

**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](http://www.hcd.ca.gov)



August 2, 2019

Deborah Feng, City Manager  
City of Cupertino  
10300 Torre Ave  
Cupertino, CA 95014

**RE: Implementation of 2015 – 2023 Housing Element of the General Plan**

Dear Deborah Feng:

This letter informs the City of Cupertino (City) of a potential violation of state housing element law through the failure to implement Strategy 1 of the housing element requiring the sites to accommodate the City's Regional Housing Need Allocation (RHNA).

In 2017, the Governor signed a Housing Package of 15 bills, the package included Assembly Bill (AB) 72 (Chapter 370 Statutes of 2017), which expanded and clarified HCD's enforcement authority. Accordingly, HCD is reviewing local government's actions and inactions, including program actions committed within an adopted housing element, to determine consistency or inconsistency with state law. If HCD finds that a city's act or omission does not substantially comply with state law, housing element compliance may be revoked, and HCD may notify the Attorney General's Office that the city is in violation of state law.

As you are aware, the Department's May 29, 2015 review found the City's adopted element in full compliance with State housing element law (Article 10.6 of the Government Code). This finding of compliance was based upon the successful implementation of Strategy 1 of the housing element to accommodate the City's remaining RHNA for 1,064 units, 356 of which need to accommodate very-low income households and 207 of which need to accommodate low-income households. Strategy 1 proposed two scenarios to accomplish this goal. Scenario A (the primary scenario) stated the City would adopt a specific plan and rezoning for the Vallco Mall site by May 31, 2018 and if this was not accomplished, the City would proceed with rezoning sites identified under Scenario B. In September 2018 the City adopted the specific plan under Scenario A. However, on May 7, 2019 the City rescinded that specific plan. To the Department's knowledge, rezoning under Scenario B has not commenced.

In September 2018, the City approved the Vallco Town Center project on the Vallco Mall site for 2,402 units of which 361 are for very low-income households and 840 are for low-income households. The City made this approval under the State's Streamlined Ministerial Approval Provisions (SB 35, Statutes of 2017). The City reported the application and subsequent approval of the project in the City's 2018 Annual Report on the housing element of the general plan, received by the Department on May 3, 2018. The approval of the Vallco project meets the City's remaining RHNA obligation as put forth by Strategy 1.

However, court filings in the Superior Court of the State of California indicate the City and the development proponents of the Vallco project are being challenged by the Friends of Better Cupertino with the contention that the City did not act in accordance with State law when approving the project. The City filed a Statement of Non-Opposition on May 24, 2019. If petitioners prevail, and the City fails to implement Scenario A or Scenario B under Strategy 1 in the housing element, the housing element will no longer demonstrate adequate sites to accommodate the RHNA. Such failure to act may result in revocation of the City's housing element compliance.

In addition, the City should be aware that it has an obligation to implement programs in the housing element to facilitate development of housing for lower-income households and special needs households. For example, Strategy 4 obligates the City to provide flexible development standards and Strategies 11, 12, and 13 provide incentives for the development of housing. According to the City's Annual Progress report these strategies are being used primarily for rehabilitation activities of existing developments rather than facilitating new development. While rehabilitation and repair of existing affordable housing is imperative, the City must also look for opportunities to support the development of new housing within the community.

HCD appreciates the difficulty jurisdictions face in balancing competing interests when making land use decisions. However, the City also has the responsibility to zone adequate sites to accommodate housing needs and to ensure that new housing development opportunities are available to meet the housing needs of all members of the community. If you have any questions concerning this letter, please contact Melinda Coy, of our staff, at (916) 263-7425.

Sincerely,



Zachary Olmstead  
Deputy Director

CC: Steven Scharf, Mayor, City of Cupertino  
Benjamin Fu, Interim Director of Community Development, City of Cupertino