Dear Mr. Campora,

We, the undersigned, appreciate the opportunity to comment on the draft Housing Element Update Guidance prepared in anticipation of the fifth cycle of the housing element. We value the efforts to increase efficiency in Housing Element preparation and evaluation as this has potential benefits to be a more efficient process for HCD, local governments and housing advocates alike. It is our understanding that the changes made will result in a significant time savings for staff while maintaining the department’s responsibilities to thoroughly and thoughtfully review all housing elements for compliance with state law.

Below, we make specific recommendations that we strongly believe are necessary to ensure that streamlining does not undermine the quality of Housing Elements or the rigor of the review process. In particular, we offer comments on the Checklist and Completeness Review, the Eligibility Requirements for Streamlining, and the Scope and Procedures for Streamlined Review.

1. **Completeness Review Checklist**

We commend the addition of a checklist to the review process. The checklist will allow HCD staff to comprehensively review only drafts that include all statutorily required components. Although completion of the checklist will not guarantee that a jurisdiction’s Housing Element complies with all statutory requirements, the checklist hopefully will reduce the use of HCD’s limited resources in reviewing draft Housing Elements that are substantially incomplete.

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¹That being said, we note that the draft guidelines do not make any changes that promote improved housing elements. While we understand that changes to Housing Element content and process are outside of the scope of this comment letter, we remain convinced that substantive changes are needed to truly improve the utility of Housing Elements (e.g. lengthening the time period in which local constituents can hold jurisdictions accountable for an effective Housing Element and strengthening implementation requirements).
a. **Improved clarity**
As presented in the draft guidelines, the Completeness Review Checklist is combined with the Streamlined Update Template. It is difficult to discern where each document starts and ends.

**Recommendation:** The Completeness Review Checklist and Streamlined Update Template should be two separate documents. Separation would allow for an “at-a-glance” determination of whether or not all items have been included in the checklist.

b. **Purpose of the checklist**
We are concerned that there could be a perception that merely including sections to address each item on the Completeness Review Checklist indicates substantial compliance with the law.

**Recommendation:** The guidelines need to clarify that a completed checklist is not evidence that the Housing Element is in compliance with the law. It is rather a starting point from which HCD can commence its review.

c. **Transparency**
It is unclear from the guidelines whether or not the Completeness Review Checklist will be made available for public review before the jurisdiction submits it to HCD. The checklist could be a very helpful tool in improving communication between the local jurisdictions and community members about the Housing Element content.

**Recommendation:** The guidelines should require jurisdictions to release the Completeness Review Checklist for public comment prior to submittal to HCD. This will help to increase transparency and provide an opportunity for members of the public who have intimate knowledge of their communities to compare the checklist to the Housing Element to ensure that all required items are both present and accurate.

2. **Eligibility Requirements for Streamlining**
Establishing meaningful eligibility criteria to access streamlined review is critical to the success of the streamlining system. Streamlining should be a privilege, not a right. It should be accessible to a sufficient number of jurisdictions to permit HCD to focus its attention on those Housing Elements that most need it, but it should be limited to those jurisdictions whose performance indicates a true commitment to achieving the goals of Housing Element Law.

a. **Timely Adoption of Fourth-Cycle Housing Element**
We agree that having an HCD-certified Housing Element for the prior planning period should be a baseline requirement for taking advantage of streamlined review. However, jurisdictions should also be asked to demonstrate that their adoption was timely. There are compelling reasons for offering streamlining to jurisdictions that adopted their prior elements on time, but not to those jurisdictions that failed to do so. These reasons are not punitive, but rather speak to the need for more complete review of late-adopted Housing Elements.

Jurisdictions that adopt Housing Elements late in the planning period must necessarily act more quickly to ensure that they fully accommodate their housing needs for the period. Programs relating to everything from rezoning to housing funding to first-time homebuyer education efforts need time to take effect, and any delay in action could undermine the effectiveness and legal compliance of the element. Moreover, adopting late in the planning period creates the temptation to “put off for
another day” key community priorities on the theory that another update is “just around the corner.” For these and other reasons, it is appropriate for HCD to perform a full and thorough review of fifth-cycle updates when jurisdictions adopted their fourth-cycle updates substantially past the due date.

**Recommendation:** Allow streamlined review only for jurisdictions that adopted HCD-certified Housing Elements for the fourth cycle within one year of the statutory due date.

b. **Implementation Review**

We commend HCD for requiring an Implementation Review in order to qualify for a streamlined review. As communities, advocates, and developers know well, Housing Elements must be implemented fully and promptly if they are to serve their purpose of facilitating housing development for people of all income levels. That said, we believe that the draft implementation checklist is too narrow.

i. **HCD Compliance Letter**

During the fourth revision period, some jurisdictions received a finding of substantial compliance that was conditioned on implementing specific programs or actions. If these programs were not carried out, the jurisdiction has not fully complied with the law and its housing element merits a full review by HCD.

**Recommendation:** The jurisdiction should demonstrate that it met every condition stated in HCD’s final compliance letter in order to qualify for streamlined review. The implementation checklist should include a check-off for compliance with conditions described in the final review letter.

ii. **Compliance with AB 1233**

AB 1233 applies to any jurisdiction that, during the prior planning period, failed to make adequate sites available to meet its RHNA requirement. Within one year of the beginning of the current planning period, the jurisdiction must zone or rezone sufficient sites to meet the prior planning period’s RHNA obligation in addition to meeting its RHNA obligation for the current planning period. Housing element programs to meet AB 1233 obligations are critical to complying with legal obligations over multiple housing element planning periods.

**Recommendation:** Add completion of all AB 1233 rezoning obligations to the Implementation Review.

iii. **Program Implementation**

The draft implementation checklist is too-narrowly focused on zoning, with no apparent analysis of the implementation of other statutory requirements of the Housing Element. The focus on site rezoning programs, while critical, leaves out many programs that affect site availability and suitability and are a required component of the adequate sites analysis. For example, rezoning can be ineffective if excessive development standards make development infeasible. To the extent that small sites or accessory dwelling units are relied upon, site aggregation programs or second unit amnesty programs may be critical to satisfying basic housing element obligations. Additionally, the statute requires a program to preserve existing housing at risk of conversion to market rate.
Implementation of these programs can be just as critical to meeting the basic requirements of the Housing Element statute as implementation of explicit rezoning programs. Without a certification by the jurisdiction that these critical programs have been implemented, streamlined review could miss important sections of the Housing Element update that need deeper scrutiny.

**Recommendation:** The implementation review should include all programs needed to ensure site suitability and availability, including zoning amendments and removal of constraints to production, and to ensure that goals are met to preserve existing housing.

c. **Timely Submission of Fifth Cycle Updates**

SB 375 modified Housing Element Law to encourage timely housing element adoption. Streamlined Review should be used to help reinforce this objective, by limiting its use to jurisdictions that are moving toward timely adoption of their fifth-cycle updates.

There is little reason to offer streamlining to tardy Housing Elements. The expected strain on HCD staff resources should be eased after the majority of elements are submitted in preparation for timely adoption. In addition, late submittal of a Housing Element is a red flag that it may require a more complete review.

**Recommendation:** Housing Elements submitted for review more than 60 days after the due date (therefore making adoption within 120 days of the due date highly unlikely, if not impossible) should not be given the benefit of streamlined review. This timeline corresponds with the timeframe of Government Code section 65588 (e)(4), which imposes penalties if the fifth revision is adopted more than 120 days after its due date. Jurisdictions that fail to meet the requirements of section 65588(e)4 and fall into a four year Housing Element update cycle should also not be given access to streamlined review.

3. **Scope and Procedures for Streamlined Review**

a. **Better Define “Streamlined” Review**

While we see the potential benefits of streamlining efforts, the draft guidelines are extremely vague about how streamlined review of a statutorily-required section would differ from “full” non-streamlined review. The guidelines need additional clarification about how HCD will implement its statutory role to determine that the Housing Element as a whole substantially complies with state law. For example, the Housing Element must be internally consistent, but a streamlined review that only examines a portion of the document may not be able to make this determination. Similarly, examining the entire document may result in discovering needed changes to portions of the Housing Element that the local government has not updated. How that challenge will be resolved is unclear from this document. Since one of the goals of this new process is to provide additional clarity to local governments and the public, it is critical that the final guidance provide clear standards for how the streamlined review will be conducted.

**Recommendation:** The guidelines should include additional detail about the difference between a standard review and a streamlined review, including making clear that a streamlined review does not limit HCD’s statutory role in determining compliance.
b. **Ensure Adequate Public Participation Opportunities**

We are concerned that the streamlined update will limit opportunities for public comment. It is unclear from the guidelines if the public will be allowed to weigh in on the decision about whether jurisdictions should be allowed to submit a Streamlined Update. As this is an important decision that should be made on the basis of accurate facts, it should be made in the full light of day with adequate opportunity for the public to weigh in.

*Recommendation:* Create provisions for public comment on the decision about whether a jurisdiction should qualify for Streamlined Update, as well as whether a Housing Element is considered in compliance. In addition, clarify that the streamlined review may encompass areas that have changed, as evidenced by public comment, even if those areas are not identified by the jurisdiction.

c. **Add SB 2 requirements to the Streamlined Update Template**

In the Sites Inventory and Analysis section of the Streamlined Update Template, there is currently no requirement for a program to address the requirements of SB 2. We recognize that for a jurisdiction to be eligible for streamlined review, they must have met SB 2's requirements in the fourth revision period. However, an updated analysis is required for the fifth cycle as well. If that analysis demonstrates a need for an additional program to implement SB 2's requirements, that should be addressed in the streamlined update.

*Recommendation:* Add a section to the Sites Inventory and Analysis section of the Streamlined Update Template to identify additional zones or adopt other programs to address SB 2.

d. **Add Guidelines for Site Inventory Analysis to the Streamlined Update Template**

The Streamlined Update Template does not adequately address the difference between vacant and nonvacant sites in the inventory. The statute recognizes the inherent differences between development of vacant land versus land that includes other uses. This difference is demonstrated by the additional analysis requirements for nonvacant sites in the statute (Government Code Section 65583.2.(g)). Yet, the Streamlined Update appears to treat them the same.

While a streamlined update/review of undeveloped properly-zoned vacant land from the last planning period is appropriate, additional guidance is needed for nonvacant and mixed-use sites. The Streamlined Update directs jurisdictions to “Update methodologies as necessary to estimate residential capacity and Analyze any new known environmental constraints or changed conditions and circumstances such as market conditions that affect the suitability of identified sites,” yet no guidance is provided as to how HCD will evaluate such information, nor is any guidance provided to the local government about what would be acceptable.

*Recommendation:* The guidance should specifically indicate that nonvacant sites and mixed use sites require a higher level of analysis regarding their continued appropriateness than vacant sites. In addition, the statute specifically requires a description of regulatory concessions or incentives to encourage reuse of the sites. As a result, the local government should be required to indicate whether any incentives or concessions were adopted or implemented to encourage development on nonvacant sites.
e. Provide Guidance to Help Standardize Housing Elements

It would be beneficial for all jurisdictions, advocates, and HCD reviewers if there were standard formats for key statutorily required sections – including model charts and forms to complete the site inventory, quantify demographic data and housing needs, report on housing permitting and production, etc. The streamlining guidelines present a valuable opportunity for HCD to provide recommended standard formats for the presentation of this information. No regulatory change would be required, as streamlining is an optional incentive that local jurisdictions may elect to access or to bypass. Moreover, standardized presentation of key required sections of the Housing Element is likely the single change that would save the most HCD staff time, as it would make locating and evaluating required sections quicker and easier. Moreover, standardized templates would assist resource-constrained local jurisdictions by cutting down on local planning staff or consultant time needed to parse statutory requirements and ensure that all necessary information is included clearly and accurately.

Recommendation: HCD should work to develop a standard format for charts and other information required in each Housing Element and use of this standard form should be required for the Streamlined Update Review.

Thank you for taking our comments into careful consideration as you prepare the next draft of the Housing Element Update Guidance. We look forward to further opportunities to participate in the process of developing these guidelines as it moves forward this fall. Please feel free to contact us with any questions about our concerns and let us know when future public meetings on the guidelines are scheduled.

Sincerely,

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