

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

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



May 8, 2023

City of Redondo Beach  
Mayor and City Council Members  
415 Diamond Street  
Redondo Beach, CA 90277

Dear Mayor Bill Brand, Council Member Nils Nehrenheim, Council Member Todd Loewenstein, Council Member Paige Kaluderovic, Council Member Zein Obagi, Jr., and Council Member Scott Behrendt:

**RE: City of Redondo Beach 1100 N. Harbor Drive – Letter of Technical Assistance**

The California Department of Housing and Community Development (HCD) understands the City of Redondo Beach (City) City Council will consider an appeal of the application of the proposed housing project on the former AES Power Plant Facility located at 1100 N. Harbor Drive (Project). The purpose of this letter is to assist the City with its decision-making by providing technical assistance related to State Housing Element Law (Gov. Code, § 65580 et seq.) and the Housing Accountability Act (Gov. Code, § 65589.5). HCD recognizes the challenge of interpreting ever-changing housing and land use laws and appreciates the opportunity to provide technical assistance.

**Background**

HCD understands the Project would result in 2,700 housing units (2,160 market rate units and 540 units available to low-income households), 300 hotel rooms, 550,000 square feet of office space and 160,000 square feet of retail space. The City will hear an appeal to its March 3, 2023, letter to 9300 Wilshire, LLC. (Applicant) that determined the development application for the Project was incomplete. The City's incomplete letter provided the Applicant with a comprehensive list of items required to process the application. The City's determination was fundamentally based on the conclusion that the housing element adopted on July 5, 2022, was substantially compliant with State Housing Element Law, and; therefore, the Project was not entitled to the protections granted under Government Code section 65589.5, subdivision (d)(5) (colloquially referred to as the "Builder's Remedy").

The following are key dates related to the Project and the City's 6<sup>th</sup> Cycle Housing Element:

- July 5, 2022 – The City adopted its 6<sup>th</sup> Cycle Housing Element.

- August 12, 2022 – The Applicant submitted its Preliminary Application.
- August 15, 2022 – The Applicant submitted an updated Preliminary Application and architectural plan set.
- September 1, 2022 – HCD issued a letter finding the City’s July 5, 2022, adopted 6<sup>th</sup> Cycle Housing Element to be in substantial compliance.<sup>1</sup>
- February 6, 2023 – The Applicant submitted its development application.

### **Housing Element Compliance**

Pursuant to Government Code Section 65585, a local jurisdiction must submit a draft housing element to HCD and receive HCD’s findings. If HCD finds the draft element is not substantially compliant, the local jurisdiction must revise the draft to address any findings by HCD (Gov. Code, § 65585, subd. (f)(2)). Promptly following adoption, the local jurisdiction must submit the adopted housing element to HCD (Gov. Code, § 65585, subd. (h)).

In other words, a local jurisdiction does not have the authority to determine that its adopted element is in substantial compliance. A local jurisdiction is “in compliance” as of the date of HCD’s letter finding the adopted element in substantial compliance.<sup>2</sup> A local jurisdiction cannot “backdate” compliance to the date of adoption of a housing element. For the City of Redondo Beach, the housing element was found by HCD to be in substantial compliance on September 1, 2022.

### **Housing Accountability Act (HAA)**

Pursuant to Government Code section 65589.5, subdivision (d), a jurisdiction shall not disapprove a housing development project for very low-, low-, or moderate-income households<sup>3</sup> or condition approval in a manner that renders the housing development project infeasible for development for the use of very low-, low-, or moderate-income households unless it makes written findings, based upon a preponderance of evidence in the record, as to one of five findings in subdivision (d).

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<sup>1</sup> HCD Approval Letter - Redondo Beach’s 6<sup>th</sup> Cycle (2021-2029) Adopted Housing Element, dated September 1, 2022. Attached.

<sup>2</sup> HCD, Memorandum - Summary and Clarification of Requirements for Housing Element Compliance, dated March 16, 2023. Attached.

<sup>3</sup> “Housing for very low, low-, or moderate-income households” means that either (A) at least 20 percent of the total units shall be sold or rented to lower-income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to persons and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, as defined in Section 65008 of this code (Gov. Code, § 65589.5, subd. (h)(3)).

If a local jurisdiction's adopted housing element is not found substantially compliant by HCD as of the jurisdiction's statutory deadline, the jurisdiction may not use subdivision (d)(5) of Government Code section 65589.5, inconsistency with zoning and general plan standards, as a basis to lawfully deny qualifying an affordable housing project. Again, subdivision (d)(4) is colloquially referred to as the "Builder's Remedy." Alternative means of denial may be available, such as subdivisions (d)(2) through (d)(4), and under subdivision (e), jurisdictions are still required to comply with both California Environmental Quality Act (CEQA) and the California Coastal Act,<sup>4</sup> as applicable.

### **Preliminary Application**

Pursuant to Government Code section 65941.1, subdivision (a), the submittal of a complete Preliminary Application vests the right to develop a housing development project in accordance with the ordinances, policies, and standards in effect when a preliminary application is submitted. (Gov. Code §65589.5, subd. (o)(1)).

The central point of contention between the City and the Applicant is as follows:

### **Can the Project utilize "Builder's Remedy" if the Applicant submitted a complete preliminary application after the City adopted a housing element, but before HCD has found the housing element to be in substantial compliance?**

The answer is "yes." The submittal of a complete preliminary application pursuant to Government Code section 65941.1 vests the right to develop a housing development project in accordance with the ordinances, policies, and standards in effect when a preliminary application is submitted. (Gov. Code § 65589.5, subd. (o)(1)). Therefore, if the preliminary application submittal occurs at a time when the jurisdiction does not have a compliant housing element, and the development submittal occurs within the 180-day required period<sup>5</sup>, any potential benefits afforded to the applicant resulting from the jurisdiction's noncompliant status would remain throughout the entitlement process even if the jurisdiction subsequently achieves compliance.

### **Conclusion**

Notwithstanding the unique environmental circumstances of this Project site, the City should remain mindful of its obligations under the HAA as it considers the appeal of the

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<sup>4</sup> "Nothing in this section shall be construed to relieve the local agency from complying with the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code) or from making one or more findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resource Code)." (Gov. Code, § 65589.5, subd. (e)).

<sup>5</sup> Gov. Code § 65941.1, subd. (d)(1)

Project application. Because the City had not attained substantial compliance with the State Housing Element Law until September 1, 2022, the City may not deny the Project pursuant to Government Code section 65589.5, subdivision (d)(5). HCD would also like to remind the City that HCD has enforcement authority over the HAA, among other state housing laws. Accordingly, HCD may notify the California Office of the Attorney General that a local government is in violation of state law (Gov. Code, § 65585, subd. (j)).

HCD remains committed to supporting Redondo Beach in achieving housing objectives across all income categories and hopes the City finds this clarification helpful. If you have any questions or need additional information, please contact Gabriel A. Pena-Lora, of our staff, at [gabriel.pena-lora@hcd.ca.gov](mailto:gabriel.pena-lora@hcd.ca.gov).

Sincerely,

A handwritten signature in black ink that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West  
Housing Accountability Unit Chief

cc: Brandy Forbs, AICP, Community Development Director

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September 1, 2022

Mike Witzansky, City Manager  
City of Redondo Beach  
415 Diamond Street  
Redondo Beach, CA 90277

Dear Mike Witzansky:

**RE: Redondo Beach's 6<sup>th</sup> Cycle (2021-2029) Adopted Housing Element**

Thank you for submitting the City of Redondo Beach's (City) housing element adopted July 5, 2022 and received for review on July 11, 2022. 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 considered comments from Oliver Fries, Leo Pustilnikov, Dawn Sarmiento, Chris Voisey, Mushki Gorowitz, Abundant Housing LA, YIMBY Law, John & Laurie Oester, Josh Albrekston, Grace Peng and Susan Andrade pursuant to Government Code section 65585, subdivision (c).

HCD is pleased to find the adopted housing element in full compliance with State Housing Element Law (Article 10.6 of the Gov. Code). The adopted element addresses the statutory requirements described in HCD's April 12, 2022 review, including required analysis of sites proposed for rezoning and amendments to multiple programs, including programs to affirmatively further fair housing.

HCD commends the inclusion of an executive summary in the housing element. By providing additional history and context regarding policy decisions, the executive summary assists the public in its review of the housing element. The City must continue timely and effective implementation of all programs including but not limited to the following:

- Program 6 (Affordable Housing Development) includes multiple strategies and incentives to facilitate affordable housing development for a variety of housing types.
- Program 8 (Residential Sites Inventory and Monitoring No Net Loss) commits to rezone sites to address a shortfall of sites available to accommodate affordable housing and to ensure the City's Regional Housing Need Allocation (RHNA) can be accommodated for all income levels at all times throughout the planning period.

- Program 9 (By-Right Approval for Projects with 20 Percent Affordable Units) ensures nondiscretionary processing for nonvacant sites identified in the City's previous housing element.
- Program 11 (Small Lot Development/Lot Consolidation) facilitates, incentivizes, and expedites affordable development on small lots, including the consolidation of small lots.
- Program 12 (Accessory Dwelling Units) includes actions to facilitate the development of 240 ADUs within the planning period, monitor the City's progress in meeting the goal, and adjusting its strategies and incentives if the City is not meeting that goal in 2025.
- Program 13 (Amendments to the Zoning Ordinance) commits to update the City's Zoning Ordinance to comply with multiple state laws and implement the City's new General Plan.
- Program 14 (Objective Design Standards) commits the City to update existing design standards to create objective standards by the end of 2022 and the create objective standards for rezoned sites by October 15, 2024.
- Program 15 (Monitoring the Effect of Article 27 of the City Charter [Measure DD]) ensures the City monitors and responds appropriately to votes of the electorate, including a vote regarding the recommended Land Use Plan of the General Plan and associated rezoning required by State Housing Element Law.
- Program 18 (Fair Housing) includes a variety of actions to ensure that the City meets its obligation to Affirmatively Further Fair Housing (AFFH) pursuant to Government Code section 8899.50.

HCD acknowledges that although the City Council adopted a Preferred Land Use Plan in May 2021, the City is still in the process of updating its general plan, including the land use element. This update requires approval by the electorate. The City anticipates placing the issue on the ballot in March 2023 with multiple implementing program actions to be completed subsequent to voter approval. The housing element has been written to be consistent with the Preferred Land Use Plan. Should the ballot measure be disapproved by the electorate, the City must take additional timely actions as outlined in Program 15 (Monitoring the Effect of Article 27 of the City Charter [Measure DD]) to ensure continued compliance with State Housing Element Law.

Regarding Program 13 (Amendments to the Zoning Ordinance), HCD reminds the City that although the Zoning Ordinance may not be updated, and regardless of housing element compliance status, the City has an obligation to apply current state law as opposed to an outdated zoning code, examples include:

- Density Bonus,
- Transitional and Supportive Housing,
- Emergency Shelters and Low Barrier Navigation Centers,
- Affordable Housing Streamlined Approval (SB 35),
- Employee Housing,

- Reasonable Accommodation,
- Definition of Family, and
- Unlicensed Group Homes.

The element includes Program 8 (Residential Sites Inventory and Monitoring of No Net Loss) identifying adequate sites to accommodate the shortfall of 1,164 units for lower-income households. Among other things, the program commits to zoning with densities of 20-55 units per acre and permitting owner-occupied and rental multifamily uses by right for developments in which 20 percent or more of the units are affordable to lower income households. Pursuant to Senate Bill 197 (Chapter 70, Statutes of 2022), as the City failed to adopt a compliant housing element within 120 days of the statutory deadline (October 15, 2021), Program 8 (Residential Sites Inventory and Monitoring of No Net Loss) must be completed no later than three years and 120 days from the statutory deadline (February 12, 2025). Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i).

The City must monitor and report on the results of all housing element programs through the annual progress report, required pursuant to Government Code section 65400. Please be aware, Government Code section 65585, subdivision (i) grants HCD authority to review any action or failure to act by a local government that it determines is inconsistent with an adopted housing element or housing element law. This includes failure to implement program actions included in the housing element. HCD may revoke housing element compliance if the local government's actions do not comply with state law.

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.

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: <https://www.opr.ca.gov/planning/general-plan/guidelines.html>.

HCD appreciates the dedication, professionalism, cooperation, and assistance the City's housing element team provided throughout the course of the housing element review. Among others, the team included yourself, Brandy Forbes, Community Development Director, Sean Scully, Planning Manager, and the City's consultant, Veronica Tam. HCD wishes the 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, of our staff, at [Robin.Huntley@hcd.ca.gov](mailto:Robin.Huntley@hcd.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul McDougall", with a stylized flourish at the end.

Paul McDougall  
Senior Program Manager

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**MEMORANDUM**

**DATE:** March 16, 2023

**TO:** Planning Directors and Interested Parties

**FROM:** Megan Kirkeby, Deputy Director  
Division of Housing Policy Development

A handwritten signature in black ink, appearing to read "Megan Kirkeby".

**SUBJECT: Summary and Clarification of Requirements for Housing Element Compliance**

HCD is committed to diligently reviewing all 539 local jurisdictions' housing elements for substantial compliance with State Housing Element Law. To comply with State Housing Element Law and avoid the consequences of noncompliance, a local jurisdiction must, among other things:

1. Submit a draft housing element to HCD at least 90 days before adoption<sup>1</sup> and receive findings from HCD determining whether the draft element is substantially compliant,<sup>2</sup> and consider HCD's findings before adopting the draft element.<sup>3</sup>

**In other words, where a jurisdiction submits an "adopted" housing element before submitting an initial draft or before considering HCD's findings on an initial draft, HCD will consider the "adopted" to be an initial draft for purposes of both HCD's review and the jurisdiction's statutory compliance.**

2. If HCD finds the draft element is not substantially compliant, revise the draft to address any findings by HCD<sup>4</sup> or adopt without changes and include written findings explaining why the jurisdiction believes that the draft substantially complies.<sup>5</sup> Promptly following adoption, submit the adopted housing element to HCD<sup>6</sup> and receive findings on the adopted element from HCD.<sup>7</sup>

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<sup>1</sup> Gov. Code, § 65585, subd. (b)(1)

<sup>2</sup> Gov. Code, § 65585, subds. (b)(3), (d)

<sup>3</sup> Gov. Code, § 65585, subd. (e)

<sup>4</sup> Gov. Code, § 65585, subd. (f)(1)

<sup>5</sup> Gov. Code, § 65585, subd. (f)(2)

<sup>6</sup> Gov. Code, § 65585, subd. (g)

<sup>7</sup> Gov. Code, § 65585, subd. (h)

**In other words, a jurisdiction does not have the authority to determine that its adopted element is in substantial compliance but may provide reasoning why HCD should make a finding of substantial compliance.**

**In addition, a jurisdiction is “in compliance” as of the date of HCD’s letter finding the adopted element in substantial compliance. Any other letters are not a finding of substantial compliance.**

**HCD recommends that a jurisdiction adopt only after receiving a letter from HCD finding the draft meets statutory requirements.**

For more detailed information about this process, please visit HCD’s [Housing Elements webpage](#) and [Housing Elements Building Blocks](#).