



January 18, 2019

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re: Encinitas Housing Element, post judicial ruling

Dear Ms. Huntley:

I hope this communication finds you in good health and that you enjoyed your holiday break.

I am writing in response to the City of Encinitas's most recent letter to HCD dated December 21 2018 and the subsequent January 10<sup>th</sup> letter regarding one acre development example. I would ask that you refer to our previous communications to your office on May 11<sup>th</sup> and August 8<sup>th</sup>, 2018 as well. The BIA would like to make you aware of the following points:

1. We find it interesting that in the City letter to HCD on Dec. 21<sup>st</sup> the City failed to inform HCD of the Court's Writ of Mandate directing the following:
  - a. The Court is not persuaded that it is appropriate to order the implementation of any particular measure under the Government Code SS65754, only that **whatever measure is implemented must receive Department of Housing and Community Development approval.**
  - b. IT IS ORDERED, ADJUDGED, AND DECREED that the City shall bring its general plan into compliance with the Government Code within 120 days pursuant to the Government Code SS65754 **and to comply with the requirements relating to the Department of Housing and Community Development as set forth in Government Code SS, 65754 (a)**
  - c. The Court has retained supervision of this process and can step in if the City fails to incorporate changes to its Development Standards and Zoning Code as directed by HCD. However, HCD must make its direction clear enough that a Court can understand what has been requested of the City. To that end, the BIA is providing the following comments and attachments to HCD in an effort to ensure the City's Housing Element will actually produce housing.

2. The City should not be allowed to delay the approval of projects outside of the Coastal Zone. In the City's Dec 21<sup>st</sup> letter on page 15, under the heading "Allow To Go Into Effect Outside the Coastal Zone before Coastal Commission Approval," the City states that "One letter submitted to HCD recommends that the sites outside of the Coastal Zone be able to proceed as soon as the Housing Element is adopted" and the City's response: The City has agreed that while the Local Coastal Program Amendment (LCPA) is being processed at the Coastal Commission development applications for the up-zoned sites may begin the review process. Additionally, the City is initiating talks with Coastal Commission staff to address the required LCPA process. The City will propose that the Housing Element and the zoning amendments go into effect upon Council adoption for the two up-zoned sites located outside of the coastal zone. Further, in the proposed Zoning Code the statement is not appropriate nor consistent with the City's representations as quoted here per Ordinance 2018-07 SECTION FOURTEEN: CALIFORNIA COASTAL COMMISSION CERTIFICATION REQUIRED. "This Ordinance will become effective *following* certification by the California Coastal Commission as being consistent with the Local Coastal Program for the City of Encinitas."

Please direct the City to follow through on their assertions and make the implementing ordinance effective *immediately* for any properties outside of the Local Coastal Program and not subject to the oversight of the California Coastal Commission.

3. It is critical to point out that the Court Order also provides for a "ONE TIME" exemption from the City's restrictive measures set forth in Proposition A for this current Housing Element Update. As a result, many of the City's efforts and promises to offer to make changes to their Development Standards if necessary in the future, must be rejected by HCD now as "Infeasible" because they will be restricted by Proposition A and are therefore not reasonable features to rely upon. For example, the Dec. 21<sup>st</sup> letter from the City stated "The City also intends to adopt an emergency shelter ordinance, and all zoning and specific plan changes required to up-zone sites to **30 units per acre**". This 30 du/ac is an important concept that the BIA wants HCD to be aware of, but in fact the City has not proposed to allow for 30 units per acre, or even close to this density, due to the extensive reductions to density built into their restrictive and oppressive Development Standards. Please refer back to our April 18<sup>th</sup> and June 13<sup>th</sup> comment letters to the City of Encinitas (attached) identifying numerous issues that the City has not adequately addressed. The City's Development Standards if not revised will not allow adequate multi-family densities and are sure to not allow more than 10 units per acre. Specifically, please take note of the following issues:
  - a. City Exhibit 2018-07-3 Section 30.16.010 B.6.a references building heights stating "The standard height limit for residential buildings, shall be the lesser of...three stories in the R-30 Overlay zone or the following height...33 feet". The City has argued that they have allowed enough height for 3-story buildings but this includes all projections, and the measurement approach is much more restrictive. Please direct the City to eliminate the conflict and state that 3-story buildings are allowed up to 37 feet plus necessary projections on the roof. The

City has argued that elevator shafts and structures are not necessary, however, such elevator designs are not approved by the State of California as a matter of right but only by special application that is discretionary.

- b. The City provided the “One Acre Development Standards example that, once corrected for real work development constraints, including on-site fire circulation and parking areas as shown on the attached documents, that 30 du/acre is barely achievable with full use of a one acre parcel without additional setbacks for the 3<sup>rd</sup> floor as proposed by the City. Please see our attached corrected “One Acre Development Potential”.
- c. The City has referenced, and in fact relied upon, a “Monitoring Program” called “3H” to make “any necessary adjustments” to the City’s Development Standards in the future if projects are not getting built. There should be no delay and now is the only time to make such changes because this “Monitoring Program” is not viable as that any future changes will be constrained by Proposition A as previously referenced. There should not be a requirement for Planning Commission review, or need to process a Lot Area Averaging or Planned Residential Development as these are discretionary processes that will impede development activity and cause unnecessary delays. Please see the BIA’s strike-out underline of the City’s “Attachment 4\_Proposed R-30 Zoning Amendments”.
- d. Exhibit 2018-07-3 Section 30.16.010 B.6.d. “natural grade for purposes of measuring building height for development in the R-30 Overlay zone shall be allowed if one or more of the following findings can be made, as part of a discretionary approval by the Planning Commission:...”. Again, this will preclude development due to the costs of going through this unknown process together with the requirement of compliance and possible litigation of Proposition A. Please direct the City to remove all references to the numerous sections that reduce the “Lot Area” and “Development Envelope” including slope calculations, all reductions from Gross Area to calculate Net Area except for proposed future rights of way and measure height from the certified graded pad elevation of the proposed project.
- e. As referenced above, Net Acreage and all the other items referenced in our previous letters to the City of Encinitas and your agency remain critical and, as of this writing, remain unaddressed. Attached are the Development Standards from At Home In Encinitas in 2016, that received HCD’s unqualified approval, and in fact pursuant to our legal brief, are the only Development Standards to have received the unqualified approval of HCD. Specifically, as they relate to height, density based on Gross Acreage, setbacks and grading. These standards are an acceptable resolution to the issues raised in our prior comment letters and form the basis of our proposed revisions to the City’s proposed Development Standards, attached.
- f. Compare the Net Lot Area as proposed by the City in Appendix B section 8.2.5 to that shown in At Home In Encinitas under Defined Terms on the very last page (Pg 68) – “**Net Acreage** means the total acreage of the lot minus any area proposed to be dedicated for future rights- of-way.

- g. “Net Lot Area as proposed by the City requires complicated calculations of slope, multiple setbacks from multiple points on each side of a lot and building requiring a rectangular lot with a 3-story building to calculate no less than 12 setbacks. In addition, an applicant must include numerous site features as deductions from total acreage to determine net acreage. This will preclude development at any multi-family density.
  - h. The language below is from the City’s submittal to HCD on Dec. 21<sup>st</sup> in Appendix B Section 8.2.4 Building Height – “Relative to Proposition A, the ballot measure established a citywide height limitation and **new method** for establishing where height is measured from (the lower of natural or finished grade). **Previously, in some circumstances (before Proposition A) an approved subdivision may have established the finished pad elevation from which building height is measured with consideration given to on-site and surrounding terrain.** The purpose of the new method of measuring height is to discourage excessive grading activity and the building up of pads. This helps minimize impacts to the topography and adjacent views. Some architectural elements may project up to four feet above the height limit. “ - **This is an acknowledgement that this policy came from Prop A and that it will constrain development. It must be changed back to the original language as described in the 2016 At Home In Encinitas Development Standards.**
2. Other important issues to get corrected include the following:
- a. Table B-43 – Development Fees are compared to cities that are in compliance with State Law. These fees should provide an incentive for multi-family development in Encinitas, which lacks a certified Housing Element. This illustrates how far the City goes to derail possible housing projects.
  - b. 8.8.1-Design Review- “Would not tend to cause the surrounding neighborhood to depreciate materially in appearance or value” (EMC 23.08.080). This phrase is too broad, subjective and impossible to enforce. This is an opening for ongoing delays and project stopping activities.
  - c. Inclusionary Requirements – do not allow inclusionary requirements to be further increased until housing is built in the City or after the next round of the Housing Element Update. This City must demonstrate compliance by getting projects built before requiring even more economic burden placed on market rate housing production.
  - d. When one reviews actual sites in the proposed Housing Element (Measure U), it appears there are discrepancies between what is a “realistic” unit yield compared to what the City proposes as the Unit Yield on each particular site. The City gives possible unit yields for each site. When given a more realistic review of the actual site constraints (topography, etc.) and required parameters (development standards) when developing these sites, the actual unit yield is significantly lower than the City claims. This problem can easily be resolved by directing the City to implement the Development Standards set forth in the 2016 EIR. Here are two examples that help illustrate our point:

- a) Site #2, Piraeus 6.93 acre site: This site has significant slopes and at least 1.7 acres of habitat in a ravine on the north end. The net acreage would be more like 4 to 4.5 acres, not the 6.93 acres. It is not possible to yield 173 units as stated, and would yield substantially less because of height restrictions, water quality requirements, etc. and a more realistic unit yield would be somewhere between 110 to 125 units total.
- b) Site #5 Encinitas Blvd/Quail Gardens 4.91 acre site: this site has steep slopes, potential habitat, access issues, and the net acreage would be more in the realm of 3 to 3.5 acres, and not the 4.78 acres listed. It is not possible to yield 119 units as stated. The yield would be in the realm of 70 to 85 units' total.

As we have stated to you and the City of Encinitas in our previous written comments, we are looking for a development process that will allow for multi-family housing production. The City is responsible for ensuring that their fair share of housing under the Regional Housing Needs Assessment is actually built. We believe the actions of the City Council to make affordable high density housing infeasible with unrealistic development standards will make development monumentally more difficult demonstrates the City working against their regional responsibilities.

It is clear that the Court is looking to HCD to provide the direction to the City for this **Court Mandated** adopted Housing Element and the process to actually build housing. The judge's ruling sets aside some of the more onerous impediments for possible development from Measure A. We are asking that you give direction to the City to make it a reasonable, clarity of process, and certain in standards so housing creation can occur.

We are here to offer additional ideas and support to help the City achieve compliance with State Law while providing the development community with fair and reasonable ability to produce needed housing in Encinitas. We would appreciate the opportunity to sit down together to review any details in person should you so desire. Please let me know when you are available to meet.

Please contact us if you need any further clarification or assistance.

Sincerely,



Borre Winckel  
President & CEO  
BIA San Diego