STATE MANDATE

Auditor cheers critics of edicts to add housing

By Richard Halstead
rhalstead@marinij.com

Marin critics of housing mandates handed down by the state say a new report by California's auditor validates their objections.

"I applaud the audit," said Mill Valley resident Susan Kirsch, founder of Catalysts for Local Control. "It is one of the greatest contributions we've had to try to get accurate numbers that jurisdictions can rely on."

The auditor's report, released last month, supports analysis by the Palo Alto-based Embarcadero Institute that the state mandates are based on inflated estimates of future housing needs, Kirsch said.

"Overall, our audit determined that the Department of Housing and Community Development (HCD) does not ensure that its needs assessments are accurate and adequately supported," wrote Michael Tilden, acting California state auditor, in a letter to the governor and the Legislature accompanying the report.

"I firmly believe that the auditor's report raises enough questions that the state Legislature should look into this and possibly consider eliminating the penalties for not achieving the Regional Housing Needs Assessment mandates, especially if we might need to go back and redo them," said Novato Councilwoman Pat Eklund, a member of the California Alliance of Local Electeds, which pushed for the audit.

While issues raised in the report sometimes support the argument that the housing mandates issued by HCD are too high, the auditor also suggests changes that might result in higher mandates.

The emergency audit was conducted at the request of the Joint Legislative Audit Committee.

"As you know, our state is facing an unprecedented housing crisis," state Sen. Steve Glazer, D-Orinda, wrote in a letter to the committee's chairman, Assemblymember Rudy Salas, D-Bakersfield. "However, there is almost no transparency when it comes to determining each region's housing needs."

State law requires HCD to conduct periodic housing needs assessments to determine existing and projected housing needs throughout California. These assessments are then given to regional councils of governments, such as the Association of Bay Area Governments (ABAG), which assign a proportionate amount of the housing to the municipalities and counties within their boundaries.

ABAG has assigned Marin County and its cities and towns 14,220 new residences between 2023 and 2031.

To generate the needs assessments, HCD begins with projections by the Department of Finance of future population and households. Then

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state law requires HCD to adjust the assessments for certain factors. For example, it increases the number of homes needed to guarantee a "healthy" vacancy rate and to reduce housing overcrowding.

The auditor's report focused on four main areas. It cited data entry errors made by HCD staff that reduced the amount of housing needs in the needs assessments for two of the three regions reviewed. It stated that HCD failed to adequately demonstrate how it considered the balance between jobs and housing, and housing lost in emergencies, such as wildfires.

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"This insufficient oversight and lack of support for its considerations risks eroding public confidence that HCD is informing local governments of the appropriate amount of housing they will need," Tilden wrote.

The auditor based his report on a review of needs assessments for the Santa Barbara County Association of Governments, the Sacramento Area Council of Governments and Amador County. It did not include the two largest planning organizations, ABAG and the Southern California Association of Governments, because of pending lawsuits challenging HCD's needs assessments for those areas.

The computational errors identified by the auditor's office resulted in 3,822 fewer homes being assigned than should have been. The report suggests, however, that HCD's vacancy rates adjustments have a far larger impact. It notes that HCD made a vacancy rate adjustment to increase Sacramento's needs assessment by more than 22,700 homes, or nearly 15% of the total housing needs.

"HCD did not provide adequate support for a critical determination it made about the healthy housing vacancy rate that it used in the three needs assessments we reviewed, raising questions about whether HCD can support the rate in its other assessments," the report says.

According to the report, HCD said it chose to use the same vacancy rate for both rental and owned housing even though it understood that the ownership vacancy rate is lower than 5%. The report recommends that the Legislature amend state law to clarify whether HCD should continue this practice.

Responding to the audit in a letter, Gustavo Velasquez, HCD's director, defended the use of a single vacancy rate "given that housing units can fluctuate between rental and home ownership and acceptable rental vacancies could be higher than 5%."

Analysis by Embarcadero Institute president and co-founder Gab Layton, often cited by critics of the housing mandates, makes this same point regarding HCD's use of the vacancy rate.

"While 5% is a healthy benchmark for rental vacancies, it is unhealthy for owner-occupied housing, which typically represents half of existing housing," Layton wrote in her critique.

Layton has also asserted that HCD inappropriately increased its estimates of needed housing based on overcrowding and cost-burdening even though the Department of Finance's household projections were already inflated.

"If the Department of Finance clarifies their assumptions," Layton said, "then the overlap that occurred between the Department of Finance and HCD will become very clear."

While not speaking directly to this issue, the auditor's report does find that the Department of Finance failed to sufficiently support its projections of the number of future households.

The audit notes that instead of relying on the 2010 census to estimate current household formation rates, the Department of Finance used information from earlier census data. It did so because of a relatively low household formation rate identified in the 2010 census, perhaps due to the Great Recession that began in 2007.

The lawsuit filed by the Orange County Council of Governments alleges that HCD failed to use the appropriate population forecast, failed to appropriately evaluate household overcrowding and cost burden rates, and used unreasonable vacancy rates.

"The notion that there is some kind of double counting here completely misses the point," said Chris Elmendorf, a law professor at the University of California, Davis.

Elmendorf said the Legislature passed Senate Bill 828 in 2018, allowing for adjustments due to overcrowding and cost burdening, because it believed that the Department of Finances forecasted rate of household growth is a poor measure of housing need.

"The point is," Elmendorf said, "what they need to capture is something beyond the forecasted number of households."

YIMBY Action and YIMBY Law had sued HCD, alleging that it had failed to consider the job/housing balance in calculating ABAG's need for housing over the next eight years. They dropped the suit, however, after the audit validated their claim.

"We are excited that HCD has committed to addressing California's jobs-housing balance," said Rafa Sonnenfeld, director of legal advocacy for YIMBY Law.

Researchers at the University of California, Los Angeles, have estimated that this change could increase the number of homes assigned in the Bay Area by as many as 138,000.

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Marin County and its municipalities are under a state mandate to allow more than 14,000 new residences by 2031. City-owned property at 1 Hamilton Drive in Mill Valley, above, is among the sites being considered for housing development.