

**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



July 5, 2018

Karen P. Brust, City Manager  
City of Encinitas  
505 S. Vulcan Avenue  
Encinitas, CA 92024

Dear Karen P. Brust:

**RE: Encinitas' 2013-2021 Housing Element**

The purpose of this letter is to assist the City in its decision-making and provide guidance to address the statutory requirements of housing element law (Article 10.6 of the Government Code).

On June 12, 2018, the Department of Housing and Community Development (HCD) found the city's draft housing element would meet the statutory requirements of state housing element law once it is adopted and all approvals necessary to make appropriate zoning and development standards are available. This finding was based on, among other reasons, timely completion of commitments (Programs 1A and 1B) to make appropriate zoning and development standards available on sufficient and suitable sites to accommodate the regional housing need for lower-income households. Please see the enclosed review letter for additional information, including advising that any revision to the document should be immediately submitted to HCD.

In addition, HCD's findings include notice that subsequent revisions to the draft element, related documents or new information may impact HCD's finding that the element meets statutory requirements. Any changes, including those that affect identification of sufficient suitable sites to accommodate the regional housing need for lower-income households or appropriate zoning with development standards that facilitate development at maximum densities will impact compliance with statutory requirements. HCD urged the city to continue to consult with the public and HCD if considering any changes potentially affecting the draft housing element throughout the adoption process.

During Encinitas' City Council meeting on June 20, 2018, Council Members discussed revisions that potentially conflict with HCD's direction in its June 12, 2018 correspondence. Specifically, the Council voted 3-2 to remove Site Number AD12 (Rancho Santa Fe East) and Site Number AD32 (Garden View Court) from the site inventory. The Council also approved development standards for the R-30 zone that differ from those reviewed by HCD. Barring additional information, analysis, programs or newly identified vacant sites, if the housing element is adopted with these revisions, HCD would not find the housing element compliant with state housing element law.

Recent changes to housing element law reflect the importance of demonstrating the potential for redevelopment of non-vacant sites within the planning period. These changes require additional analysis when 50 percent or more of the city's Regional Housing Need Allocation (RHNA) for lower-income households is accommodated on non-vacant sites. Removal of site AD12 (Rancho Santa Fe East) potentially reduces the capacity of vacant sites to accommodate the city's RHNA for lower-income households to less than 50 percent of the total. Non-vacant sites now comprise

more than 50 percent of the capacity to accommodate the RHNA for lower-income households. Pursuant to Government Code Section 65583.2 subdivision (g) on non-vacant sites, the existing use is presumed to impede additional residential development. Therefore, the housing element must be revised to include analysis demonstrating substantial evidence the existing uses on all non-vacant sites will be discontinued during the planning period.

Alternatively, additional vacant sites may be added to the inventory. For example, the L-7 site, which was previously removed from the inventory could be added back. L-7 is a city-owned site, which represents a promising opportunity to promote the development of affordable housing.

For your information, in 2017, the Governor signed the 2017 Legislative Housing Package. Chapter 370 Statutes of 2017, Assembly Bill (AB) 72, became law as part of this package. AB 72 expands and clarifies HCD's enforcement by authorizing HCD to find a jurisdiction out of compliance with state housing law at any time. In addition, HCD may review local government's actions and inactions related to housing element and other housing laws, to determine consistency or inconsistency with state housing law. If HCD makes findings of inconsistency, housing element compliance may be revoked and additional actions may be taken, including referral to the California State Attorney General's Office.

HCD respects the challenges and complexity that affect land use decisions in Encinitas. HCD urges the City to carefully weigh the effects of its choices in moving forward with housing element adoption, including, but not limited to potential issues as described in HCD's June 12, 2018 correspondence. HCD continues to be committed to working collaboratively with Encinitas in order to comply with all statutory requirements of housing element law. If you have any questions, please contact Robin Huntley, of our staff, at (916) 263-7422.

Sincerely,



Zachary Olmstead  
Deputy Director

Enclosure

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
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June 12, 2018

Brenda Wisneski, Director  
Development Services  
City of Encinitas  
505 S. Vulcan Avenue  
Encinitas, CA 92024

Dear Brenda Wisneski:

**RE: Review of the City of Encinitas' 5<sup>th</sup> Cycle (2013-2021) Draft Housing Element**

Thank you for submitting Encinitas' revised draft housing element update received for review on April 13, 2018, along with revisions received on April 26, May 9, 16, 25, 30, 31, and June 8, 2018. Pursuant to Government Code (GC) Section 65585(b), the Department is reporting the results of its review.

The review was facilitated by multiple telephone conversations with city staff, consultants and attorneys. In addition, the Department considered comments from Public Interest Law Project and San Diego Volunteer Lawyer Program, Building Industry Association of San Diego County, Zephyr Partners, Williams Iagmin LLP, Glen Johnson, Bobby Wilkes, Carolyn Levin, Sharon Cooper, Leslie and Ken Smith, Steve and Jayshree Gerken, Sally Bolus, Lisa Shaffer, Teresa Barth, Carmen Nespore, Susan Turney, Bob Kent and Cheryl Konn, Lois Sunrich, Donna Westbrook, Janet Weinstein, Jamal Mohamed, Damien Mavis, Stefan LaCasse, and Keith Harrison pursuant to Government Code Section 65585(c).

The revised draft element meets statutory requirements of state housing element law. This finding is based on, among other reasons, timely completion of commitments (Programs 1A and 1B) to make appropriate zoning and development standards available on sufficient and suitable sites to accommodate the regional housing need for lower-income households. Development standards that encourage and facilitate multifamily development, including achieving maximum densities with certainty, are crucial to effective zoning.

The revised element will comply with state housing element law (Article 10.6 of the Government Code) once it is adopted and all approvals necessary to make appropriate zoning with development standards available, including voter approval and California Coastal Commission approval of a Local Coastal Plan amendment are implemented. Necessary zoning amendments also include permitting emergency shelters without discretionary action. The adopted element and accompanying documentation must be submitted to the Department in accordance with GC Section 65585(g). Any draft revision to the element, including proposed development standards should be immediately submitted to the Department.

Specifically, the element identifies a zone to permit emergency shelters and adequate sites to accommodate the city's regional housing need for lower-income households through implementation of Programs 2E, 1A and 1B. These programs commit to permit emergency shelters without discretionary action and rezone sufficient acreage to the new R-30 zone to accommodate a shortfall of adequately-zoned sites to accommodate a shortfall of 253 units carried over from the 4<sup>th</sup> cycle planning period and 888 housing units for the 5<sup>th</sup> cycle planning

period. Zoning for an unaccommodated need and shortfall must meet the statutory requirements set forth in GC Section 65583.2(h) and (i), for example, multifamily housing development with 20 percent or more of the units affordable to lower-income households must be permitted without discretionary action.

Any subsequent revisions to the draft element, related documents or new information may impact the Department's finding that the element meets statutory requirements. For example, the Department understands the city may be considering changes to proposed development standards such as height and unit sizes and could potentially consider other changes prior to adoption. Any changes including those that affect identification of sufficient suitable sites to accommodate the regional housing need for lower-income households or appropriate zoning with development standards that facilitate development at maximum densities will impact compliance with statutory requirements. The Department urges the city to continue to consult with the public and the Department if considering any changes potentially affecting the draft housing element throughout the adoption process.

In addition, the city should consider, at minimum, the following areas through the adoption and implementation of the housing element that may impact compliance with statutory requirements.

- *Unsuitable Sites and Minimal Surplus of Appropriate Capacity:* The element identifies multiple sites to accommodate the required rezoning. Of the sites identified, the Department does not consider the following sites to be adequate sites to meet any portion of the Regional Housing Needs Allocation for lower-income households. As such, they should not be considered adequate, available or additional sites pursuant to GC Section 65863 (No-Net Loss Law).
  - Site number 06, Armstrong Parcels
  - Site number 11, El Camino Real South Parcel
  - Site number AD-7, DeWitt Property

Without these sites, the city identifies a minimal surplus of adequate sites to accommodate the regional housing need for lower income households. In addition, estimated capacity calculation is compromised by the city's methodologies to calculate net densities, environmental sensitive areas, slopes and allowable densities, parking requirements for non-affordable units, height measurements at natural grade with no explicit alternative measurement points, and potential for changes or mitigations through the Local Coastal Plan amendment process. Given the complexity, time and cost of upzoning in Encinitas and the potential cumulative effects of capacity assumptions, the city should consider rezoning additional suitable sites. For example, the revised element removed site number L-7 for consideration as a suitable site for rezoning to accommodate a portion of the city's Regional Housing Needs Allocation (RHNA) for lower-income households. L-7 is a city-owned site, which represents a promising opportunity to promote the development of affordable housing.

- *Ratio of Vacant to Non-vacant Sites:* Recent changes to housing element law reflect the importance of demonstrating the potential for redevelopment within the planning period. These changes require additional analysis when 50 percent or more of the city's RHNA for lower-income households is accommodated on non-vacant sites. If any of the

following sites are not rezoned, the element may necessitate additional analysis pursuant to GC Section 65583.2(g)(2).

- ✓ Site number 02, Cannon Property (Piraeus)
  - ✓ Site number 05, Encinitas Blvd. and Quail Gardens Sites
  - ✓ Site number 08, Rancho Santa Fe Parcels (Gaffney/Goodsen)
  - ✓ Site number AD-1, Sage Canyon Parcel
  - ✓ Site number AD-2, Baldwin and Sons Properties
  - ✓ Site number AD-12, Rancho Santa Fe East
- **State Density Bonus Law (SDBL) and Proposition A:** Developers with an eligible development application are entitled to the benefits of density bonus law (GC Section 65915), including a density bonus, concession, incentive, waiver or reduction of development standards and parking ratios. These benefits must be granted regardless of Proposition A, and must not be limited to the sites rezoned to accommodate a shortfall of adequate sites. For example, an applicant is entitled to propose an increase in height or an exception to measuring heights from natural grade as a concession or a waiver or reduction to development standards pursuant to GC Sections 65915(d) or (e). The city should consider amending its ordinance to explicitly resolve this potential conflict between Proposition A and SDBL and affirmatively encourage development with affordable housing.
  - **Cumulative Impact of Development Standards:** The city carries out a complex set of regulations which may negatively impact housing development. Each one potentially impacts the other and could affect the ability to achieve maximum densities. For example, the cumulative effect of constraining heights with additional implementing mechanisms such as natural grade, unit sizes, parking, and lot coverages, as a whole, can have constraining effects. The city should carefully consider any changes to its regulatory environment for impacts on achieving net minimum and maximum densities. Changes should facilitate ease of achieving maximum densities.
  - **Program Timing and Beneficial Impact:** Given the long absence of an adequate plan to address the housing needs of the community, the city should consider adjusting the timing and commitment of some programs to assure a beneficial impact as quickly as possible within the planning period.
    - ✓ **Programs 1A and 1B** mention an accompanying Local Coastal Plan amendment to make zoning available on a majority of the sites intended to accommodate the housing needs for lower-income households. The city should continue to complete, including coastal commission approval, these actions as concurrently as possible to avoid potential delays on the availability of rezoned sites.
    - ✓ **Program 3H** seeks to monitor development standards and, if needed, "...request initiation of a zoning amendment." The program should go beyond requesting initiation and commit to completion of actual changes within a timely manner (e.g., three to six months), especially given the critical nature of this issue.
    - ✓ **Program 5A** commits to adopt a reasonable accommodation ordinance or procedure that would take effect in July 2019. Requirements to address constraints on housing for persons with disabilities, including reasonable accommodation in zoning and land use, took effect in 2002 – over fifteen years ago. The city should consider prioritizing this need by reducing this timeline and immediately installing alternative interim measures to assure housing opportunities for persons with disabilities.

GC Section 65588(e)(4) requires a jurisdiction that failed to adopt its housing element within 120 calendar days from the statutory due date to revise its element every four years until adopting at least two consecutive revisions by the applicable due dates. The City of Encinitas did not meet the requirements of GC 65588(e)(4); therefore, it is subject to the four-year revision requirement until the city has adopted at least two consecutive updated revisions by the applicable due dates. The next opportunity to adopt on time will be on or before the due date for the 6<sup>th</sup> planning cycle housing element update.

For your information, some general plan element updates are triggered based upon housing element adoption. For example, the safety and conservation elements of the general plan must include analysis and policies regarding fire and flood hazard management (GC Section 65302(g)). Also, the land-use element must address disadvantaged communities (unincorporated island or fringe communities within spheres of influence areas or isolated long established legacy communities). For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: [http://opr.ca.gov/docs/SB244\\_Technical\\_Advisory.pdf](http://opr.ca.gov/docs/SB244_Technical_Advisory.pdf) and [http://opr.ca.gov/docs/Final\\_6.26.15.pdf](http://opr.ca.gov/docs/Final_6.26.15.pdf).

For your information, on January 6, 2016, HCD released a Notice of Funding Availability (NOFA) for the Mobilehome Park Rehabilitation and Resident Ownership Program (MPRRP). The purpose of this program is to loan funds to facilitate converting mobilehome park ownership to park residents or a qualified nonprofit corporation and assist with repairs or accessibility upgrades meeting specified criteria. The program supports housing element goals such as encouraging a variety of housing types, preserving affordable housing, and assisting mobilehome owners, particularly those with lower-incomes. Applications are accepted over the counter beginning March 2, 2016 through June 30, 2018. Further information is available on the Department's website at: <http://www.hcd.ca.gov/grants-funding/active-funding/mprrop.shtml>.

The Department appreciates the hard work and cooperation of city staff, consultants, and attorneys in preparation of the housing element and looks forward to receiving Encinitas' adopted housing element. Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the city must continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available while considering and incorporating comments where appropriate. If you have any questions or need additional technical assistance, please contact Robin Huntley, of our staff, at (916) 263-7422.

Sincerely,



Zachary Olmstead  
Deputy Director