



# City of Encinitas

Development Services Department

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

December 4, 2020

SUBMITTED VIA MAIL AND 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 6<sup>th</sup> Cycle Housing Element 2021-2029 Update – Response to Comments**

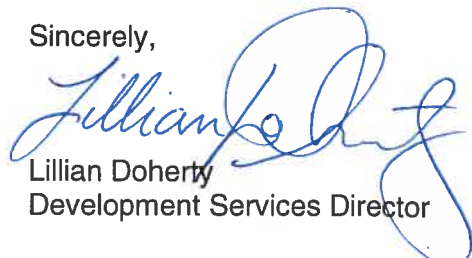
Dear Ms. Huntley:

The City of Encinitas thanks you for the opportunity to respond to comments received in the letter dated August 27, 2020. The revised submittal documents that are included are also 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 5<sup>th</sup> 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 a table with our responses to the comments received from HCD and where the edits can be found within each document. All edits since August 27, 2020 are identified in red in ~~strikethrough~~ underline format. In addition, responses to public comments received from June through August, including the letters sent to HCD from Camille and Virginia Perkins are included in Appendix A. 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 HCD Comments

**City of Encinitas 2021-2029 Housing Element Update**

**Response to HCD Comments**

**December 2020**

HCD Comment	City Response (Section/Page) Edits are in <u>Red Underline Strikethrough</u> Format
<b>A. Housing Needs, Resources, and Constraints</b>	
<p>A1. Fair housing issues related to community opposition and the development of housing.</p>	<p>Section 1 Program 3F (Pages 1- 39-40) 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- 67-68) 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>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- 39-40), 3H (Pages 1- 41-42), 5A (Pages 1- 44-50), and 5C (Page 1- 51) 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- 67-68) 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>A1. Fair housing issues related to Proposition A.</p>	<p>Section 9.1.10 (Pages B- 76-77) 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> <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,</p>

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	and, in the court action, HCD is not claiming that Proposition A violates the City's obligation to affirmatively further fair housing.
A2. Site inventory electronic copy required, however is still being finalized.	Acknowledged
A2. Site Inventory as it relates to the Armstrong Parcels.	Section 1, Appendix B and Appendix C have been updated to reflect use of Armstrong Parcels. The Armstrong parcels have been included as available sites for lower income housing as the parcels have the realistic potential to redevelop for residential use within the eight-year planning period. HCD's refusal to include the sites in the Fifth Cycle Element was based on the lack of a letter from the owner, given the very short time remaining in the planning period. However, the full planning period is now available, the site has been offered for sale, and similar uses (Sunshine Gardens) have made applications for R-30 development. 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.
A2. Realistic capacity of sites suitable for low income housing and no net loss.	<p>The City has updated Program 1A (Pages 1- 12-16) of Section 1, Section 12 of Appendix B (Pages B- 125-132), 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 Armstrong Parcels, addition of projects 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. 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 at least 1,041 units, over 100 percent of the City's 838-unit RHNA obligation.</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</p>

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	<p>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 <b>net</b> acre to 30 units per <b>net</b> 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 increase in capacity represents only a 20 percent increase. 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- 20-21), 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>A3. Design Review applicability and requirement of traffic studies for "use by right" projects as identified in Govt. Code Section 65583.2.</p>	<p>Section 9.9.1 (Pages B-108-109) Design Review section of Appendix B and Section1 Program 1B (Pages 1- 16-18) 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 plan, and state and local requirements for traffic safety.</p>

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	<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 projects that qualify for “use by right” are not considered a “project” for purposes of the California Environmental Quality Act (CEQA).</p>
<p>A3. Design Review and Citizen Participation Plans as a government constraint to housing development.</p>	<p>Section 9.10 (Page B-111) was added to Appendix B 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.</p> <p>Section 8.5 (Pages B 66-67) explains that most projects that are approved obtain building permits, demonstrating that conditions of approval do not make development infeasible.</p>
<p><b>B. Housing Needs, Resources, and Constraints</b></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- 12-16) of Section 1, Section 12 of Appendix B (Pages B- 125-132), and Appendix C have been revised to reflect an increase in the realistic site capacity, inclusion of Armstrong Parcels, 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 at least 1,041 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</p>

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	sites. The City has adopted zoning to provide a variety of housing types.
B2. Program 1B: Monitoring of sites to accommodate lower-income housing and potential constraints to development	Program 1B (Pages 1- 16-17) 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.
B3. Program 3C: Right to Vote Amendment	<p>Program 3C (Pages 1- 35-37) 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 to determine if state law preempts Proposition A 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 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</p>



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	elected City Council, in a situation where the City has superior knowledge and in excess of HCD's authority.
B3. Program 3F: Creating community support for housing through a variety of education and outreach	Program 3F (Pages 1- 39-40) 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.
B4. Program 3H: Examining and mitigating barriers	Program 3H (Pages 1- 41-42) 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.
B4. Program 5A: Outreach and engagement of a broader audience in affirmatively furthering fair housing activities.	Program 5A (Pages 1- 44-50) 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.
B4. Program 5C: Engage Legal Aid Society of San Diego, or similar service provider in conducting study	Program 5C (Page 1- 51) 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.
<b>C. Public Participation</b>	
C. Public participation	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 conducting another questionnaire in English and Spanish in December will be sent through a number of partners to try to increase participation. City continues to make efforts to circulate the element among low- and moderate-income households, diverse ethnic racial populations and organizations. In addition, a table showing the City's response to public comments received in June through August is available in Appendix A.
<b>D. Consistency with General Plan</b>	
D. Consistency with the General Plan	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.