its housing element to demonstrate the adequacy of the alternative sites and strategies and submit the revised element to HCD for review.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds Eureka to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: http://opr.ca.gov/docs/OPR_Appendix_C_final.pdf and http://opr.ca.gov/docs/Final_6.26.15.pdf.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, CalTrans Senate Bill (SB) 1 Sustainable Communities grants; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities program; the SB 2 Planning Grants as well as ongoing SB 2 funding (Permanent Local Housing Allocation) consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With housing element compliance, Eureka meets the housing element requirements for these funding sources.

HCD appreciates the hard work and dedication Brian Heaton, former Senior Planner, and Robert Dumouchel, Acting Planning and Building Manager have provided throughout the course of the housing element review. HCD commends the City for its creative thinking and innovative approaches to meeting the housing needs for all economic segments of the community; and wishes the City success in implementing its housing element. HCD will follow the City's progress through the General Plan annual progress reports pursuant to Government Code section 65400. If HCD can provide assistance in implementing the housing element, please contact Robin Huntley, of our staff, at (916) 263-7422.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, written in a professional style.

Shannan West
Land Use & Planning Manager

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May 18, 2021

Miles Slattery, City Manager
City of Eureka
531 K Street
Eureka, CA 95501

Dear Miles Slattery:

RE: City of Eureka's Housing Element Program H-34 Reorganization

Thank you for submitting correspondence to the California Department of Housing and Community Development (HCD) requesting review of the City of Eureka's (City) housing element Program H-34. The City has requested approval to reorganize the listing of sites scheduled in 2021 for the release of Requests for Proposal (RFP).

Specifically, the City requests Sites 9 (City Hall Parking Lot-5th Street) and 10 (City Hall Parking Lot-6th Street) be reallocated from calendar year 2023 to calendar year 2021. The City additionally requests a new site, Site A (City-Owned Parking Lot-L Street) replace Site 5 (City Parking Lot-5th and D) in the 2021 RFP. The City's correspondence provides sufficient description of Site A to establish it as an adequate replacement for Site 5.

The City's basis for the request is public input expressing new concerns surrounding safety and the reductions in available parking that were not brought forward during the drafting of the housing element. It is HCD's understanding that at a future date, the City may seek to find replacements for Sites 4 (City Parking Lot-3rd and E) and 6 (City Parking Lot-4th and G) which were the sites previously scheduled for 2021. For now, Sites 4 and 6 continue to remain part of the sites inventory and are proposed to be included in the 2022 RFP.

The City had great success with its 2020 RFP. Program H-34 committed to providing 45 units accommodating very-low-income households and 15 units accommodating low-income households. City Council awarded the RFPs to Linc Housing who will develop three projects proposing 104 units of housing affordable to low-income households and three market-rate managers' units. This is 47 more units than the 2021 RFPs were committed to provide. Additionally, the City's correspondence

describes additional responses to the RFPs demonstrating a regulatory environment attractive to developers seeking to provide affordable housing in Eureka.

HCD approves the City's request to revise Program H-34. In doing so, HCD recommends future RFPs target a deeper affordability level that accommodates very-low-income households. As a result, the housing element which was adopted on December 3, 2019 continues to comply with State Housing Element Law (Article 10.6 of the Gov. Code).

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City meets housing element requirements for these and other funding sources.

HCD appreciates the hard work and dedication of the City's staff in implementing Eureka's housing element; commends the City for its continued public outreach during implementation of the housing element; and looks forward to following the City's progress through the general plan Annual Progress Reports pursuant to Government Code section 65400. If you have any questions or need additional technical assistance, please contact Robin Huntley, of our staff, at Robin.Huntley@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West
Land Use & Planning Unit Chief

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December 8, 2021

Miles Slattery, City Manager
City of Eureka
531 K Street
Eureka, CA 95501

Dear Miles Slattery:

RE: City of Eureka's 6th Cycle Housing Element (2019-2027) - Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) is responsible for administering State Housing Element Law (Article 10.6 (commencing with section 65580) of Chapter 3 of the Government Code), including the review of local housing elements for compliance. HCD is aware of multiple amendments being considered for the City of Eureka's (City) 2019-2027 housing element as well as newly-discovered constraints that preclude residential development on sites previously identified to accommodate the City's Regional Housing Needs Allocation (RHNA). The purpose of this letter is to provide technical assistance to the City regarding next steps required to ensure continued compliance with State Housing Element Law.

Background

On March 16, 2020, HCD found the City's 6th cycle housing element substantially compliant with State Housing Element Law. HCD's letter emphasized the importance of successful implementation of multiple program actions identified in the element in its determination of housing element compliance. Among other program actions, HCD identified commitments made under program IMP H-34 – Affordable Housing on Publicly-Owned Properties. Specifically, program IMP H-34 includes a schedule for the City to issue Requests for Proposal (RFP) on multiple City-owned sites each year, beginning July 1, 2020, selling or leasing the property for the purpose of accommodating affordable housing.¹ The ultimate aim of the program is to accommodate 315 deed-restricted affordable housing units by 2028.

Recent Actions

The 2020 RFP was highly successful. While the housing element anticipated 60 units for lower-income households on the three sites identified in the RFP, the winning bid proposed 104 units affordable to lower-income households plus three market-rate units.

¹ HCD's letter cites programs IMP H-35, IMP H-34, IMP H-3, and IMP H-5.

In May 2021, the City reached out to HCD to request reorganization of the schedule of sites to be released for RFPs. The excess units realized in the first RFP allowed HCD flexibility to approve the request. On May 18, 2021, HCD issued a letter approving the reorganization of sites identified for the 2021 and 2022 RFPs as well as the addition of a new site.² A timely release of the 2021 RFP on July 1, 2021 was anticipated.

In a letter dated August 5, 2021, the City advised HCD that its July 1, 2021 RFP was delayed. The City is considering a land exchange involving three of the sites identified in the housing element (and scheduled for RFPs)³ with multiple sites not currently identified in the housing element site inventory.⁴ The City requested HCD's opinion regarding the exchange. During a meeting with City staff on August 25, 2021,⁵ HCD informed the City that after the City adopted its housing element, the Surplus Land Act (SLA) was amended significantly by Assembly Bills (AB) 1486 and 1255.⁶ The amendments to the SLA affect RFPs for all City-owned sites, not just the three sites currently being considered for the land exchange. HCD provided a link to the April 2021 Surplus Land Act Guidelines⁷ and recommended the City contact HCD's Public Lands Team⁸ for direction and guidance.

Additionally, the August 5, 2021 letter advised HCD that sites 8 and 12 were not available to accommodate RHNA. The City discovered previously-unidentified deed restrictions on the sites that prohibit residential development. The element projected 20 units on site 8 and 80 units on site 12. The combined loss was for capacity to accommodate 100 units for lower-income households.

During the August 25, 2021 meeting, HCD advised City staff that the City's housing element must be updated to eliminate sites 8 and 12, add site A, and update program IMP H-34. If the City decided to move forward with the land exchange, the element would also require analysis of the new sites to establish their adequacy to accommodate RHNA for lower-income households.

Furthermore, during the August 25, 2021 meeting, HCD advised City staff to immediately move forward in satisfying the requirements of the SLA and program IMP H-34 by pursuing an RFP for sites 10 and A. These sites are not identified as being affected by the land exchange. In its August 5, 2021 letter, the City indicated that it anticipated release of the RFP for sites 10 and A "no later than October 1, 2021." HCD additionally reminded the City of its obligations under No Net Loss Law.⁹

² Sites 9 and 10 were reallocated from the 2023 RFP to the 2021 RFP. A new site "A" replaced Site 5 in the 2021 RFP. Sites 4 and 6 were reallocated from the 2021 RFP to the 2022 RFP.

³ Sites 6, 7, and 9.

⁴ Proposed sites B, C, D, and E.

⁵ HCD followed up the meeting with an email memorializing the items discussed.

⁶ Gov. Code, § 54220 et seq., as amended by Statutes of 2019, Chapters 661 and 664.

⁷ https://www.hcd.ca.gov/community-development/docs/sla_guidelines_final.pdf

⁸ publiclands@hcd.ca.gov

⁹ Gov. Code, § 65863.

Subsequently, the City reached out to HCD's Public Lands Team, and HCD issued a determination that the sites identified for the land exchange met the requirements of exempt surplus land under Government Code section 54221, subdivision (f)(1)(C).¹⁰ No such determination was made for sites 10 or A. In an October 28, 2021 email, the Public Lands Team also reminded the City, "As required by Section 400(e) of the SLA Guidelines, please submit the adopted resolution and any other supporting documents to HCD for review at least 30 days prior to disposition." (Emphasis original.)

Next Steps

As noted above, HCD has reminded the City of the need to revise its housing element, and the City responded that it was aware of the requirements and confident in the outcome. Specifically, on December 1, 2021, the City advised HCD via email of the following:

- The City has not issued the 2021 RFP.
- The property exchange is still in negotiations.
- A separate housing development project may be providing additional affordable units.
- A housing element update is anticipated to occur in the first quarter of 2022.

The majority of the communication described herein between HCD and the City have occurred via email. This letter memorializes those communications and provides formal, transparent technical assistance regarding next step actions required to ensure continued housing element compliance.

Due to changes to the sites the City is identifying to accommodate its RHNA and due to changes to associated program actions, the City must amend its housing element in the first quarter of 2022. At a minimum, amendments must include:

- Remove all references to sites 8 and 12, including, but not limited to, the sites inventory and program IMP H-34.
- Add site A to the sites inventory and provide complete analysis to establish it is an adequate site to accommodate RHNA for lower-income households (if the City still intends to identify this site).
- Analyze the land exchange (if moving forward with this exchange).
- Analyze any sites added to the sites inventory to establish they are adequate sites to accommodate RHNA for lower-income households.
- Amend the sites inventory to accurately reflect identified sites.
- Amend program IMP H-34 to reflect any revisions to sites and RFP schedules.
- Amend the description of progress in meeting RHNA to include analysis of the winning bid for the 2020 RFP.
- Additional amendments as determined by the City.

¹⁰ Email dated October 28, 2021 from the HCD Public Lands Team to various staff at the City of Eureka.

During these activities, the City must remain mindful of its obligations under No Net Loss Law.¹¹ Further, pursuant to Senate Bill 6 (Chapter 667, Statutes of 2019), housing elements or amendments adopted on or after January 1, 2021, require the City to submit an electronic copy of its sites inventory to HCD using standards, forms, and definitions adopted by HCD.¹² Additional information on this requirement can be found at <https://hcd.ca.gov/community-development/housing-element/index.shtml> or by contacting sitesinventory@hcd.ca.gov.

Public participation in the development, amendment, adoption, and implementation of the housing element is essential to effective housing planning. Throughout the housing element amendment process, the City must continue to engage the community, including organizations that represent lower-income and special-needs households, by making information regularly available while considering and incorporating comments where appropriate.

Additionally, the City is delinquent in releasing its 2021 RFP¹³ pursuant to program IMP H-34. The City must take immediate action to satisfy the requirements of SLA and issue an RFP equivalent to the one currently described in program IMP H-34.¹⁴

Consequences of Lack of Compliance with State Housing Element Law

Housing availability is a critical issue with statewide implications, and most housing decisions occur at the local level. Housing elements are essential to developing a blueprint for growth and are a vital tool to address California's prolonged housing crisis. As such, state law has established clear penalties for local jurisdictions that fail to comply with State Housing Element Law.

First, noncompliance will result in ineligibility or delay in receiving state funds that require a compliant housing element as a prerequisite, including, but not limited to, the following:

- Permanent Local Housing Allocation,
- Local Housing Trust Fund Program,
- Infill Infrastructure Grant Program,
- SB 1 Caltrans Sustainable Communities Grants, and
- Affordable Housing and Sustainable Communities Program.

Second, jurisdictions that do not meet their housing element requirements may face additional financial and legal ramifications. HCD may notify the California Office of the Attorney General, which may bring suit for violations of State Housing Element Law. Further, statute provides for court-imposed penalties for persistent noncompliance, including financial penalties. Government Code section 65585, subdivision (l)(1), establishes a minimum fine of \$10,000 per month and up to \$100,000 per month. If a

¹¹ Gov. Code, § 65863.

¹² Gov. Code, § 65583.3, subd. (a).

¹³ RFP release date is July 1, 2021.

¹⁴ Accommodating 40 units for very low-income households and 35 units for low-income households.

jurisdiction continues to remain non-compliant, a court can multiply the penalties up to a factor of six. Other potential ramifications could include the loss of local land use authority to a court-appointed agent.

In addition to these legal remedies available in the courts, under the Housing Accountability Act,¹⁵ jurisdictions without a substantially compliant housing element cannot use inconsistency with zoning and general plan standards as reasons for denial of a housing project for very low-, low-, or moderate-income households.¹⁶

Conclusion

The City must take immediate action as described above to amend and implement its housing element and ensure continued housing element compliance. As a reminder, AB 72 (Chapter 370, Statutes of 2017) expanded and clarified HCD's enforcement authority. Accordingly, HCD may review local government's actions and inactions to determine consistency with state law. If HCD finds that a city's act or omission does not substantially comply with state law, HCD may revoke its compliance finding for the housing element and may notify the California Office of the Attorney General that the local government is in violation of state law.¹⁷

If you have any questions, would like to discuss the content of this letter, or consult for technical assistance regarding the City's 6th cycle housing element update, contact Robin Huntley, of our staff, at Robin.Huntley@hcd.ca.gov.

Sincerely,



David Zisser
Assistant Deputy Director, Local Government Relations and Accountability

cc: Mayor Susan Seaman
Councilmember Leslie Castellano
Councilmember Kati Moulton
Councilmember Natalie Arroyo
Councilmember Scott Bauer
Councilmember Kim Bergel

¹⁵ Gov. Code, § 65589.5, subd. (d).

¹⁶ For purposes of the Housing Accountability Act, housing for very low-, low-, or moderate-income households is defined as having at least 20% of units set aside for low-income residents or 100% of units set aside for moderate- or middle-income residents (Gov. Code, § 65589.5, subd. (h)(3)).

¹⁷ Gov. Code, § 65585.

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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February 24, 2022

Miles Slattery
City Manager/ City Administrator
City of Eureka
531 K Street
Eureka, CA 95501

Dear Miles Slattery:

RE: HCD's Response to the City of Eureka's Determination of Public Parking Lot Properties (APNs 001142007, 001142005, 001192001) as Exempt Surplus Land

Thank you for contacting the California Department of Housing and Community Development (HCD) regarding the public parking lot properties located at 4th and G Street, 5th and H Street, and 5th and K Street (Assessor Parcel Numbers (APN) 001142007, 001142005, 001192001, collectively, the "Parking Lot Properties"), currently owned by the City of Eureka (City) in fee simple. HCD reviewed Resolution No. 2022-03 ("Resolution") and considered the City's claim that the Parking Lot Properties qualify as "exempt surplus land" under Government Code section 54221, subdivision (f)(1)(C) of the Surplus Land Act (SLA). However, as explained in more detail in this letter, HCD finds that the Parking Lot Properties do not qualify as "exempt surplus land" until the City takes certain actions described below.

Summary

The City plans to exchange the Parking Lot Properties for four properties currently owned by Pierson Properties & Development, LLC (APNs 008052024; 008052025; 008052026; and 008052027, collectively, the "PPD-Properties").

According to Government Code section 54221, subdivision (f)(1)(C), "exempt surplus land" means "[s]urplus land that a local agency is exchanging for another property necessary for the agency's use." (Emphasis added; see also Surplus Land Act Guidelines section 103(b)(3)(C).) The term, "agency's use," is defined in Government Code section 54221, subdivision (c)(1), to "include ... land that is being used [or] is planned to be used pursuant to a written plan adopted by the local agency's governing board for...agency work or operations...." (Emphasis added; see also Surplus Land Act Guidelines section 102(d).)

However, the City does not yet have a written plan that describes how the PPD-Properties will be used. HCD understands that, before making this exchange, the City plans to include the PPD-Properties in its Housing Element's Site Inventory and designate those properties for the development of affordable housing. However, for the Housing Element to qualify as a written plan under the SLA, the City must update it appropriately and submit it to HCD, the City Council must adopt it, and HCD must certify it as substantially compliant.

In the absence of such an adopted "written plan," the City cannot show that the PPD-Properties that the City is receiving are necessary for the City's use; therefore, the Parking Lot Properties that the City intends to convey cannot be considered "exempt surplus land."

Background on the Properties and the Proposed Exchange

The City Council adopted the Resolution declaring that the PPD-Properties that the City will receive in exchange for the Parking Lot Properties qualify as "exempt surplus land" under Government Code section 54221, subdivision (f)(1)(C). According to the Resolution, the Parking Lot Properties are currently used to provide public parking for downtown businesses. The Resolution further provides that the City had previously planned to use the Parking Lot Properties for the development of very low- and low-income housing. In its adopted Housing Element, the City designated the Parking Lot Properties for the development of affordable housing, including 45 very low-income and 20 low-income housing units.

However, the City now desires to exchange the Parking Lot Properties for the PPD-Properties because the PPD-Properties are purportedly more suitable for the development of affordable housing. Additionally, the City asserts that the PPD-Properties will increase opportunities for the City to comply with the requirements of its adopted Housing Element, including, but not limited to, Implementation Program H-34: Affordable Housing on Publicly-Owned Land. The City further claims that the PPD-Properties will provide additional resources for the City to meet its Regional Housing Need Allocation (RHNA) because the PPD-Properties would allow for the development of 104 affordable housing units, including 59 very low-income and 45 low-income housing units.

Properties the City is Receiving Are Not Necessary for the City's Use

As summarized above, for land to qualify as "exempt surplus land" under Government Code section 54221, subdivision (f)(1)(C), the land received via the exchange must be "necessary for the agency's use." Under Government Code section 54221, subdivision (c)(1):

“‘agency’s use’ shall include, but not be limited to, land that is being used [or] is planned to be used pursuant to a written plan adopted by the local agency’s governing board pursuant to a written plan adopted by the local agency’s governing board for ... agency work or operations....”

Based on the facts provided in the Resolution, the City plans to use the PPD-Properties for the development of affordable housing pursuant to its adopted Housing Element. However, the PPD-Properties are not yet identified in the Housing Element currently adopted by the City. Therefore, for the PPD-Properties to qualify as “necessary for the agency’s use” under Government Code section 54221, subdivision (f)(1)(C), and for the Housing Element to qualify as “a written plan adopted by the local agency’s governing board” under Government Code section 54221(c)(1), several requirements must be fulfilled prior to the City taking any further action.

Specifically, 1) the City must first update its Housing Element’s Site Inventory to remove the three Parking Lot Properties, add the four PPD-Properties, and designate the latter sites for low- or very low-income housing; 2) the City must submit the draft revisions to HCD for review for compliance with State Housing Element Law per Government Code section 65585, subdivision (b); 3) the City Council must adopt the updated Housing Element; and 4) HCD must find the Housing Element continues to be in substantial compliance with State Housing Element Law (see Government Code sections 65580-65589.11) and No Net Loss Law (see Government Code section 65863).

At that point, moving the PPD-Properties from private ownership to City ownership will allow the City to much more easily both implement affordable housing programs in the City’s adopted and compliant Housing Element and facilitate development of affordable housing for low- and very low-income households on sites in the Site Inventory, meeting the definition of “agency’s use” found in Government Code section 54221, subdivision (c)(1), and advancing the fundamental purpose of the SLA – affordable housing development.

Additionally, the City must subsequently use the PPD-Properties for the development of very low- and low-income housing. If the City elects to *dispose* of the PPD-Properties for the development of affordable housing instead of developing the properties for affordable housing itself, the City must follow the standard SLA process or seek an affordable housing exemption under Government Code section 54221, subdivision (f)(1).

Conclusion

As described above, the Parking Lot Properties do not qualify as “exempt surplus land.” In order to take advantage of Government Code section 54221, subdivision (f)(1)(C), the City must first take appropriate steps to update and adopt a compliant housing element that designates the PPD-Properties for affordable housing development.

Technical assistance regarding the process required for updating the City's Housing Element can be found on HCD's website.¹ Additionally, if you have questions regarding State Housing Element Law or the housing element update process, please contact Robin Huntley, of our staff, at Robin.Huntley@hcd.ca.gov.

If you have questions regarding the applicability of the SLA or need additional technical assistance, please contact Imaez Wahid, of our staff, at Imaez.Wahid@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to be "D. Slattery", with a long horizontal flourish extending to the right.

Assistant Deputy Director
Local Government Relations and Accountability

¹ <https://hcd.ca.gov/community-development/housing-element/index.shtml>

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March 4, 2022

Miles Slattery
City Manager/ City Administrator
City of Eureka
531 K Street
Eureka, CA 95501

Dear Miles Slattery:

**RE: Review of the City of Eureka's Resolution Declaring Assessor Parcel Numbers
008052027, 008052024, 008052025, 008052026, 002114002, 001136001,
001136002, 001103003, 001192004, 008112031 as "Exempt Surplus Land"**

Thank you for contacting the California Department of Housing and Community Development (HCD) regarding the ten parcels (Assessor Parcel Numbers (APN) 008052027, 008052024, 008052025, 008052026, 002114002, 001136001, 001136002, 001103003, 001192004, 008112031) (collectively the "Properties") that the City of Eureka ("City") currently owns or has an agreement in place to own. HCD reviewed Resolution No. 2022-09 ("Resolution") that you provided. The Resolution provides that the Properties qualify as "exempt surplus land" under Government Code section 54221, subdivision (f)(1)(A), because the City intends to dispose of the Properties for the development of affordable housing pursuant to Government Code section 37364. However, as explained in more detail below, HCD finds that the Properties do not qualify as "exempt surplus land" under Government Code section 54221, subdivision (f)(1)(A), because the City does not own or have an agreement to purchase four of the parcels (APNs 008052024, 008052025, 008052026, 008052027) (collectively the "Parcels").

For the Properties to qualify as "exempt surplus land" under Government Code section 54221, subdivision (f)(1)(A), Government Code section 37364, subdivision (a), requires that the property that the City's legislative body deems suitable for affordable housing must be "owned or to be purchased by the city...." (Emphasis added). Because the City does not currently own the Parcels and is not purchasing the Parcels but exchanging three parcels it currently owns (APNs 001142005, 001142007, 001192001) for the Parcels, the City cannot yet claim that it has complied with Government Code section 37364. Therefore, at this time, the Properties as a whole do not qualify as "exempt surplus land" under Government Code section 54221, subdivision (f)(1)(A).

The City's acquisition of the Parcels via this exchange is contingent upon the City taking certain necessary actions to comply with State Housing Element Law and upon HCD's approval of Resolution No. 2022-03, which relies on the definition of "exempt surplus land"

in Government Code section 54221, subdivision (f)(1)(C), of the Surplus Land Act. HCD specified these necessary actions in its February 23, 2022, letter to the City. Once HCD has approved Resolution No. 2022-03 and the exchange has been completed such that the City owns the four parcels, the City may then provide HCD with a revised draft Resolution for HCD's review and feedback before the City Council adopts a final draft of the Resolution.

If you have any questions or need additional technical assistance, please contact Imaez Wahid, of our staff, at Imaez.Wahid@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a long horizontal flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability