

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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July 13, 2021

Pamela Antil, City Manager
City of Encinitas
505 S. Vulcan Avenue
Encinitas, CA 92024

Dear Pamela Antil:

RE: City of Encinitas' 6th Cycle (2021-2029) Adopted Housing Element

Thank you for submitting the City of Encinitas' (City) housing element which was adopted April 7, 2021 and received for review on April 14, 2021. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review.

HCD finds the adopted housing element in substantial compliance with State Housing Element Law (Article 10.6 of the Gov. Code). The adopted element addresses the statutory requirements described in HCD's February 4, 2021 review. The basis for HCD's finding is described below.

Repeal Density Bonus Ordinance

HCD's February 4, 2021 correspondence stated: *Program 2D must be revised to commit the City to immediately remove or suspend Ordinance No. 2020-09 and apply current State Density Bonus Law (SDBL) until the City's density bonus ordinance is appropriately amended to be in compliance with the requirements of Assembly Bill (AB) 2345 and Government Code section 65915, including as noted in the Department's December 16, 2020 correspondence.*

Subsequently, Encinitas City Council adopted Ordinance No. 2021-07, which repealed Ordinance No. 2020-09 in its entirety, and readopted Encinitas Municipal Code section 30.16.020(C) (Density Bonus Regulations). While the majority of the City's Density Bonus Regulations comport with State Density Bonus Law (Government Code section 65915), Municipal Code section 30.16.020(C)(5)(e) specifies, "Regardless of the number of affordable units, no housing development shall be entitled to a density bonus of more than 35 percent." This provision directly conflicts with current SDBL,

which allows for bonus units in excess of 35 percent. HCD reminds the City of its commitments under Program 2D which include:

- Repeal the amendments made to the City's density bonus ordinance included in Ordinance 2020-09 adopted December 2020 and adopt any amendments required to be consistent with current requirements of State Density Bonus Law within three months.
- Immediately process density bonus applications consistent with State Density Bonus Law.
- Amend the density bonus ordinance within one year after amendments are passed applicable to State Density Bonus law or if there are changes in case law.
- Process Coastal Commission certification of Local Coastal Program Amendments as required.

As AB 2345 (Chapter 197, Statutes of 2020) amended SDBL effective January 1, 2021, the City must immediately implement density bonus applications consistent with AB 2345 and revise its local ordinance by January 1, 2022.

Repeal Group Home Ordinance

HCD's February 4, 2021 correspondence stated: *Program 2E must be revised to commit the City to immediately remove or suspend Ordinance No. 2020-16 and uphold current State laws regarding the fair and equal treatment of persons with disabilities without discrimination in land use.*

Subsequently, Encinitas City Council adopted Ordinance No. 2021-08 which repealed Ordinance No. 2020-16 in its entirety. Adoption of Ordinance No. 2021-08 meets the finding cited in HCD's February 4, 2021 correspondence.

Amend Inclusionary Ordinance

Consistent with implementing actions presented in Program 2A (Continue and Improve Inclusionary Housing Policies), HCD notes the City Council has conducted a first reading and approval of amendments to the City's Inclusionary Housing Ordinance, including adoption of an in-lieu fee and an affordable housing impact fee for residential care facilities. City Council accepted staff's recommendations as supported by studies conducted by Keyser Marsten Associates, Inc.

In addition to adopting amendments to its Inclusionary Ordinance, Program 2A commits to:

- Evaluate program effectiveness and impact on housing production.
- Review provisions, standards, or other regulatory features for constraints on housing development and amend within one year of the identification of a constraint as stated in Program 3B.

HCD hopes the City's amended Inclusionary Housing Ordinance is successful in producing additional affordable housing in the City and will be monitoring its progress through the City's Annual Progress Reports.

Processing of By-Right Housing Projects

HCD reminds the City of its programmatic commitments that impact the processing of by-right housing projects:

- **Program 3F** (Seek to Create Community Support for Housing at a Variety of Income Levels): The program includes the following actions. *Only objective standards will be considered in evaluation of the project by the decision-making body.* In staff reports and at community meetings, emphasize that only objective standards can be used by decision-making bodies in making decisions about projects qualifying for by-right review.
- **Program 3D** (Improve the Efficiency of the Development Review Process for Housing Projects): The program includes the following action. The City will continue to find opportunities to streamline the permitting process to remove unnecessary barriers, *while implementing objective design standards* that will define community character without compromising public health and safety.
- **Program 3B** (Modify Regulations that Constrain the Development of Housing): The program includes the following action. Revise design guidelines and zoning standards to *ensure they are objective standards*.

HCD understands that the City, utilizing HCD administered grant funding, has hired a consultant to review the City's existing design guidelines and zoning standards and develop clear objective standards in an ordinance, which was expected to be approved in Spring 2021.¹ HCD assumes the ordinance is forthcoming shortly.

In the interim, HCD notes that Encinitas Planning Commission considered the Vulcan Project at its June 3, 2021 meeting. As proposed, the project includes 60 market-rate units and 12 units affordable to lower-income households for a total of 72 units. The project utilizes the provisions of State Density Bonus Law and is allowed by-right.² The Staff Report was approved by both Assistant Director Roy Sapa'u and Principal Planner Anna Colamussi, and the report recommended approval of the project.

¹ Housing Element, p 1-37.

² Anders, P. Encinitas Planning Commission Staff Report, June 3, 2021, Agenda Item 8B, p 2.

According to law, as a by-right project, the Vulcan Project is subject only to an objective process³ and objective standards⁴. No discretion is allowed. However, the Planning Commission applied a subjective process and denied the project on the basis of the project's inconsistency with the City's design guidelines, which are subjective standards.

HCD understands an appeal has been filed for the Vulcan Project and that the City Council will hear the appeal during a meeting in August 2021. HCD further understands the Planning Commission's decision is stayed pending the appeal hearing. However, an appeal process does not replace the City's obligation to provide a non-discretionary process for projects qualifying for by-right processing. HCD will continue to monitor the City's processing of the Vulcan Project and other by-right housing projects. Failure to implement housing element programs may result in HCD taking action pursuant to Government Code section 65585, subdivisions (i) and (j), including revocation of HCD's finding that the City's housing element is in substantial compliance and/or potential referral to the California Office of the Attorney General.

Additionally, HCD understands that the City has hired a consultant to review the City's existing design guidelines and zoning standards and develop clear objective standards in an ordinance, which was expected to be approved in Spring 2021. HCD assumes the ordinance is forthcoming shortly.

Other Programs Crucial to Housing Element Compliance

HCD reminds the City of the importance of other programs in the City's housing element that will require careful implementation.

- **Program 1C** (Promote the Development of Accessory Dwelling Units and 1D Develop Programs to Promote and Encourage Accessory Dwelling Units (ADUs) Affordable to Lower Income and Moderate Income Households): The housing element projects 250 ADUs affordable to very-low and low income households, and 300 ADUs affordable to moderate-income households will be built within the

³ Government Code section 65583.2, subdivision (i): (i) For purposes of this section and Section 65583, the phrase "use by right" shall mean that the local government's review of the owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a "project" for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Any subdivision of the sites shall be subject to all laws, including, but not limited to, the local government ordinance implementing the Subdivision Map Act. A local ordinance may provide that "use by right" does not exempt the use from design review. However, that design review shall not constitute a "project" for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.

⁴ Government Code section 65589.5, subdivision (f): (f) (1) Except as provided in subdivision (o), nothing in this section shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

planning period. As such, the programs commit to review production estimates and affordability levels every two years. If production and affordability levels fall short of expectations, the City must revise its approach to accommodating RHNA for all income levels during the planning period.

- **Program 1E** (Ensure that Adequate Sites Remain Available Throughout the Planning Period): In order to comply with Government Code section 65863 (No-Net Loss Law), the City must make required findings for housing element sites at the time of housing project approval. If a shortfall to accommodate the City's remaining RHNA at all income levels is identified, the City must rezone sufficient sites within 180 days to accommodate the shortfall. As with Program 3C discussed above, any site identified to be rezoned must satisfy the adequate site requirements of Section 65583.2 and will be consistent with the City's obligation to affirmatively further fair housing. HCD offers assistance should the City desire consultation or technical assistance on any site(s) under consideration.
- **Program 3C** (Right to Vote Amendment): HCD acknowledges the City's continued participation in the current declaratory relief action, *City of Encinitas v. Department of Housing and Community Development*, in which the City seeks limited preemption of Proposition A with respect to housing element adoption and necessary implementing actions. Regardless of the court's ultimate determination, the program commits to:
 - Commence review of sites that may be suitable for upzoning immediately after Housing Element adoption. Identify suitable sites and complete environmental review of any required upzoning. Any site identified to be rezoned will satisfy the adequate site requirements of Section 65583.2 and will be consistent with the City's obligation to affirmatively further fair housing.

HCD offers assistance should the City desire consultation or technical assistance on any site(s) under consideration.

Government Code section 65588, subdivision (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 is subject to the four-year revision requirement. Adoption of this housing element meets the requirements of the first four-year update. Provided the City adopts a housing element pursuant to the requirements of Government Code section 65585 on or before April 15, 2025, it will meet the second four-year update requirement and return to an eight-year update schedule.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the City to consider timing provisions and welcomes

the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: http://opr.ca.gov/docs/OPR_Appendix_C_final.pdf and http://opr.ca.gov/docs/Final_6.26.15.pdf.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City meets housing element requirements for these and other funding sources.

HCD appreciates the assistance Encinitas' housing element team provided throughout the course of the housing element review. HCD wishes City success in implementing its housing element and looks forward to following its progress through the General Plan annual progress reports pursuant to Government Code section 65400. If HCD can provide assistance in implementing the housing element, please contact Robin Huntley at Robin.Huntley@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" and the last name "West" clearly distinguishable.

Shannan West
Land Use & Planning Unit Chief