



City of Encinitas

Development Services Department

505 S. Vulcan Avenue, Encinitas, California 92024-3633

January 18, 2021

SUBMITTED VIA EMAIL

Ms. Robin Huntley
Housing Policy Manager, Housing Policy Division
Department of Housing and Community Development
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833

RE: City of Encinitas 6th Cycle Housing Element 2021-2029 Update – Response to Verbal Comments

Dear Ms. Huntley:

The City of Encinitas thanks you for the opportunity to respond to verbal comments received on January 11, 2021. The revised submittal documents are available on the Housing Element webpage and through the link provided via email to download. The resubmittal includes:

- **Section 1: Housing Element Policy Program** – contains the policy programs for the Housing Element.
- **Appendix A: Community Engagement Summary** – provides a summary of community engagement activities conducted and community comments.
- **Appendix B: Housing Profile Report** – provides the requisite analysis of housing need, constraints, and resources pursuant to housing element law and progress on the 5th Cycle Housing Element.
- **Appendix C: Adequate Sites Analysis** – provides the requisite analysis for the provision of adequate sites to accommodate the City's RHNA need.

We have provided an updated checklist showing where our response to the prior written comments and subsequent verbal comments received can be found within each document. If you have any questions or concerns regarding the 2021-2029 Housing Element, please feel free to contact Jennifer Gates, Principal Planner at (760) 633-2714. We appreciate your assistance throughout the certification process.

Sincerely,

Lillian Doherty
Development Services Director

1. Response to Comments

City of Encinitas 2021-2029 Housing Element Update

Response to HCD Comments

January 18, 2021

HCD Comment	<p>City Response (Section/Page) with additional comments in Red Underline Strikethrough</p> <p>Edits are in Red Underline Strikethrough Format in the Housing Element Documents</p>
A. Housing Needs, Resources, and Constraints	
<p>A1. Fair housing issues related to community opposition and the development of housing.</p>	<p>Section 1 Program 3F (Pages 1- 42-43) has been updated to include outreach to the community to better understand community concerns that can be addressed through policy such as objective design standards.</p> <p>Appendix B Section 8.6 (Pages B- 68-69) has been substantially expanded to include additional information on how community opposition has not prevented either the approval of proposed housing developments or the construction of approved projects.</p> <p><i>HCD has accepted changes.</i></p>
<p>A1. Fair housing issues related to AFFH analysis exclusively tied to affordability.</p>	<p>Section 1.3.4 (Pages 1- 3-5) has been added and Programs 3F (Pages 1- 42-43), 3H (Pages 1- 44-45), 5A (Pages 1- 47-52), and 5C (Page 1- 53) have been updated in response to HCD comments. Section 1.3.4 (Pages 1- 3-5) is a new section of the Housing Element that provides a summary of all Programs identified that take meaningful actions to affirmatively further fair housing including to identify and address discrimination, segregation, and access to opportunity, and fostering compliance with civil rights and fair housing laws as identified in Government Code Section 8899.50.</p> <p>Appendix B Section 8.6 (Pages B- 68-69) has been substantially expanded in response to HCD's comments. Section 6.4 / Pages 41-63 of Appendix B incorporates the analysis of impediments to fair housing choice in accordance with the requirements of Section 91.225 of Title 24 of the Code of Federal Regulations as well as additional analysis related to access to opportunity, discrimination in housing, potential for displacement, segregation and concentration, location of existing and proposed affordable units as it relates to race and ethnicity, and other topics. This Analysis is on a variety of topics related to AFFH, not exclusively affordability.</p> <p><i>HCD has accepted changes.</i></p>
<p>A1. Fair housing issues related to Proposition A.</p>	<p>Appendix B Section 9.1.11 (Pages B- 77-78) has been substantially expanded to address HCD's comments related to Proposition A. While the initial draft did not limit its analysis to affordable housing, it has been clarified to indicate that it is not known whether Proposition A resulted in a less diverse population in Encinitas, in either market-rate or affordable housing.</p>

City of Encinitas 2021-2029 Housing Element Update

Response to HCD Comments

January 18, 2021

HCD Comment	City Response (Section/Page) with additional comments in Red Underline Strikethrough Edits are in Red Underline Strikethrough Format in the Housing Element Documents
	<p>As HCD is aware, the City and HCD are currently parties to a declaratory relief action to determine if Proposition A is preempted by State housing laws. HCD cannot use its review of the City's housing element to obtain an admission from the City that Proposition A violates the City's obligation to affirmatively further fair housing. The City is unaware of any evidence of such a violation, and, in the court action, HCD is not claiming that Proposition A violates the City's obligation to affirmatively further fair housing.</p> <p><i>HCD has accepted changes.</i></p>
<p>A2. Site inventory electronic copy required, however is still being finalized.</p>	<p>Acknowledged. <u>This will be submitted as part of the adopted Housing Element document.</u></p>
<p>A2. Site Inventory as it relates to the Armstrong Parcels.</p>	<p>Section 1, Appendix B and Appendix C have been updated to reflect use of <u>the vacant Armstrong Parcel (identified as Site 06a). The site inventory notes for Parcel 06a indicate that the net acreage excludes the identified sensitive habitat area as well as a 50 foot required buffer.</u></p> <p>The Armstrong parcel have been included as available site for lower income housing as the parcel have the realistic potential to redevelop for residential use within the eight-year planning period. R-30 zoning presents a significant development incentive. The site meets requirements for net size accommodating for known constraints, is adjacent to existing roadway infrastructure, has existing utility connections, and has R-30 zoning that has been 'deemed appropriate' for lower income housing.</p> <p><u>The City has removed Site 06b, which contains the existing Armstrong Garden Center use, from the list of available sites to meet the City's lower income RHNA need. Site 06b remains an R30 Overlay site but is not included within the 6th Cycle Housing Element.</u></p>
<p>A2. Realistic capacity of sites suitable for low income housing and no net loss.</p>	<p>The City has updated Program 1A (Pages 1- 13-17) of Section 1, Section 12 of Appendix B (Pages B- 127-134), and Appendix C to reflect the increase in the realistic site capacity to 30 units per net acre on sites which have not submitted planning applications, inclusion of the <u>vacant Armstrong Parcel (06a)</u>, addition of projects</p>

City of Encinitas 2021-2029 Housing Element Update

Response to HCD Comments

January 18, 2021

HCD Comment	<p>City Response (Section/Page) with additional comments in <u>Red Underline Strikethrough</u></p> <p>Edits are in <u>Red Underline Strikethrough</u> Format in the Housing Element Documents</p>
	<p>under construction, issued building permits, or approved since the start of the projection period on June 30, 2020, and updated ADU projections based on the City's model program and continued high demand. <u>In this revision, the City has further increased projected ADU development to 125 units per year based on the most recent production data. (Under HCD's technical guide, the City could assume production of 195 units per year., but has elected to be more conservative.)</u> With these updates, the City has concluded that the plan's capacity for units affordable to lower income households will result in a total buffer of at least 1,0641 units, over 100 percent of the City's 838-unit RHNA obligation.</p> <p><u>Program 1C (Pages 1- 19-21) has been updated to include the review of ADU production estimates every two years. If production estimates are below projected amount, the City will determine if any program improvements are needed such as constraints caused by permit processing. These constraints will be addressed within a year.</u></p> <p>The realistic capacity of sites was completed in compliance with Government Code Section 65583.2 and HCD's Housing Element Site Inventory Guidebook published on June 10, 2020. The over-100 percent buffer is well in excess of the 15 to 30 percent buffer recommended by the Guidebook. The City is aware that the current applications on the R-30 sites do not propose 100 percent affordable housing, and for that reason the City has included in the Element a very large buffer for the lower income units. Section 65583.2 requires the City to identify sites that are "adequate to accommodate" lower income housing, and all of the R-30 sites meet the standards established for lower income sites. Under Section 65863 (No Net Loss), the City may continue to consider the sites as suitable for lower income housing until a development is approved with a different income level. HCD recognized this in a September 14, 2020 email to Ms. Donna Westbrook where it stated that the City "may continue to assume housing projects will be 100 percent affordable to lower-income households, up until the time projects are approved."</p> <p>The increase in capacity from 25 units per net acre to 30 units per net acre is a conservative assumption. The applications received to date have averaged a 70 percent increase over the Fifth Cycle projected capacity of 25 units per net acre, whereas the projected</p>

City of Encinitas 2021-2029 Housing Element Update

Response to HCD Comments

January 18, 2021

HCD Comment	<p>City Response (Section/Page) with additional comments in Red Underline Strikethrough</p> <p>Edits are in Red Underline Strikethrough Format in the Housing Element Documents</p>
	<p>increase in capacity represents only a 20 percent increase. The four sites identified in Appendix C as having met with the City have still not submitted a formal application; in the City’s experience, developers’ plans may change substantially between an informal discussion and actual submittal, especially since the initial meetings were held some months ago. In any case, in these initial discussions all but one of these projects discussed density at or above 30 du per net acre.</p> <p>HCD has questioned this increase because the proposals to date are not for 100 percent lower income developments. The Guidebook states that the City "should use project densities for housing affordable to lower income households developed either locally or regionally to determine typical densities." Appendix C contains a table showing the densities of housing developed regionally, which demonstrates that four of the five North County affordable projects were developed at densities over 30 units per acre. It would also be unreasonable to expect an affordable housing development to be developed at lower densities than market-rate projects, especially since affordable projects are eligible for density bonuses of at least 80 percent.</p> <p>As acknowledged and identified in Program 1E (Pages 1- 22), the City will comply with No Net Loss requirements if and when a project is approved with less than the identified RHNA for all income levels. Any site rezoned will satisfy the adequate site requirements of Section 65583.2 and will be consistent with the City’s obligation affirmatively further fair housing, which is reflected in the update to this Program in response to HCD’s comments.</p> <p>In addition, an appeal of the Planning Commission’s approval of the Fox Point project on Site 09 is scheduled to be heard by the City Council on January 27. If the project is approved, Site 09 will be removed from the list of available sites and added to the “approved” list, and the affordability adjusted to that proposed in the project.</p>
<p>A3. Design Review applicability and requirement of traffic studies for “use by right” projects as identified in</p>	<p>Appendix B Section 9.9.1 (Pages B-110-111) Design Review section of Appendix B and Section1 Program 1B (Pages 1- 17-18) has been amended to clarify the design review process and requirements and its applicability to R-30 sites. The requirement for a traffic study, if any, is to ensure compliance with objective standards contained in the City's design review ordinance, general</p>

City of Encinitas 2021-2029 Housing Element Update

Response to HCD Comments

January 18, 2021

HCD Comment	City Response (Section/Page) with additional comments in Red Underline Strikethrough Edits are in Red Underline Strikethrough Format in the Housing Element Documents
<p>Govt. Code Section 65583.2.</p>	<p>plan, and state and local requirements for traffic safety. <u>Language has been added indicating that until the objective design standards are adopted, the City will apply existing objective standards to all housing development applications, including those on R-30 sites.</u></p> <p>In 2019, as part of its adoption of the R-30 zone, the City adopted an amendment to Chapter 30.09.010 and added Note 35 identifying that by right projects on R-30 sites are not exempt from design review or the requirements of the California Coastal Act as identified in Government Code Section 65583.2. The City recognizes that the <u>design review of</u> projects that qualify for “use by right” are not considered a “project” for purposes of the California Environmental Quality Act (CEQA). <u>A new paragraph has been added clarifying that ‘by right’ projects are reviewed for conformance with conformance with adopted general plan, zoning, subdivision, and objective design standards.</u></p> <p><u>HCD has questioned the need for traffic and other studies for “by right” projects. However, “by right” projects must conform with the City’s General Plan. Government Code Section 65759 required that the Environmental Assessment (EA) adopted for the City’s Fifth Cycle Housing Element be incorporated into the City’s General Plan. The provisions of the EA require that specific studies be completed for any sites zoned R-30. Therefore, the City must require that these studies be completed as part of the City’s design review approval to ensure that the “by right” projects conform with the City’s General Plan.</u></p> <p><u>In addition, there are other construction and safety standards that projects must meet, and studies may be required to demonstrate compliance with those standards. For instance, if a project proposes access to a public right of way, the City must ensure that ingress to and egress from the site may occur safely and that the project does not create traffic hazards. Depending on the traffic volumes expected, an analysis may be required to determine the proper lane configuration and appropriate traffic controls, such as stop signs or traffic signals. Developers expect that the City will specify needed improvements as part of the entitlement process and not impose such improvements at a later date, even if the City could impose these requirements through an encroachment permit process.</u></p>

City of Encinitas 2021-2029 Housing Element Update

Response to HCD Comments

January 18, 2021

HCD Comment	<p>City Response (Section/Page) with additional comments in <u>Red Underline Strikethrough</u></p> <p>Edits are in <u>Red Underline Strikethrough</u> Format in the Housing Element Documents</p>
<p>A3. Design Review and Citizen Participation Plans as a government constraint to housing development.</p>	<p>Appendix B Section 9.10 (Page B-113) and Section 1 Program 3F (Page 1- 42-43) were amended to discuss the purpose of citizen participation plans to address HCD’s comments. The Citizen Participation Plan process, outlined in Encinitas Municipal Code Chapter 23.06, was created to allow an applicant an opportunity to understand try to mitigate any real or perceived impacts their application may have on the community early in the process. The applicant may make changes to address any concerns but they are not required to do so. In addition, the CPPs are not used as a basis to approve or deny a project but rather provide an opportunity to reduce public opposition to projects and to make design changes that may resolve identified issues. <u>Comments received during the CPP are provided to the decision-making bodies in the staff report. Staff provides an analysis of comments received that are relevant to objective standards applicable to the proposed project for the decision-making body to consider in making the required findings.</u></p> <p><u>Section 1 Program 3D (Pages 40-41) has been amended to include clarification on the terms “expedite” and “exceed”. An additional objective has been added to analyze the development review process annually to identify any constraints and address within a year.</u></p> <p>Section 8.5 (Pages B 67-68) explains that most projects that are approved obtain building permits, demonstrating that conditions of approval do not make development infeasible.</p>
<p><u>B. Housing Needs, Resources, and Constraints</u></p>	
<p>B1. Adequacy of sites analysis to meet RHNA and Programs to address any need.</p>	<p>As noted above in the response to A2, Program 1A (Pages 1- 13-17) of Section 1, Section 12 of Appendix B (Pages B- 127-134), and Appendix C have been revised to reflect an increase in the realistic site capacity, inclusion of <u>the vacant</u> Armstrong Parcel <u>(06a)</u>, increased ADU production, and units under construction, approved, and issued building permits since the start of the projection period on June 30, 2020. The dwelling unit yield has been much higher than anticipated during the City’s 2019 Housing Element Update, with proposed units exceeding those projected by over 70 percent. The City has provided a new Table 2-3 on Page 1-13 showing the City’s progress in meeting its RHNA obligation in all income categories since the start of the projection period. Based on these updates, the City has concluded that the plan's capacity for units affordable to lower income households will result in a total buffer of</p>

City of Encinitas 2021-2029 Housing Element Update

Response to HCD Comments

January 18, 2021

HCD Comment	<p>City Response (Section/Page) with additional comments in <u>Red Underline Strikethrough</u></p> <p>Edits are in <u>Red Underline Strikethrough</u> Format in the Housing Element Documents</p>
	<p>at least 1,0641 units, over 100 percent of the City's 838-unit RHNA obligation.</p> <p>All R-30 zoning has been completed, and the City's ADU program has been recognized as a model in the state. There is no shortfall of sites. The City has adopted zoning to provide a variety of housing types.</p>
<p>B2. Program 1B: Monitoring of sites to accommodate lower-income housing and potential constraints to development</p>	<p>Program 1B (Pages 1- 17-18) been updated to describe the use of the SB2 grant to hire an experienced contract planner to help with the processing of R-30 applications, that the City has developed a detailed application form and completeness checklist to provide guidance to applicants, and that City staff will continue to adhere to the Permit Streamlining Act. The City has met the timelines established by the Permit Streamlining Act to inform applicants whether or not their applications are complete; if applications remain incomplete, it is because the information requested has not been submitted to the City. Applicants often delay completing their applications for various reasons unconnected with the City, such as the desires of investors and lenders, market changes, desires of landowners, and other reasons. <u>Language has been added that the City will make the appropriate consistency changes for any adopted provisions, standards, or other regulatory features found to be an impediment to the development of housing within one year of the finding.</u></p>
<p>B3. Program 3C: Right to Vote Amendment</p>	<p>Program 3C (Pages 1- 38-39) has been updated in response to HCD's comments related to Proposition A. It includes specific commitments and timelines for action. The City will continue to participate in the current declaratory relief action, <u>in which the City seeks limited preemption of Proposition A</u> to the limited extent necessary to comply with state law regarding the timetable for adoption of the housing element and implementing measures. It will also undertake a program to identify sites that could be designated for lower income housing if the City needs to identify additional sites due to No Net Loss or to achieve an adequate housing element in 2025. The City expects the declaratory relief action to determine whether or not Proposition A is preempted to the limited extent necessary to comply with state law regarding the timetable for adoption of the housing element and implementing measures. If the</p>

City of Encinitas 2021-2029 Housing Element Update

Response to HCD Comments

January 18, 2021

HCD Comment	<p>City Response (Section/Page) with additional comments in <u>Red Underline Strikethrough</u></p> <p>Edits are in <u>Red Underline Strikethrough</u> Format in the Housing Element Documents</p>
	<p>courts determine that there is limited preemption, it will no longer pose a constraint to compliance with state housing law.</p> <p>A vote to amend Proposition A could be an alternative means to remove the constraint. However, the Encinitas City Council can best judge whether and when a vote to amend Proposition A might be successful. HCD has no evidence that its demand that a specific date be set for a vote to amend Proposition A will result in success. The courts have held that, in considering the adequacy of a housing element, they will not interfere with a city's assessment of policy. (Fonseca v. City of Gilroy (2007)148 Cal.App.4th 1174, 1191-92.) Here HCD is attempting to substitute its judgment for that of the elected City Council, in a situation where the City has superior knowledge and in excess of HCD's authority.</p> <p><u>In its second review, HCD requested minor changes in the wording of Program 3C, which have been made by the City.</u></p>
<p>B3. Program 3F: Creating community support for housing through a variety of education and outreach</p>	<p>Program 3F (Pages 1- 42-43) has been updated to incorporate HCD's recommended actions including a program to hold at least four workshops/listening forums a year on housing topics.</p> <p><u>Additionally, Program 3F has been updated to include language stating that the objective design standards and other educational materials will be available to the public online and in hard-copy at City Hall and the public libraries. Additional language clarifying the CPP process has been added within the program description. In addition, the infrastructure needs will be reviewed as part of the City's annual adoption of its capital improvement program.</u></p>
<p>B4. Program 3H: Examining and mitigating barriers</p>	<p>Program 3H (Pages 1- 44-45) has been updated to incorporate HCD's recommended action to analyze the reasons that Encinitas is dissimilar to the San Diego Region in racial and ethnic diversity.</p> <p><i>HCD has accepted changes.</i></p>
<p>B4. Program 5A: Outreach and engagement of a broader audience in affirmatively furthering fair housing activities.</p>	<p>Program 5A (Pages 1- 47-52) has been updated to incorporate HCD's suggestion to offer educational opportunities to staff and engage a broader audience in community decisions and public workshops, and report fair housing complaint resolution and litigation to the media. The Program includes expanded quantifiable actions with target audience and timeframes.</p>

City of Encinitas 2021-2029 Housing Element Update

Response to HCD Comments

January 18, 2021

HCD Comment	City Response (Section/Page) with additional comments in Red Underline Strikethrough Edits are in Red Underline Strikethrough Format in the Housing Element Documents
	<i>HCD has accepted changes.</i>
B4. Program 5C: Engage Legal Aid Society of San Diego, or similar service provider in conducting study	Program 5C (Page 1- 53) has been updated to identify potential partners to participate in the study that specialize in eviction-related topics related to displacement, such as the Legal Aid Society of San Diego. <i>HCD has accepted changes.</i>
C. Public Participation	
C. Public participation	<p>Section 1.5 (Pages 1- 5-8) and Appendix A have been updated to reflect the continued public participation efforts, including making materials available in Spanish which are now available online. The City will be<u>is</u> conducting another questionnaire in English and Spanish in December <u>and January</u>. City continues to make efforts to circulate the element among low- and moderate-income households, diverse ethnic racial populations and organizations. <u>The questionnaire along with information on how to comment on the Housing Element was sent to a number of organizations to try to increase participation including Faith in Action, Keys 4 Homes, Encinitas 4 Equality, local school districts, and Los Angelitos de Encinitas. The City also sent letters and emails to all landlords, property managers, and residents in the City's affordable units and Section 8 program.</u> In addition, a table showing the City's response to public comments received in June through August is available in Appendix A.</p> <p><u>Additionally, Section 1.5 has been updated to show the concerted effort the City has made to outreach to all stakeholders and encourage participation throughout the Housing Element Update process. A summary of actions has been included within the element.</u></p> <p><u>In Appendix A, a number of additional outreach efforts overlapped with the Housing Element process. The information and data collected from these efforts is included within the Housing Element and provided valuable information especially related to affordable housing and fair housing.</u></p>

City of Encinitas 2021-2029 Housing Element Update

Response to HCD Comments

January 18, 2021

<p>HCD Comment</p>	<p>City Response (Section/Page) with additional comments in <u>Red Underline Strikethrough</u></p> <p>Edits are in <u>Red Underline Strikethrough</u> Format in the Housing Element Documents</p>
	<p><u>The City continues to provide updates to all interested parties on the Housing Element. Additional outreach will continue to occur through adoption and as the City implements the Housing Element.</u></p> <p><u>An email with a link to the latest draft has also been sent to Public Law Interest Project as requested by HCD.</u></p>
<p><u>D. Consistency with General Plan</u></p>	
<p>D. Consistency with the General Plan</p>	<p>The City will identify and update other Elements of the General Plan as required by State Law. The City believes that the current draft of the Housing Element is consistent with the other Elements of the General Plan and that no amendments to other Elements are needed.</p>
<p><u>E. New Comments Received January 11, 2021</u></p>	
<p><u>E1. Describe recent changes to City's ordinance implementing State Density Bonus Law</u></p>	<p><u>Program 2D (Pages 1-31-32) briefly describes the City's recently adopted amendments to state density bonus law. In addition, a new program element has been added to require the City to evaluate the success of the new housing program included in the ordinance in incentivizing affordable housing.</u></p> <p><u>HCD expressed concerns about several of these amendments in a letter dated December 16, 2020. The City will provide a formal response to HCD's letter but responds in part here.</u></p> <ol style="list-style-type: none"> <u>1. HCD questioned whether the housing program included in the ordinance would incentivize the construction of affordable housing.</u> <p><u>In its adoption of the ordinance, the City described several reasons why its program would incentivize affordable housing, including:</u></p> <ol style="list-style-type: none"> <u>a. Very large bonuses for small increases in affordable housing undermine the 80 percent bonus offered for 100% affordable housing. The Western Center for Law & Poverty and California Rural Legal Assistance raised similar concerns regarding a 50 percent bonus for only 15 percent very low income units that would be imposed if the City did not adopt its own program. Encinitas has the greatest needs for affordable housing rather than market-rate housing and did not want to undermine incentives intended to create 100 percent affordable housing developments.</u>

City of Encinitas 2021-2029 Housing Element Update

Response to HCD Comments

January 18, 2021

HCD Comment	City Response (Section/Page) with additional comments in Red Underline Strikethrough Edits are in Red Underline Strikethrough Format in the Housing Element Documents
	<p>b. <u>A Terner Center report showed a lower rate of return with a 50 percent bonus than with current density bonus law.</u></p> <p>c. <u>Encinitas has had great success with the bonuses provided by current law, with most of the larger projects in the City utilizing density bonus. Encinitas therefore designed its program to provide the same percentage increases in affordable housing v. bonus as had been successful in incentivizing the use of density bonuses to create more affordable housing, without undermining the bonuses provided for 100 percent affordable projects.</u></p> <p><u>However, recognizing that the success of programs cannot be known until they are implemented, an element has been added to Program 2D to evaluate the program’s success after two years and to make modifications if the program is not successful in incentivizing affordable housing.</u></p> <p>2. <u>HCD noted that the City has the burden of proof to deny an incentive or concession and questioned whether the application requirements for an incentive or concession were permitted by density bonus law.</u></p> <p><u>The City agrees that it has the burden of proof to deny an incentive or concession. However, Government Code Section 65915(a)(2) states that the City may require “reasonable documentation” to “establish eligibility” for an incentive or concession, and Section 65915(j)(1) states, more specifically, that a “study,” which is not allowed, does not include “reasonable documentation to establish eligibility” for a concession or incentive and does not include reasonable documentation “to demonstrate that the incentive or concession meets the definition” of an incentive or concession contained in density bonus law.</u></p> <p><u>Financial analysis of some kind is needed to demonstrate that an incentive both “results in identifiable and actual cost reductions” and that those reductions “provide for” affordable costs or rents. The draft ordinance does not specify what financial analysis is required; the applicant may submit whatever information he/she believes demonstrates eligibility. The City’s language in the ordinance mirrors the language and intent of the statutory language.</u></p>

City of Encinitas 2021-2029 Housing Element Update

Response to HCD Comments

January 18, 2021

HCD Comment	City Response (Section/Page) with additional comments in Red Underline Strikethrough Edits are in Red Underline Strikethrough Format in the Housing Element Documents
	<p>3. <u>HCD expressed concern that the City was amending its ordinance, which it asserted calculates density based on gross acres, to use net acres instead.</u></p> <p><u>Encinitas' previous density bonus ordinance did not state that density for purposes of a density bonus was to be calculated based on gross density, nor had any policy-making body adopted such a policy. The City's housing and land use elements both calculate site capacity and allowed density based on net density. The previous ordinance deferred to definitions in Section 65915. That section contains no definition for "maximum allowable gross residential density" but does have a definition for "maximum allowable residential density." The amendment states the City's actual policy consistent with its General Plan and is consistent with the policies of other cities it has surveyed, including the City of San Diego. Most approved density bonus projects shown in Table B-40 utilized net density. Consequently, the City does not believe that this clarification disincentivizes affordable housing.</u></p>
<u>E2. Update Program 1C</u>	<u>Program 1C (Pages 1- 19-21) has been updated to include an objective stating that the City will conduct production reviews every two years and will determine/make any program improvements if needed within one year.</u>
<u>E3. Update Program 2D to reflect the language within AB 2345</u>	<u>Program 2D (Pages 1- 30-32) has been updated to reflect language within AB 2345 related to Government Code Section 65915(s) and other statutory language.</u>
<u>E4. Incorporate description of City's newly adopted Group Home Ordinance</u>	<u>Appendix B Section 9.3.6 (Pages B- 93-94) has been added to describe the City's newly adopted Group Home Ordinance. A similar ordinance has been found by a federal District Court jury to benefit the disabled and so consistent with fair housing law, as further described in Section 9.3.6. The City has amended Program 2E (Pages 1- 32-33) to state that it will amend the ordinance if there is any change in case law.</u>
<u>E5. Revise Program 2E to include dates by which revisions will be made if inconsistencies are determined to exist.</u>	<u>The City is aware of inconsistencies only regarding supportive housing and navigation centers. The program was modified to state that if new state laws or cases create inconsistencies regarding special needs housing, the City will modify its ordinances within one year.</u>

City of Encinitas 2021-2029 Housing Element Update

Response to HCD Comments

January 18, 2021

HCD Comment	City Response (Section/Page) with additional comments in Red Underline Strikethrough Edits are in Red Underline Strikethrough Format in the Housing Element Documents
<u>E5. Cultural Resources Overlay</u>	<u>Appendix B Section 9.1.7 (Pages B- 73-74) has been updated with additional information. The Final Environmental Assessment adopted with the Fifth Cycle Housing Element and incorporated into the City's General Plan identifies the R-30 sites that potentially may have ecologically sensitive plant and animal habitats or could contain archaeological and tribal cultural resources. The project staff will inform the applicant if a site-specific study for biology or archaeology is required based on the analysis in the EA; the EA provides detailed requirements for the content of the studies. Mitigation measures are identified in the EA if a significant impact is identified, or the report may recommend mitigation measures. Because the EA is incorporated into the General Plan, the City is required to ensure that developments on R-30 sites comply with its requirements. The City has accounted for deductions due to sensitive habitat areas in determining site capacity, and to date this Overlay Zone has not reduced the capacity of any site below that shown in the Housing Element.</u>