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SENT VIA EMAIL ONLY

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**RE: City of Encinitas December 2018 Draft Housing Element
Submission**

Melissa A. Morris
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Dear Mayor Blakespear and Council Members:

Noah Kirshbaum-Ray
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San Diego Volunteer Lawyer Program, Inc., provides free legal assistance to low income families and individuals on a wide variety of issues, including housing. The Public Interest Law Project is a statewide support center that provides training and litigation support to legal services programs throughout California.

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On behalf of our clients we submit the comments below to ensure the housing element complies with the requirements of housing element law and will fulfill the intent of the law to promote and facilitate housing for all income groups. The housing element draft submitted on December 21, 2018, is inadequate in several respects each outlined below. We detail the actions the City must take to comply with Housing Element Law.

Deborah Collins
(Retired)

Judith Gold (1952 - 2016)

Please note that we may submit additional brief comments to address the further revisions, analysis, and the One Acre Development Standards Example submitted by the City to HCD.

The Inventory Fails to Contain Adequate Sites

As stated in our previous comment letters, the City's proposed capacity overstates actual capacity for the following sites:

02 Cannon Property
05 Encinitas Blvd & Quail Gardens
AD1 Sage Canyon
06b Armstrong Parcels
AD2abc Baldwin & Sons
01 Greek Church Parcel

07 Jackel Properties
08b Rancho Santa Fe
09 Echter Property
12 Sunshine Gardens

Please see site-specific analysis chart enclosed with this letter.

Of particular concern is the City's inclusion of the Armstrong Parcels site (site number 06). As stated in our comment letter of June 30, 2018, because HCD has already determined Armstrong Parcels to be unsuitable, it is inappropriate for the City to include its 55 units in the inventory. (HCD Review Letter, June 12, 2018, p. 2; SDVLP/PILP Comment Letter, June 30, 2018, p. 2; SDVLP/PILP Comment Letter, June 7, 2018, p. 5.)

The Housing Element Draft Lacks the Required Site-Specific Analysis

If HCD finds that the Encinitas & Quail Gardens Site (site number 05) qualifies as a vacant site, the inventory may meet the 50 percent vacant site threshold. Submittal Letter, p. 3 (demolition of abandoned house on site). As a result, the City's reliance on non-vacant sites would not exceed 50 percent of site capacity, causing the heightened site analysis methodology in Government Code § 65593.2(g)(2) to no longer apply.

The applicable standard for reviewing the sites would be Government Code § 65583.2(g)(1). This standard requires the City to ensure the sites are actually available for development during this planning period. *Id.* The City must provide HCD with information demonstrating that an independent review or analysis of each site was conducted. As stated in our earlier comment letters, relying solely on letters of interest from site owners is not sufficient to comply with Government Code § 65583.2(g)(1).

There are multiple sites that continue to lack the site-specific analysis required by Government Code § 65583.2(g)(1). Our June 7, 2018, comment letter provides a detailed chart identifying each site's proposed capacity, actual capacity, whether or not it is vacant, environmental constraint analysis, existing leases/use analysis, owner constraints, availability, owner interest, and other constraints. (SDVLP/PILP Comment Letter, June 7, 2018, p. 5.) We have updated this chart, please find it enclosed.

To comply with Government Code § 65583.2(g)(1), the City must demonstrate it has conducted the required independent review or analysis of the following sites:

06b Armstrong Parcels
08b Rancho Santa Fe
09 Echter Property
12 Sunshine Gardens
AD2abc Baldwin & Sons
AD8 Vulcan & La Costa
AD11 Manchester Avenue West
AD14 Harrison Sites

AD31 Meyer Proposal

Again, please see site-specific analysis chart enclosed with this letter for further information.

Development Standards

In its December 12, 2018, Letter of Noncompliance, HCD referenced the actions taken by the City in June when the City elected to change the development standards that HCD had already reviewed and indicated would be appropriate.. HCD directed the City to provide additional information and analysis to demonstrate that the development standard changes made in June 2018 comply with state law. (HCD Letter of Noncompliance, Dec. 12, 2018, p. 2.)

The development standards approved by HCD included a “Third floor setback of 15 feet when a development is adjacent to single-family home or duplexes – with third story setback of 5 feet resulted in 20-foot setback total.” (Encinitas Housing Element Submittal Letter, Dec. 21, 2018 (hereinafter “Submittal Letter”), p. 4; City’s Letter to HCD, June 28, 2018, pp. 2, 11-17; Appendix B, pp. B-57-58.) The City adopted a more restrictive development standard: “Setback increased to 30 feet for third story when adjacent to single-family homes or duplexes.” (Submittal Letter, p. 4; Appendix B, pp. B-57-58.)

The City addresses HCD’s development standard concerns in the “Modified Development Standards” section of its submittal letter and in an attachment entitled “Transition Standard.” (Submittal Letter, p. 4; Attachment 6, p. 2.) However, the information the City provides reiterates information already provided to HCD and provides no further information or analysis to demonstrate compliance with state law:

As shown in the diagrams provided as Attachment 6, none of the sites are entirely surrounded by single-family homes and duplexes. On the parts of the property adjacent to single-family homes and duplexes, the reduced setback on the first and second floors will provide additional building volume equal to that lost on the third floor. Additional volume will be gained by the removal of the five-foot setback for third stories not adjacent to single-family homes and duplexes.

Submittal Letter, p. 4.

The information provided by the City in response to HCD’s request for additional information and analysis is inadequate for two reasons. First, the City addresses only the impact the development standards have on sites currently identified in the housing element.

As we stated in our comment letter of June 30, 2018, to demonstrate compliance with state law, the City must provide information and analysis to show whether the

development standard will create housing opportunities at the maximum permitted density, and impact the economic feasibility of producing affordable housing at the lowest possible cost during this planning period. Gov. Code § 65913.1. Simply stating that the development standard will not significantly constrain development *on the sites identified for this housing element cycle* is not sufficient.

Furthermore, as stated in our letter of June 30, 2018, the City will likely have to rezone additional sites during this planning period to comply with the No Net Loss Law. Gov. Code § 65863. Because limited undeveloped land is available, the sites that will have to be rezoned are likely to be adjacent to single-family homes or duplexes, rendering the development standards applicable to more sites than those identified in the housing element.¹

The information the City provides fails to address whether it has analyzed whether these development standards constrain housing opportunities outside of the limited application of these standards to sites identified in this current housing element inventory.

Without additional information and analysis regarding how the development standards constrain the development of affordable housing beyond the sites identified in the housing element, the development standards fail to provide the required information and analysis to demonstrate compliance with state law.

Second, the City must provide additional information to demonstrate how the application of the development standards will impact developments when not only *one side* is

¹ The City states that it will not have to rezone sites to remain compliant with the No Net Loss Law for two reasons. First, the City disagrees with HCD's determination that the Armstrong Parcels site (site number 06) is not suitable, and has included the site in its inventory despite HCD's finding. Second, the City states that because developers may be entitled to develop 30 units per acre instead of 25 units per acre, and can apply for a density bonus, the capacity is higher than actually stated in the inventory.

However, the City disregards the standard for determining whether a jurisdiction must rezone land to comply with the No Net Loss Law. The law is aimed at ensuring a jurisdiction maintains sites for the actual production of lower income housing units during a planning period. If a jurisdiction approves a project *at a lesser density* than identified in the housing element or for *a different income level*, then it would have to rezone another site within 180 days. The standard is not simply whether or not there is a buffer.

Based on past developments patterns in the City and its limited available land, it is likely that projects will be approved both at lower densities than 25 units per acre *and* for higher income levels, causing the No Net Loss Law rezoning requirement to be triggered. In addition, given the fact that HCD has already determined Armstrong Parcels to be unsuitable, it is inappropriate for the City to include 55 units attributable to this site in its inventory, therefore the City overstates its buffer.

adjacent to a single-family home or duplex, but *two sides* or *three sides* are adjacent. In these situations, the setback may result in a significant reduction in affordable housing units particularly given the limited land available in Encinitas and its proximity to existing residential homes. The City must provide information pertaining to the impact this type of application will have on beyond the sites identified in the housing element.

Conclusion

For the reasons stated above, additional information and analysis is necessary for the housing element to comply with the requirements of housing element law. We thank you for considering our concerns. Should you have any questions regarding these comments or need further clarification, please do not hesitate to contact us by email at ijadipm@gmail.com or vfeldman@pilpca.org.

Sincerely,



Parisa Ijadi-Maghsoodi
Pro Bono Attorney



Valerie Feldman
Staff Attorney

cc: Robin Huntley, HCD

enclosures

Sites	City's Proposed Capacity	Actual Capacity	Lacks environmental constraint analysis ²	Lacks existing leases and uses analysis	Lacks program to address owner constraints	Lacks evidence that site is "avail."	Lacks owner interest	Other Constraints
Vacant								
02 Cannon Property ³	173	160	✓					✓
05 Encinitas Blvd & Quail Gardens ⁴	119	98	✓					
06a Armstrong Parcels ⁵	26	0	✓					✓
08a Rancho Santa Fe (Gaffney/Goodsen) ⁶	36	36						
AD1 Sage Canyon ⁷	60	45	✓			✓	✓	✓
AD2a Baldwin & Sons ⁸	74	More information needed	✓			✓		✓
AD2b Baldwin & Sons ⁹	121	More information needed	✓			✓		✓
Non-vacant								
01 Greek Church Parcel ¹⁰	50	45						✓
06b Armstrong Parcels ¹¹	29	0	✓	✓				✓
07 Jackel Properties ¹²	33	More information needed	✓					✓
08b Rancho	113	0	✓	✓	✓			✓

Santa Fe (Gaffney/Goodsen) ¹³								
09 Echter ¹⁴ Property	246	0	✓	✓		✓		✓
12 Sunshine Gardens ¹⁵	84	70	✓	✓				✓

² Without Additional Information Pertaining to Environmental Constraints, Sites Cannot Be Deemed Adequate: For all sites, the inventory of land must include, “A general description of any environmental constraints to the development of housing within the jurisdiction, the documentation for which has been made available to the jurisdiction. This information need not be identified on a site-specific basis.” Gov. Code § 65583.2(b). The sites reference environmental constraints but fail to provide sufficient specificity and analysis to support the sites’ viabilities for residential development on the proposed net acreage at the proposed density. Without additional information pertaining to the environmental constraints on these sites, the sites cannot be found to be adequate for residential development at the identified densities.

³ SDVLP/PILP Comment Letter dated June 7, 2018, pp. 7-8; Exhibit C, p. C-8.

⁴ Exhibit C, p. C-10 (Structure demolished); SDVLP/PILP Comment Letter dated June 7, 2018, p. 8.

⁵ HCD Review Letter, June 12, 2018, p. 2 (HCD has already determined Armstrong Parcels to be unsuitable, it is inappropriate for the City to include its 55 units in the inventory); SDVLP/PILP Comment Letter, June 30, 2018, p. 2; SDVLP/PILP Comment Letter dated June 7, 2018, pp. 12-13; Exhibit C, pp. C-28 - C-29.

⁶ SDVLP/PILP Comment Letter dated June 7, 2018, pp. 8-10; Exhibit C, pp. C-14 – C-15.

⁷ Exhibit C, pp. C-18 and C-76 (Letter from individual who is in a contract to purchase Sage Canyon site, sale has not yet closed, and the property is currently planned for a ten-lot subdivision; buyer states interest in pursuing development consistent with proposed zoning change); Submission of Additional Information, dated January 10, 2019; SDVLP/PILP Comment Letter dated June 7, 2018, p. 10.

⁸ Exhibit C, p. C-21 (All parcels now under common ownership); SDVLP/PILP Comment Letter dated June 7, 2018, pp. 11-12.

⁹ *Id.*

¹⁰ SDVLP/PILP Comment Letter dated June 7, 2018, p. 12; Exhibit C, p. C-25.

¹¹ HCD Review Letter, June 12, 2018, p. 2 (HCD has already determined Armstrong Parcels to be unsuitable, it is inappropriate for the City to include its 55 units in the inventory); SDVLP/PILP Comment Letter, June 30, 2018, p. 2; SDVLP/PILP Comment Letter, June 7, 2018, p. 5.; Exhibit C, p. C-21. *See also* Submission of Additional Information, dated January 10, 2019 (indication that City may provide letter of interest form owner).

¹² SDVLP/PILP Comment Letter dated June 7, 2018, pp. 13-14; Exhibit C, p. C-30.

¹³ SDVLP/PILP Comment Letter dated June 7, 2018, pp. 8-10; Exhibit C, pp. C-14 - C-15.

¹⁴ SDVLP/PILP Comment Letter dated June 7, 2018, p. 14; Exhibit C, p. C-32.

¹⁵ SDVLP/PILP Comment Letter dated June 7, 2018, pp. 15-16; Exhibit C, p. C- 34.

AD2c Baldwin & Sons ¹⁶	30	More information needed	✓	✓		✓		✓
AD8 Vulcan & La Costa ¹⁷	50	50		✓				✓
AD9 Seacoast Church ¹⁸	35	35						✓
AD11 Manche ster Avenue West Sites ¹⁹	41	41		✓			✓	
AD14 Harrison Sites ²⁰	21	21		✓				
AD31 Meyer Proposal ²¹	163	163		✓				✓

¹⁶ Exhibit C, p. C-22 (All parcels now under common ownership); SDVLP/PILP Comment Letter dated June 7, 2018, pp. 11-12.

¹⁷ SDVLP/PILP Comment Letter dated June 7, 2018, p. 14; Exhibit C, p. C-36.

¹⁸ SDVLP/PILP Comment Letter dated June 7, 2018, p. 17-18; Exhibit C, p. C-38.

¹⁹ SDVLP/PILP Comment Letter dated June 7, 2018, pp. 18-19; Exhibit C, p. C-40.

²⁰ SDVLP/PILP Comment Letter dated June 7, 2018, p. 19; Exhibit C, p. C-42.

²¹ Submission of Additional Information, dated January 10, 2019 (Emails submitted regarding property); SDVLP/PILP Comment Letter dated June 7, 2018, pp. 19-20; Exhibit C, p. C-44.