



City of Encinitas

Development Services Department

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

January 28, 2019

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

**RE: RESPONSES TO COMMENTS SUBMITTED TO HCD REGARDING THE
DRAFT 2019 ENCINITAS HOUSING ELEMENT UPDATE**

Dear Ms. Huntley:

The following is the response of the City of Encinitas to the following comments submitted to the City and HCD regarding the Draft 2019 Encinitas Housing Element Update:

- Letter dated January 16, 2019 from the Public Interest Law Project (PILP).
- Letter and attachments dated January 18, 2019 from the Building Industry Association of San Diego County (BIA).
- Letter dated January 21, 2019 from Nick Lee, Baldwin & Sons.
- Email dated January 17, 2019 from Donna Westbrook.
- Email dated January 23, 2019 from Scott Graydon Carter

PILP LETTER

Many of these comments were previously submitted to the City as well as HCD. They have been considered in drafting the City's Housing Element and responded to in the City's May 25, 2018 and June 12, 2018 letters to HCD, which are incorporated by reference. Comments are responded to in the order discussed in the January PILP letter.

Adequate Sites

The comment letter continues to argue that the City has overestimated the capacity of most sites designated for lower income housing in the Housing Element. The City's May 25 and June 12, 2018 letters responded in detail to each of the issues raised, and additional information was provided in the City's December 21, 2018 letter to HCD. In regard to the Sage Canyon site, the site has been purchased, and the current owner has provided letters to the City and HCD stating his intent to develop under the proposed R-30 zoning.

While the City continues to believe that the Armstrong parcels are available for development within the planning period, based on contacts with the owner and potential purchasers, the

inventory of sites suitable for lower income housing is adequate whether or not the Armstrong parcels are included. Without the Armstrong parcels, the sites designated for lower income housing could accommodate 1,449 units, well in excess of the City's remaining lower income RHNA of 1,141 units.

The City would reiterate that, under the Housing Accountability Act, the City must approve housing development projects at the 30 units per net acre densities shown in the General Plan (as reflected in the Housing Element) unless detailed findings can be made. However, site capacity has been conservatively estimated at 25 units per net acre, so reductions in unit count below that number are highly unlikely.

Site-Specific Analysis

Appendix C contains a detailed, independent, site-specific analysis of each site designated for lower income housing. It has buttressed this independent review with letters from property owners stating their interest in site development. Additional analysis of each of the factors listed in Government Code section 65583.2(g)(1) is contained in Appendix B, pages B-83 to B-93. While information about environmental constraints "need not be provided on a site-specific basis" under Government Code section 65583.2(b) (as noted in the PILP letter), the City has deducted environmentally sensitive areas from site capacity where those constraints are known, and additionally responded to alleged constraints and other issues raised by PILP throughout the City's May 25, June 12, and December 21, 2018 letters.

The analysis of each site identified in the Housing Element Inventory satisfies legal requirements and demonstrates the ability to accommodate the projected unit yield of at least 1,504 units.

Development Standards

HCD's letter to the City dated July 5, 2018 expressed concern about loss of development capacity caused by the required 30-foot third story setback when a site upzoned to R-30 is adjacent to single-family homes and duplexes. PILP states that the City's response, in its December 21, 2018 letter, reviewed only the impact of the requirement on sites included in this Housing Element and not the impact on sites that may be surrounded on all sides by single-family homes and duplexes.

The City's December 21, 2018 letter considered the impact of the change *in general*. It noted that, while the required third story setback would reduce building volume, the elimination of a required third story setback and reduced first- and second-story setbacks would *increase* building volume and reached these conclusions:

For sites not adjacent to single-family homes or duplexes, the elimination of the third-story setback provides additional building volume.

For sites adjacent to single-family homes or duplexes, the five-foot reduction in the first and second floor setbacks provides additional building volume equal to that lost on the third floor, *even if a site is entirely surrounded by single-family homes and duplexes*.

The City further supplemented this analysis on January 10, 2019 with a memo providing an example of how the proposed development standards would apply to a hypothetical parcel surrounded on two sides by single-family homes or duplexes. The analysis illustrates the precise point above: even when considering the City's proposed height, setback, parking, and amenity requirements together, the proposed third-floor setback would not limit a project's ability to develop at 30 dwelling units per acre. Additional analysis of these issues is attached to this letter.

The City's December 21, 2018 letter and subsequent analysis demonstrate that, even in a worst case situation, the 30-foot third story setback would result in no loss of building volume in comparison with the development standards reviewed and approved by HCD in its June 12, 2018 letter.

No Net Loss

The Housing Element correctly cites the No Net Loss statute (Government Code section 65863) in Program 3D, stating that it will make the required findings if a site is proposed for development "with fewer units *or at a different income level*" than shown in the Housing Element. The City has also committed to rezoning sufficient sites within 180 days if required to accommodate the City's RHNA.

It is incorrect that rezoning is required whenever the City approves fewer units or a different income level for a site than shown in the Housing Element. Rather, the City may find that the remaining sites in the Housing Element are adequate or may identify "additional, adequate, and available sites" so that there is no net loss of capacity. Only if neither finding can be made is the City required to rezone additional sites.

BIA LETTER AND ATTACHMENTS

The proposed development standards previously approved by HCD in its letter to the City of June 12, 2018 will allow development at the proposed R-30 density. Site capacity has been estimated conservatively. HCD has received letters both from members of the community who believe that R-30 densities can be accomplished with more rigid standards and from members of the development community who believe that the standards should be further loosened. Based on the analysis of its consultants, the proposed standards comprise a reasonable position between these viewpoints and will accommodate the proposed R-30 density.

Comments are generally responded to in the order addressed in the BIA letter dated January 18, 2019.

Effective Date of Housing Element and Zoning Ordinance

The City has committed to providing that the Housing Element and associated rezonings will become effective 30 days after adoption outside the coastal zone. Within the coastal zone, they will become effective upon approval by the California Coastal Commission.

An ordinance cannot become effective "immediately" unless adopted as an urgency ordinance, which is not appropriate for these ordinances.

Building Height Limit

The BIA suggests that the building height limit be increased to 37 feet, and the diagrams included in the BIA's proposed zoning revisions (included as Attachment 4) show a uniform height limit of 37 feet, for both buildings with flat roofs and those with sloped roofs, with an additional five feet allowed for projections such as elevator shafts.

The development standards proposed by the City already allow building heights of 37 feet for sloped roofs and permit an additional five-foot for projections such as elevator shafts. (See Section 30.16.010.B.6.a.iii.) Approximately four feet less height is required for buildings with flat roofs, making a height limit of 33 feet appropriate if developers elect to develop with flat roofs. The building heights proposed by the City (33 feet and 37 feet) were approved by HCD in its letter of June 12, 2018. For HCD's information, we are attaching (as Attachment 1) the diagrams presented to and approved by the City prepared by Kimley-Horn showing how three stories can be accommodated at 33 feet and 37 feet.

One Acre Development Standards Example

The City disagrees with the modifications made to the 'One Acre Development Standards' by the BIA. The original 'One Acre Development Standards Example' prepared by the City's planning and design consultant, Kimley-Horn and Associates, is shown in Attachment 2 of this letter. In general, the BIA modifications are based on unrealistic assumptions, such as an average parking stall size that is much larger than a typical area required, even after accounting for drive aisles and parking structure facilities. Please see Attachment 3 with a detailed response to specific BIA critiques.

In addition to the 'One Acre Development Standards' analysis, Kimley-Horn has prepared an analysis of the Sage Canyon site (Parcel AD-1) using previously approved building pads and grading plans to identify buildable areas. Within these real-life buildable areas, Kimley-Horn's analysis illustrates two potential development concepts that comply with all of the City's proposed development standards while achieving 30 dwelling units per acre. Even on a site with greater-than-average slopes requiring both cut and fill, it is possible to achieve the required density within the proposed height limit and by measuring height from the lower of natural or finished grade. Please see Attachment 4 for more information and illustrations.

Monitoring Program (Program 3H)

It is not correct that all changes made in the R-30 development standards at a future date, to ensure that the zoning is workable, will necessarily require a vote under Proposition A. The City has made numerous changes in its zoning ordinance (such as the adoption of an emergency shelter ordinance) that do not require a public vote.

Measurement of Height from Natural Grade or Finish Grade

Section 30.16.010.B.6.d provides a discretionary process to respond to the concerns regarding the feasibility of development when height is measured from natural grade. HCD's letter of June 12, 2018 approved this process as part of its approval of the City's proposed development standards. Natural grade may be modified in a wide variety of situations, such as to achieve adequate site drainage, comply with recommendations of a soils engineer, for disabled accessibility, for hazardous waste remediation, and in general for any condition where there is a physical constraint that precludes developers from achieving the allowed R-30 density. The need for a discretionary process by itself does not preclude development, and no vote will be needed under Proposition A.

Net Acreage

The BIA requests that net acreage be defined as gross acreage, minus areas to be dedicated for future rights-of-way and minus easements for public or private streets/roads, with no other deductions allowed. Steep slopes, floodplains, beaches, permanent bodies of water, significant wetlands, major power transmission easements, and railroad track beds would then all be included in the developable area of the site (see BIA proposed changes to Section 30.16.010.B.2. in BIA Attachment 4).

Housing Element law (Gov't Code § 65583.2(c)(2)) requires that the capacity of a site be adjusted based on land use controls and on the "realistic" development capacity of a site. Clearly it is not realistic to build housing in floodplains, permanent bodies of water, significant wetlands, major power transmission easements, and railroad track beds. In regard to slopes, it is "realistic" to assume that slopes up to 25% can be easily developed, that perhaps half of slopes from 25 to 40% can be developed, and that slopes of over 40% are largely undevelopable, and these steeply sloped areas have been removed from calculations of site capacity (see Appendix C). Including these steep slopes in developable acreage would have the potential to encourage massive grading.

Additionally, most R-30 sites are located in the coastal zone. It is highly unlikely that the changes recommended by the BIA would be approved by the Coastal Commission, and they would result in a significant over-estimation of site capacity.

Although the BIA's proposed amendments allow deductions for public or private streets and roads, Mr. Nick Lee, in a letter dated January 21, 2019, stated that this provision would result in a substantial loss of net acreage. For the purposes of calculating density, the City's definition of net acreage excludes existing and future right of ways and easements for public and private streets/roads, but it does not deduct the area of parking lots, driveways, and drive aisles from gross acreage.

Standards Included in 'At Home in Encinitas'

The BIA suggests that certain standards be adopted from 'At Home in Encinitas,' the Measure T development standards rejected by the voters in 2016. (See discussion above regarding changes to the definition of net acreage.)

The Measure T development standards are over 100 pages long and contain detailed design and development standards for different neighborhoods. Most of the sites included in the Measure T Housing Element do not meet current state law standards, and the sites selected are very different from those included in the City's current draft Housing Element. The City therefore believes that it is more productive to examine the adequacy of the current proposed standards rather than attempt to resurrect standards created for very different sites. (Note also that there is no evidence in the City's records that HCD ever reviewed the Measure T development standards.)

Net Lot Area

It appears that in a number of instances net acreage and net lot area are being confused. "Net lot area" and "net acreage" are not one in the same. The definitions of both are found in Municipal Code Chapter 30.04, Definitions. "Net lot area" only applies when subdividing a property and only excludes streets within the boundary lines of a lot and the area contained within the panhandle portion of a panhandle lot in a zone where the minimum required lot size is 10,000 square feet. This definition does not reduce "net acreage" for the purpose of determining site capacity or allowed density. The definition of "net acreage" is discussed in more detail above.

Table B-43

The City's fees have all been adopted as required by the Mitigation Fee Act, based on required nexus studies or studies of the cost of service, as appropriate to the fee. Providing funds for the provision of infrastructure (parks, open space acquisition, trail development, traffic, sewer, and water) is necessary to support residential construction and to decrease opposition to development.

Design Review Finding (Appendix B, Section 8.8.1)

The City has committed to removing this finding in Program 3B.

Inclusionary Requirements

The City has authorized significant additional economic feasibility studies to ensure that any increases in required inclusionary housing in market-rate development do not constrain housing production.

Piraeus (Site #2)

During development of this site, any habitat areas will be precisely identified and appropriate mitigation will be implemented. However, habitat areas are not deducted when calculating the

net acreage of the site, and the site must be allowed to achieve the density stated in the Housing Element. Therefore, the presence of any habitat identified during development will not reduce the overall density permitted or the projected unit count on the site.

Encinitas Blvd./Quail Gardens (Site #5)

Acreage on this site was reduced for steep slopes. In a review of a previous application, a Planning Commission interpretation was approved for the site, which found that the property contains manufactured steep slopes consisting of artificial fill soils, which are not considered natural grade for purposes of development. The acreage utilized for calculating unit capacity in the Housing Element was based on this interpretation.

Revisions to Zoning Ordinance (Attachment 4)

The specific revisions drafted by the BIA in many cases affect sites that are not proposed for rezoning to R-30. Therefore, the City will draft any necessary changes after receiving comments from HCD.

Most of the revisions proposed in the zoning ordinance have been discussed above. Additionally, the BIA proposed changes in the following sections:

1. Section 30.16.010.B.6.e: This change is not needed because this section is not applicable to the proposed R-30 overlay zone.
2. Section 30.16.010.B.7. This change is also not needed because there is no FAR limit in the proposed R-30 zone. See table Section 30.16.010.A.3.
3. Section 30.16.010.E.13. This section already states that if there is any conflict between development standards in Section D and those in Section E, applicable to the R-30 zone, those in Section E supersede the Section D standards.

LETTER FROM NICK LEE, BALDWIN & SONS

Comments are responded to in the order addressed in Mr. Lee's letter dated January 21, 2019.

Height Measurement from Natural Grade

Please see discussion above in response to BIA letter. Given the need for substantial fill on the site, if strict interpretation of the code results in a constraint that precludes development at R-30 densities, the finding can be made to modify the determination of natural grade for the purpose of determining building height. This discretionary process was previously approved by HCD in its letter of June 12, 2018.

33-Foot Height Limit for Flat Roofs

Please see Attachment 1, demonstrating the feasibility of 33-foot and 37-foot height limits and the response to the BIA's concerns regarding building height. HCD's letter of June 12, 2018 previously approved these proposed height limits based on the evidence submitted by the City.

It appears that the height requested by Mr. Lee could largely be accommodated within the proposed 33-foot height limit. In particular, a parapet of only 30" is required by the Building Code. The proposed standards already accommodate a four-foot screen around mechanical equipment by allowing an additional five foot projection above the height limit is allowed in order to accommodate necessary equipment (such as elevator shafts and mechanical equipment) *and* screening, as long as any projections do not occupy more than 25 percent of the roof area and are set back a minimum of 10 feet from the edge of the wall plane on all sides. (Section 30.16.010B.6.iii.) Projections as specified in Section 30.16.010B.6.ii (towers, hips, spires, etc.) zone may be four feet above the 33- foot limit.

Net Acreage

Please see discussion above in response to BIA letter regarding limiting exclusions from net acreage to public right-of-way.

EMAIL FROM DONNA WESTBROOK

Comments are responded to generally in the order addressed in Ms. Westbrook's email dated January 17, 2019, regarding the Sage Canyon site (parcel AD1).

Sage Canyon was the subject of a previously approved application, and so accurate information regarding slopes, wetlands, and environmentally sensitive areas was available to the City. Consistent with the building envelope of the previously approved tentative map for the Sage Canyon site, the area available for development was determined to be 2.4 acres, substantially less than the gross 5.23 acres. It is anticipated that the wetlands required to be restored in the previous development approval will be restored with any future application.

As stated in the City's earlier correspondence, because of the general lack of public transportation in Encinitas, most residents of affordable housing own or have access to automobiles. Unfortunately, there are few sites in the City located in a transit priority area.

In relation to monitoring development on these sites, Housing Element Program 1D requires that the City comply with the 'No Net Loss' statute (Gov't Code § 65863) so that adequate sites will remain throughout the planning period.

EMAIL FROM SCOTT GRAYDON CARTER


Mr. Carter suggests that affordable housing may be provided at lower densities (16 to 22 units per acre) to create a suburban feel, rather than requiring three-story buildings at higher densities.

In Encinitas, densities allowing 30 units per acre are considered to be "appropriate" to accommodate housing for lower income households. (Gov't Code § 65583.2(c)(3)(B)(iv).) Therefore the City is required by state law to zone sufficient sites at 30 units per acre to accommodate its remaining lower income need, calculated as 1,141 units of lower income housing.

It is correct that affordable housing may be built at lower densities, and nothing prevents an applicant from constructing a lower density affordable housing project. However, to comply with State law, the City is required to zone sites to allow 30 units per acre.

Should you have any further questions or comments, please feel free to contact me directly at 760/633-2712 or bwisneski@encinitasca.gov.

Sincerely,



Brenda Wisneski
Development Services Director

Attachments:

1. Justification for Proposed Height Limits of 33-Feet and 37-Feet
2. One-Acre Development Example
3. Response to BIA Critique of One-Acre Development Examples
4. Sage Canyon Development Example