

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

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June 20, 2023

Dave Rand  
Rand Paster & Nelson, LLP  
633 West Fifth Street  
64<sup>th</sup> Floor  
Los Angeles, CA 90071

Dear Dave Rand:

**RE: City of Beverly Hills 6<sup>th</sup> Cycle Housing Element Submittal Compliance and Suitable Sites Inventory – Letter of Technical Assistance**

On March 14, 2023, the California Department of Housing and Community Development (HCD) received your firm's letter requesting technical assistance in relationship to the application of Government Code section 65586.5, the Housing Accountability Act. The purpose of this letter is to provide technical assistance regarding your request.

**Summary of Request for Clarification**

On March 14, 2023, your firm submitted a letter to HCD on behalf of 9300 Wilshire, LLC (Applicant), who is proposing development of a 16-story, 200-unit multifamily housing development project containing 40 deed-restricted, lower-income units. As HCD understands, the Applicant submitted a preliminary application to the City pursuant to Government Code section 65941.1, and the Applicant is in the process of preparing the formal entitlement application for submittal and eventual approval pursuant to Government Code section 65589.5.

Your letter requests confirmation of the City's housing element status, clarification of the City's compliance pursuant to Government Code section 65585(f)(2), and clarification as to how Government Code section 65589.5, subdivision (d)(5)(B) relates to the utilization of Government Code Section 65589.5, Subdivision (d)(5) as a basis for denying a project.

**Confirmation of the City's Housing Element Status and Clarification of the City's Noncompliance**

HCD confirms that as of the date of this letter, Beverly Hills' housing element remains out of substantial compliance with State Housing Element Law. On May 12, 2023, HCD

reported its findings to the City pursuant to Government Code section 65585, subdivision (h). Among other things, HCD found the City's housing element lacked (1) adequate sites to accommodate its share of the regional housing needs allocation (RHNA), (2) analysis related to constraints on housing for persons with disabilities, and (3) program commitments to affirmatively further fair housing.

Pursuant to Government Code section 65585, a local jurisdiction must submit a draft housing element to HCD and receive HCD's findings. If HCD finds the draft element is not substantially compliant, the local jurisdiction must revise the draft to address any findings by HCD (Gov. Code, § 65585, subd. (f)(1)) or adopt without changes and include written findings explaining why the local jurisdiction believes that the draft substantially complies (Gov. Code, § 65585, subd. (f)(2)). Promptly following adoption, the local jurisdiction must submit the adopted housing element to HCD (Gov. Code, § 65585, subd. (g)) and receive findings on the adopted element from HCD (Gov. Code, § 65585, subd. (h)). A local jurisdiction is "in compliance" as of the date of HCD's letter finding the adopted element in substantial compliance.

While the City did provide findings pursuant to Government Code section 65585, subdivision (f)(2), it does not have the authority to determine that its adopted element is in substantial compliance. HCD considered the City's findings in its review of the adopted housing element and provided a response to those findings in its May 12, 2023, letter finding the City's housing element out of compliance.

### **Clarification Regarding if a City with a Deficient Sites Inventory Can Utilize Government Code Section 65589.5, Subdivision (d)(5) as a Basis for Denying a Project**

The requirement for an adequate sites inventory under subdivision (d)(5)(B) is an additional limitation on the utilization of Government Code section 65589.5, subdivision (d)(5), to support a denial under the Housing Accountability Act. Specifically, if the City has failed to identify adequate sites to provide for the RHNA for all income levels, then Government Code section 65589.5, subdivision (d)(5) cannot be used to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations<sup>1</sup>. Please note that HCD's May 12, 2023, review of the housing element found that the City did not demonstrate an adequate sites inventory to meet its RHNA obligation because of its incomplete analysis demonstrating the adequacy of its realistic capacity methodology, the unsuitability of nonvacant sites, and its calculations of accessory dwelling units.

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<sup>1</sup> Gov. Code § 65589.5, subd. (d)(5)(B)

HCD appreciates the opportunity to provide technical assistance regarding all State Housing Element Laws. If you have any questions regarding the content of this letter or would like additional technical assistance, please contact John Buettner, of our staff, at [john.buettner@hcd.ca.gov](mailto:john.buettner@hcd.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Melinda Coy", with a long, sweeping horizontal stroke extending to the right.

Melinda Coy  
Proactive Accountability Unit Chief