
Santa Clara County Planning Collaborative

Regular Monthly Meeting Agenda + Notes

November 10, 2022

12:00pm - 1:30pm, via Zoom

Slide Deck: citiesassociation.org/documents/11-22-meeting

- **Collaborative Announcements** - Paul Peninger (peninger@bdplanning.com)
 - **Do you have the right meeting invite?** Make sure your calendar invitation to Collaborative Meetings is titled “NEW Santa Clara County Collaborative Monthly Meeting”. The Zoom meeting ID should be 850 2241 6148 and the Passcode should be 408408. If you did not receive this calendar invite email Abbie Tuning (tuning@bdplanning.com)
 - **Report: AFFH Office Hours with Root Policy:** First office hours meeting was held October 27, Collaborative staff and Root Policy Research gave an overview of HCD Comment Letters and worked with jurisdictions to identify AFFH needs for HE Draft submittal. A second meeting will be held in the coming month, with scheduling information coming soon. Jurisdiction’s who would like to volunteer for an AFFH review by Root Policy should contact Sam Dolgoff (dolgoff@bdplanning.com).
 - **Steering Committee Update:** The Steering Committee will reconvene in the coming weeks, all member jurisdictions are invited to join. Contact Abbie Tuning (tuning@bdplanning.com) for more information.
 - **Staff Transition:** Paul Peninger will be transitioning out of Baird+Driskell at the end of the month and joining Bay Area Economics. Sam Dolgoff and Abbie Tuning will remain as project staff, while Kristy Wang and David Driskell will join and Principals guiding the Collaborative’s work.
- **MTC-ABAG Announcements** - Manuel Ávalos (mavalos@bayareametro.gov)
 - **Regional Housing Technical Assistance Program:** MTC ABAG has resources available on the following:
 - Builder’s Remedy Technical Assistance: [Fact Sheet Available Here](#).
 - New State Laws Webinar: November 15 from 2-3:30pm.
 - **Claim local housing grant funding!** Time is running out to submit your REAP suballocation agreement and claim reimbursement, contact HousingTA@bayareametro.gov.
 - Free Licenses for Symbium Plancheck Software: [Fill out this questionnaire](#) by Dec 15 at 5pm.
 - Farmworker Survey: [Please take this brief survey on local needs](#).
 - **Regional Early Action Planning Grants of 2021 (REAP 2.0):** Allocation announcement coming soon.

- **Priority Development Area & Priority Production Area Planning Grants and Technical Assistance:** Call for Projects will be released the first week of December.
 - Info Webinar: Dec 14, 11am-12pm. [Register here](#). Contact Mark Shorett (mshorett@bayareametro.gov) and Ada Chan (achan@bayareametro.gov) for more information.
- **SB 743 VMT Policy Adoption Technical Assistance Program:** All materials are available to jurisdictions, contact Krute Singa (ksinga@bayareametro.gov) for access.
- **CBOT and PBOT Demo - Kristy Wang** (wang@bdplanning.com)
 - Kristy Wang provided a demonstration of two online tools for Housing Element work.
 - [Comment Bot](#) identifies common HCD comments and how to address them.
 - [Policy Bot](#) identifies policy options to address concerns specific to a jurisdiction's Housing Element.
 - Jurisdiction Questions:
 - What is the rollout timeframe? Will likely get ABAG approval within the next couple of days.
 - Questions or HCD comments that are not addressed by CBOT can be sent to Collaborative staff for assistance.
- **Regional ADU Collaboration: Program Options - David Driskell** (driskell@bdplanning.com)
 - [Presentation recording, slides, and more information available here.](#)
 - Program Goals
 - Assist in Housing Element and RHNA goals of ADU production.
 - Assisting homeowners with no housing development experience.
 - Saving time and money for jurisdictions and planning staff.
 - Regional collaboration to better leverage resources.
 - Starting Points and Existing Resources
 - [ADU Cost Calculator available here](#)
 - Potential for collaboration with/learning from other counties with ADU programs.
 - REAP funding available.
 - Program Considerations
 - Right-sizing program priorities for budget and staff capacity
 - Potential for phasing the project
 - Meeting immediate and long term needs
 - Ensuring long term sustainability
 - Calculator and Address Lookup Tool
 - Enhancements to cost calculator, provides a proforma tool.
 - Homeowner Education Portal would provide additional information tailored to homeowners.
 - Address Lookup Tool helps homeowners understand zoning and property-specific information.

- Website, Guidebook, and Exercises
 - Countywide ADU website with resources and tools.
 - Could also provide resources that could be integrated in individual city websites
 - Homeowner ADU Guidebook for Santa Clara County residents with information on city programs, exercises to prepare for permit applications and construction.
- ADU Spotlights
 - Promotional materials, personal stories and media packages on existing ADUs in the county as examples and inspiration for interested homeowners.
- Online ADU Plans Gallery
 - [Napa Sonoma ADU Example](#)
 - Customizable online database, a searchable tool for homeowners. Cities and planning staff would have backend access to approve pre-reviewed plans and set additional requirements.
 - Sourcing Options
 - Gathering existing plans created with public funding.
 - Call for submittals from local architects.
 - Partnering with San Jose, which already has a city-specific pre-approved plans program.
- Process Tools & Permitting Process
 - Handouts and resources that can be made available online or at the planning counter.
 - Tailored to city-specific needs.
 - Technical support and materials for streamlining the ADU permitting process
- Amnesty and Affordability Programs
 - Technical support for developing Amnesty and Affordability Programs, including best practice guides and model ordinances.
- Shared Online Resource Center
 - An online resource hub for cross-jurisdictional resources, technical assistance for homeowners, and general outreach and education. Could connect with city resources, and would have the opportunity for a dedicated staff person.
- Jurisdiction Questions and Feedback
 - There is existing public interest in pre-approved plans.
 - Planning staff would benefit from a better understanding of what obstacles homeowners face in ADU development and general feedback from homeowners, such as a survey or informational interviews.
 - ADU tours for both homeowners and planning staff would be a valuable resource.
 - City Council's are also interested in pre-approved plans programs.
 - Some cities are seeing a slowdown in ADU production.

- Staff pointed out concerns about an economic downturn and the need for insight into the impact of economic trends on ADU production to help determine relevancy of ADU resources.
 - Upfront costs seem to be a primary obstacle for homeowners.
 - Some cities such as San Jose are exploring options for grant programs, but in general cities like the staff capacity for a robust city-level program.
 - Cities are strongly interested in help designing affordability programs.
 - Interest in facilitator/accelerator nonprofits for ADU resources. Existing nonprofits primarily function at the state level, such as the Casita Coalition.
- **Builder's Remedy Update** - Josh Abrams (abrams@bdplanning.com)
 - [Starting at Slide 21](#)
 - [Resources available here.](#)
 - Jurisdictions are only able to deny a housing development based on zoning noncompliance if the Housing Element is "substantially compliant" with state law.
 - Housing Accountability Act requires that in order to deny a project with at least 20% low-income housing or 100% moderate income housing certain findings are required, zoning or general plan noncompliance is the most common reason, but this finding can not be made if the Housing Element has not been certified by HCD.
 - Housing Element Certification Timing & "Substantial Compliance"
 - There is no grace period before the "Builder's Remedy" becomes possible.
 - Feb 1 2023 is the "substantial compliance" deadline for Housing Elements.
 - 120 day grace period only applies to rezoning requirements and does not protect against Builder's Remedy.
 - Some debate based on whether a Housing Element needs to be in substantial compliance with or without HCD certification.
 - There may be a plausible defense in arguing that the Housing Element is in substantial compliance, even if HCD has not yet approved/certified.
 - If a jurisdiction has not adopted a Housing Element by Feb 1 they are not in substantial compliance.
 - New Law Complexities
 - There is ongoing debate about the legality of different preventative measures and what actions a developer can take.
 - The law is written vaguely enough that we have more questions than answers on what a developer can legally build while bypassing zoning under a non-compliant housing element.
 - Vested Rights

- Any benefits from a “Builder’s Remedy” action taken in a noncompliant jurisdiction will remain in effect throughout the entitlement process, even after a compliant Housing Element is adopted.
 - Another court decided that entitlement rights are not vested until required CEQA studies are approved.
 - Lots of difference in legal opinion.
 - CEQA Impact
 - CEQA still applies.
 - CEQA abuse is illegal- cities can not legally imposed increased CEQA measures to avoid Builder’s Remedy actions.
 - Builder’s Remedy: High Level Overview
 - If a Housing Element has not been adopted by Feb 1 2023, the jurisdiction is noncompliant and can not make findings against a project.
 - Denying a project without legally grounded findings is grounds for a developer to take the project to a judge, and a judge can require a jurisdiction to approve the project.
 - CEQA is still required, but jurisdiction’s can not impose unreasonable CEQA studies.
 - The timeline for vested entitlement rights is currently unclear.
 - Housing Element Adoption Requirements
 - Jurisdictions are legally required to “consider” HCD’s comments before adopting the Housing Element. This means documenting and demonstrating a process of responding to comments. The jurisdiction can then adopt the Housing Element before HCD has technically certified the new draft.
 - This is only adequate defense against a Builder’s Remedy action if the consideration process directly responds to each piece of state law and each HCD comment.
 - Jurisdiction Questions
 - What constitutes CEQA abuse?
 - If a city clearly wants to deny a project and is asking for additional studies to delay approval.
 - Noncompliance with land use planning is considered a significant impact under CEQA. Potentially, a finding against approval can be made through the EIR process.
- **HCD Comment Letters: Lessons Learned Update** - Paul Peninger
 - [Comment Letters Available Here](#)
 - Review and Revision Process
 - HCD looking for specific information on how effective programs and policies in previous Housing Elements have been at addressing the needs of special needs populations.
 - AFFH Concerns
 - Address disproportionate housing needs, especially:
 - Displacement Risk

- Site Inventory, specifically how spatial allocation will improve or exacerbate fair housing conditions.
 - Descriptions of goals, priorities, metrics, actions, and milestones should be as specific as possible.
 - Include timelines, responsible parties
 - Emphasize local knowledge, outreach to stakeholders and local community groups.
 - Racially Concentrated Areas of Affluence
 - Explain how your city compares/fits into the larger regional context
- Sites and Programs
 - Provide specific evidence on how small sites can be assembled to provide a viable parcel for affordable housing.
 - Give market examples and recent practical examples within the jurisdiction.
 - Give more information on large sites, such as what portion will be allocated for lower income RHNA.
 - Non-Vacant Sites
 - Jurisdictions identifying non-vacant sites for more than 50% of their RHNA allocations will need to provide much more detailed evidence that these sites can be transitioned to housing within the planning period.
 - Identify and explain the entitlement process for city-owned sites.
 - SB 9 and ADU Production
 - Provide market evidence demonstrating that these will realistically be used to capacity within the planning period.
- Jurisdiction Questions
 - How long are jurisdictions waiting for acknowledgement from HCD on draft receipt? There is no statutory requirement, trend seems to be between a couple days and two weeks.
- Lawyers' Committee and Root Policy Research are still available for AFFH technical assistance, contact Sam Dolgoff (dolgoff@bdplanning.com) for help.

Upcoming Meetings

Santa Clara County Planning Collaborative Monthly Meeting
Thursday, December 8, 12pm - 1:30pm

Join via Zoom:

<https://us06web.zoom.us/j/85022416148?pwd=MERJMU1RMHA1OFRBRk1NWk4yTzg1QT09>

Meeting ID: 850 2241 6148

Passcode: 408408