



# City of Encinitas

## Development Services Department

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

December 21, 2018

HAND DELIVERED

Mr. Zachary Olmstead, Deputy Director  
Department of Housing and Community Development  
Division of Housing Policy Development  
2020 West El Camino Avenue, Suite 500  
Sacramento, CA 95833

**RE: SUBMISSION OF CITY OF ENCINITAS FIFTH CYCLE (2013 – 2021) HOUSING ELEMENT FOR HCD REVIEW**

Dear Mr. Olmstead:

Enclosed with this letter is a draft of the fifth cycle (2013-2021) Housing Element for the City of Encinitas (the City). The order of the San Diego Superior Court issued on December 12, 2018 (Attachment 5), the day after the election results were certified by the City, requires the City to adopt a Housing Element consistent with State law by April 11, 2018. At its December 12, meeting, immediately after receiving the Court order, the City Council directed staff to submit a draft Housing Element to the Department of Housing and Community Development (HCD) for review by December 21, 2018.

A hard copy and an electronic version (CD) of the documents comprising the Housing Element are provided for your review (Attachments 1 and 2), along with a checklist (Attachment 3) showing where each element required by state law can be found. The City believes that these submittal documents provide the requisite analysis to achieve certification of our 2013-2021 Housing Element. The Housing Element includes:

- **Section 1: Housing Element Policy Program** – contains the policy program 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.
- **Appendix C: Adequate Sites Analysis** – provides the requisite analysis of the sites that will accommodate the City's RHNA.

We also include on the CD (Attachment 2), for HCD's use, two sets of redlines: one comparing the proposed Housing Element with that submitted to the public as Measure U; and one comparing the Measure U Housing Element with the version that HCD found to be consistent with housing element law. We also enclose the City's proposed R-30 zoning standards (Attachment 4).

Consistent with Government Code Section 65754(a) and the Court's order, the Department of Housing and Community Development (HCD) is required to review the draft Element and report

its findings to the City within 45 days of receipt of the draft Element. The City is committed to working closely with HCD to obtain a finding that the Housing Element adopted by the City is consistent with State law.

Immediately following this letter are responses to letters from HCD dated December 10, 2018 (Notice of Noncompliance), July 5, 2018, and June 12, 2018; and responses to 29 emails and letters received by HCD between June 11, 2018 and December 14, 2018 and not previously responded to by the City. The City would also request that the information and responses previously provided by the City to HCD in relation to the draft Housing Element sent to HCD on April 13, 2018 be part of this record; it is available on the City's website at this link: <http://www.encinitasca.gov/I-Want-To/Housing-Plan-Update-2018/Draft-Housing-Element-Update>. The City would be pleased to provide any further information requested by HCD.

In conclusion, the City looks forward to working with HCD and to receiving HCD's comments on the draft Housing Element enclosed with this letter. If you have any questions or concerns, please feel free to contact me at (760) 633-2712 or Diane Langager, Principal Planner at (760) 633-2714.

Sincerely,



Brenda Wisneski, AICP  
Director of Development Services

Attachments:

1. One Hard Copy of the Draft City of Encinitas 2013-2021 Housing Element
2. One CD with an Electronic PDF Copy of the City of Encinitas 2013-2021 Housing Element and Redlines Against Previous Versions.
3. Checklist of Required Sections
4. Proposed R-30 Zoning Amendments (Previously Approved Ordinance 2018-07)
5. Writ of Mandate Issued by San Diego Superior Court December 12, 2018
6. Evaluation of Proposed Third Floor Transition Standard
7. Email from Damien Mavis dated June 18, 2018 regarding Piraeus/Cannon Property (Site #2)
8. Public Correspondence received by HCD between June 11, 2018 to December 14, 2018

cc: Mayor and City Council  
Robin Huntley, HCD  
Paul McDougall, HCD

## **RESPONSES TO CORRESPONDENCE RECEIVED BY CITY FROM HCD**

### **Response to HCD Letter of December 10, 2018 (Notice of Noncompliance)**

The City intends to comply with the order of the San Diego Superior Court and to adopt a Housing Element consistent with State law by April 11, 2018. 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, by that date.

The City does dispute HCD's statement that the City is in violation of Government Code sections 65589.5 (Housing Accountability Act), 65863 ('No Net Loss'), 65915 (density bonuses), and 65008 (fair housing). The Notice of Noncompliance did not contain any specific allegations regarding violations of these code sections, and the City is not aware of any actions it has taken that would violate these sections. Please let us know if there are specific actions of the City that may not be in conformance with these statutes.

### **Response to HCD Letter of July 5, 2018**

HCD's letter of July 5, 2018 expressed HCD's concern with two changes made in the Housing Element adopted by the City Council on June 20, 2018 and placed on the ballot as Measure U: the removal of Sites Number AD12 (Rancho Santa Fe East) and Site Number AD32 (Garden View Court) from the site inventory; and the adoption of different development standards than those reviewed by HCD. The letter stated that:

"Barring additional information, analysis, programs or newly identified vacant sites, if the housing element is adopted with these revisions, HCD would not find the housing element compliant with state housing law."

The draft Housing Element enclosed with this letter contains the changes adopted by the City Council on June 20, 2018. Even with these changes, the City believes that the draft Housing Element is consistent with State law. Below are the "additional information [and] analysis" requested by HCD to support those changes.

**Removal of Sites AD12 and AD32.** The July 5 letter states that removal of site AD12 (Rancho Santa Fe East) potentially reduces the capacity of vacant sites to less than 50 percent of the 1,141 units needed to accommodate the City's remaining lower income RHNA, requiring additional justification for non-vacant sites.

To meet the 50 percent threshold, vacant sites need to accommodate 571 units. Table 2-6 in Section 1 of the Housing Element shows that the vacant sites designated as suitable for lower income housing can accommodate 609 units, exceeding the 50 percent threshold. After HCD's June review of the Housing Element, an abandoned single-family home on site 05 (Encinitas & Quail Gardens Sites) was demolished, so that the site now contains no structures and is entirely vacant.

The City continues to believe that the Armstrong Parcels (sites 06a and 06b) are adequate and available to meet a portion of the City's lower income housing need, although HCD's June 12 letter stated (without explanation) that HCD did not consider the parcels to be adequate sites. Potential buyers have met with the City regarding the status of the Housing Element and the proposed R-30 zoning. However, even if the 26 units shown to be located on vacant site 06a

are removed from consideration, the inventory will accommodate 583 units on vacant sites, still in excess of the 50 percent threshold.

In total, the inventory of sites available to meet the City's lower income housing need can accommodate 1,504 units, exceeding the remaining 1,141-unit RHNA obligation by 363 units (31 percent).

**Modified Development Standards.** The City believes that the changes in development standards introduced at the June 20, 2018 hearing and currently proposed will provide more flexibility for developers and will either increase the volume of space available for dwelling units or have no effect. Below is a table describing the changes:

<b>Reviewed by HCD</b>	<b>Adopted by City</b>	<b>Comments</b>
Third story setback of 5 feet required for all buildings	Requirement eliminated.	Provides additional building volume on all sites.
First and second floor setback of 15 feet when adjacent to single-family homes or duplexes	Requirement eliminated. Standard setback of 10 feet applies to first and second floors on all sites.	Provides additional building volume on some sites.
Third floor setback of 15 feet when adjacent to single-family homes or duplexes – with third story setback of 5 feet resulted in 20-foot setback total	Setback increased to 30 feet for third story when adjacent to single-family homes or duplexes.	Reduces building volume on some sites.

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.

However, the actual effect on the sites included in the Housing Element will be positive. 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. Overall, the changes will result in an overall increase in permitted building volume.

The City carefully reviewed these changes before adopting them to ensure that they would not create any additional constraints to development. We would be happy to provide additional information if desired by HCD.

**Response to HCD Letter of June 12, 2018**

HCD's letter of June 12, 2018 finding the City's draft Housing Element to be in substantial compliance with State law contained several comments that the City has considered.

**Unsuitable Sites and Minimal Surplus of Appropriate Capacity.** HCD identified certain unsuitable sites and questioned the accuracy of the site capacity.

In response, the City removed two of the three sites identified by HCD as 'unsuitable' from the inventory (sites number 11 and AD-7). The City continues to believe that site number 06 (Armstrong Parcels) is adequate and available based on the large vacant portion of the site and the owner's interest in additional development.

The capacity of the current inventory has been calculated conservatively at 25 units per *net* acre, with environmentally sensitive areas and areas of steep slopes deducted from net acreage to provide realistic site capacity. However, developers will be entitled to densities of 30 units per acre and may obtain even greater densities with a density bonus. The City therefore believes that the calculated capacity of 1,504 units actually undercounts site capacity and so will be adequate for the remainder of the planning period.

**Ratio of Vacant to Non-Vacant Sites.** Please see above response to letter of July 5, 2018.

**State Density Bonus Law (SDBL) and Proposition A.** HCD suggested that the City consider amending its density bonus ordinance to resolve potential conflicts between Proposition A and SDBL.

There is no conflict between Proposition A and SDBL. As noted in Section 8.1.11 of Appendix B, the statute provides that none of the incentives or bonuses available in SDBL require a general plan or zoning amendment that would trigger the need for a vote under Proposition A. Developers regularly apply for density bonuses in Encinitas, and, as stated in Program 2D, as of December 31, 2017 the City had approved 27 density bonus projects.

**Cumulative Impact of Development Standards.** The City relied primarily on the expertise of its consultant Kimley-Horn to develop appropriate development standards to accommodate housing at 30 units per net acre (proposed zoning included as Attachment 4). However, it is difficult to test these standards until they are applied to specific development projects. The Housing Element therefore contains Program 3H, to monitor development standards and initiate zoning amendments if the standards as applied appear incompatible with obtaining the required densities.

**Program Timing and Beneficial Impact.** The City continues to work closely with the Coastal Commission to ensure that the Housing Element is consistent with the Coastal Act and can be approved by the Coastal Commission. The City has offered to begin processing applications within the coastal zone prior to Coastal Commission approval. Developers have expressed high interest in obtaining City approvals for projects in the proposed R-30 zone; three have already held pre-application meetings with the City. The City believes that adoption of the Housing Element and rezoning will result in an immediate beneficial impact on housing production.

**RESPONSES TO CORRESPONDENCE RECEIVED BY HCD  
BETWEEN JUNE 11, 2018 AND DECEMBER 14, 2018**

**Correspondence Received by HCD and Forwarded to City**

1. Email from Stefan LaCasse, Quinn Communities, dated June 11, 2018.
2. Email from Keith Harrison dated June 11, 2018.
3. Email from Will Winkenhofer dated June 12, 2018.
4. Email from Keith Harrison dated June 12, 2018.
5. Emails from Donna Westbrook dated June 14 (5A) and June 21, 2018 (5A).
6. Letter from BIA of San Diego County dated June 14, 2018 (also sent to City).
7. Email from Sheila Cameron dated June 18, 2018.
8. Email from Jon R. Williams dated June 21, 2018.
9. Email and Power Point from Sean McDaniel dated June 21, 2018.
10. Email from Damien Mavis dated June 22, 2018.
11. Email from David Meyer dated June 25, 2018.
12. Letter mailed to HCD from Carol Phillips Meyer received June 26, 2018.
13. Letter from Public Interest Law Proect dated June 30, 2018.
14. Email and attachments (including petition) from Cynthia Sheya Palmer dated July 9, 2018.
15. Email and attachments from Peter Stern dated July 12, 2018.
16. Email and attachment from Diane Thompson dated July 15, 2018.
17. Email and attachment from Patricia Mahaffey dated July 15, 2018.
18. Email and attachment from David Meyer dated July 17, 2018.
19. Four emails and attachments from Sheila Cameron dated July 17, 2018 (19A – 19D).
20. Email and attachment from Eve Mayall dated July 18, 2018.
21. Email and attachment from Everett Delano dated July 18, 2018.
22. Email and two attachments from Sheila Cameron dated July 23, 2018.
23. Email from Sheila Cameron dated July 25, 2018.
24. Email from Mike McSweeney, BIA, dated July 30, 2018.
25. Email dated August 6, 2018 from Craig Campion.
26. Letter and attachments dated August 8, 2018 from Michael McSweeney, BIA.
27. Email and letter dated August 29, 2018 from Diane Thompson.
28. Email dated August 30, 2018 and letter dated August 29, 2018 from Diane Thompson.
29. Email dated December 14, 2018 from Peter Stern.

**Issues Raised in Correspondence to HCD**

Because of the large amount of correspondence received by HCD, often relating to common issues, the responses below are organized by issue rather than by the person commenting. The table below lists the correspondence raising each issue.

<b>ISSUES RAISED</b>	<b>CORRESPONDENCE NUMBER</b> (From Previous Page)
<i>ISSUES REGARDING SITES</i>	
Cannon Property – Piraeus (Site 02)	5B, 7, 16, 19A, 27, 28
Meyer Proposal (Site AD31)	9, 11, 14, 17, 18, 20
Recommended Site Changes	19B-D, 22, 23, 25
Additional Site	10
Garden View Ct. (Site AD32)	8
Quail Gardens & Encinitas Drive Traffic	12
<i>ISSUES REGARDING DEVELOPMENT STANDARDS</i>	
All	1, 2, 3, 4, 5A, 6, 15, 24, 26, 29
Parking ratios too high	1, 4, 6
Height needs to be at least 37'	1, 6
Support 30' height limit	5A, 15
Height measurement from the lower of natural or finished grade is a constraint	1, 3, 4, 6
Private storage of 200 sf is excessive; total public & private open space of 300 sf is excessive	1
Third story stepback is a constraint	3, 24
Ability to achieve 30 units per acre	3, 24, 26
Calculation of net acreage reduces capacity	6
Inclusionary: requirement of 20 percent infeasible; affordability in perpetuity infeasible	6, 26

<b>ISSUES RAISED</b>	<b>CORRESPONDENCE NUMBER</b> (From Previous Page)
Inclusionary requirement should be raised to 25% with no alternatives to on-site production	15, 29
Opposition to Planning Commission proposed changes	2, 3, 4
Allow to go into effect outside the Coastal Zone before Coastal Commission approval	26
<i>OTHER</i>	
Letter from Public Interest Law Project	13
Letter from Everett Delano	21



## **ISSUES INVOLVING HOUSING SITES**

### **A. Cannon Property – Piraeus (Site 02).**

Correspondence received by HCD raised a number of issues regarding the suitability of the Cannon Property (Site 02). Please see the City's responses below. An email from the owner's representative containing additional information is also attached (Attachment 7).

Unstable Slopes. The 2003 landslides have been partially repaired. The City's geologist has reviewed the site and determined that relatively minor grading remediation will correct any remaining instability.

Possible Hazardous Materials Due to Past Agricultural Use. The site is not listed as a hazardous waste site on the Cortese list, nor is it within one-eighth of a mile of any designated site. Also, when there is evidence that sites have been used for commercial greenhouse or field crop operations in the past, the City requires developers to submit a Phase I study, or, if warranted, a Phase II study, to identify any need for mitigation to ensure that sites are suitable for their intended use.

Possible Water Quality Violations. As described in the Environmental Assessment (EA) prepared for the Housing Element and to be incorporated into the General Plan, all future development is required to comply with City of Encinitas Municipal Code (EMC) Chapters 20.08 and 23.24; all pertinent City of Encinitas Jurisdictional Runoff Management Plan requirements; the City of Encinitas Stormwater Manual and Stormwater Standards Manual; the National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater (MS4) Permit, NPDES General Construction Permit; and all water quality-related regulations. Because development of the site would likely disturb more than one acre, a Storm Water Pollution Prevention Plan would also need to be prepared. The EA concluded that these regulations would avoid any substantial adverse water quality impacts.

Pollutants from I-5. The Environmental Assessment requires that ventilation systems designed for enhanced particulate removal be provided on all residential units within 500 feet of I-5.

Environmentally Sensitive Area. Although the site is mapped as being located in an environmentally sensitive area, it has been modified by extensive past grading, as can be seen in the photographs in Appendix C. The owner's representative states that past biologic reviews have found no impediment to site development. The Environmental Assessment also concludes that the Housing Element would have a less than significant impact on biological resources with the incorporation of mitigation measures.

Lack of Public Transportation and Pedestrian Access. In Encinitas, the sites located closest to transit and services are non-vacant sites whose owners have not expressed interest in developing them, and/or are too small, or require permission from other agencies to develop (such as sites owned by the North County Transit District). AB 1397 requires that owners express interest in redeveloping non-vacant sites and also effectively requires that at least 50% of the sites designated for lower income housing be vacant sites. At the public meetings regarding the selection of adequate sites, the City heard testimony from an affordable housing developer that, because Encinitas is not a major job center and is not developed at high densities, persons living in affordable housing in the City would, in most cases, own an automobile. Given the need to designate vacant sites and non-vacant sites with owner interest, many of the suitable sites are not located close to transit or shopping.

Impact on Capri School. Because the rate of development is not known, school district boundaries may change, and the School District does not have experience with student generation rates from R-30 housing in Encinitas; therefore, it is unclear what the impact will be on Capri school capacity. Five sites now located in the Capri attendance area are located close to the attendance boundary for Capri School, and slight adjustments in district boundaries may resolve any impacts. All projects will be required to pay school fees, which, under state law, will fully mitigate their impact on schools.

Inconsistency with the General Plan. When a Housing Element is adopted, the City will concurrently make any changes in other General Plan elements necessary to achieve consistency with the Housing Element. While the City desires to maintain a sense of spaciousness and semirural living within the I-5 corridor, it is also required by State law to identify vacant sites suitable for higher density housing.

Traffic Impacts. The Environmental Assessment does not identify any significant traffic impacts at the major Piraeus intersections. Further project specific traffic analysis may be warranted with the project application.

Need for Vote under Proposition A for Increased Height. The San Diego Superior Court has held that Proposition A is preempted by State law for the 2013-2021 Housing Element.

**B. Meyer Proposal (Site AD31).**

Correspondence received by HCD raised a number of issues regarding the suitability of the Meyer Proposal (Site AD31). Please see the City's responses below.

Validity of Letter of Intent Signed by Property Owners. Questions were raised regarding the validity of the letter of intent signed by the property owners authorizing Mr. David Meyer to represent them in requesting that Site AD31 be considered for up-zoning to R-30.

In response, Mr. Meyer submitted two letters to HCD, one containing a statement in English and Spanish authorizing Mr. Meyer to act as the representative of the property owners. None of the property owners have contacted the City to indicate that they wish to withdraw their authorization.

Narrow, Inadequate Street Access. During review of any development proposal for the site, the City will require adequate emergency and vehicular access consistent with City standards, as well as frontage improvements that include sidewalks, curb and gutter, and adequate stormwater drainage.

Traffic Congestion. The EA found that the Housing Element alternative containing Site AD31 would generate less traffic than the originally proposed project and so was the environmentally superior alternative. Developers will be required to contribute their fair share to the cost of mitigating the identified traffic impacts.

Out of Character with the Neighborhood. The City has adopted development standards requiring a third-story stepback of 30 feet for the portion of the site adjacent to single-family homes and duplexes. However, the majority of the site does not abut single-family homes and duplexes. (Refer to Attachment 6.)

Segregation of Low Income Households. The Housing Element proposes the rezoning of only 15 sites in the City, and Site AD31 is not located adjacent to any other site proposed to be up-zoned. In relation to socioeconomic and income segregation, the entire City of Encinitas is designated as either a 'highest resource' or 'high resource' area by the Tax Credit Allocation Commission and HCD. These high resource areas are given higher priority for allocation of tax credits for affordable housing based on educational opportunities, economics, and mobility. Placing affordable housing in Encinitas would reduce, Countywide, existing socioeconomic and income segregation.

Other. Please see responses above regarding the Cannon Site in relation to expressed concerns about pollutants from I-5; former agricultural use of the property; lack of public transportation and pedestrian access; and impacts on Capri Elementary School.

**C. Recommended Site Changes.**

Correspondence received by HCD requests that the City be required to select different sites than those currently proposed for rezoning to 30 units per acre.

Response: HCD's review is limited to determining whether the sites included in the draft Housing Element conform with State law. As described above and in past correspondence with HCD, and as demonstrated in Appendix C, the City believes that each of the sites included in the Housing Element is suitable and available for residential development during the planning period.

In addition, the City intends to begin identifying sites for the 2021-2029 Housing Element as soon as the 2013 – 2021 Housing Element is adopted. At that time it will review again all sites presented as alternatives to those in this Housing Element.

**D. Additional Site.**

One letter received by HCD identifies an additional site (located at the southeast corner of El Camino Real and Manchester Avenue) that could be added to the site inventory.

Response: A similar proposal to include the referenced site was made to the City. The City elected not to include the site in the list of candidate sites because of possible impacts to the San Elijo Lagoon and concern that the environmental issues could not be resolved within the planning period.

**E. Garden View Court (Site AD32).**

One letter received by HCD supports the removal of the non-vacant Garden View Court site from the site inventory, noting the existence of a long-term lease on the site that could prevent development of the site within the planning period. This was a primary reason that the City elected to remove the site from the inventory.

**F. Quail Gardens Drive Traffic.**

One letter received by HCD questioned the adequacy of Quail Gardens Drive for the proposed development.

Response: The EA completed for the Housing Element found that all segments of Quail Gardens Drive would operate at level of service C or better with the project in year 2035.

**ISSUES INVOLVING DEVELOPMENT STANDARDS**

**A. Parking Ratios Too High.**

Correspondence received by HCD stated that the proposed parking standards for market-rate housing are too high.

Response: The proposed development standards for the R-30 sites include reduced parking standards for affordable housing units: one space for studio and one bedroom units; 1.5 space for 2 bedroom units; and 2 spaces for 3 bedroom units. All projects developed on the up-zoned sites will be required to comply with the City's inclusionary ordinance, requiring at least 15 percent low income units, and may utilize at their discretion the parking standards contained in the state density bonus law (1 space for studio and one-bedroom units; 2 spaces for 2- and 3-bedroom units; and 2.5 spaces for 4-bedroom units or larger). Developers on the R-30 sites may utilize the density bonus parking requirements without applying for a density bonus, incentive, or waiver. The City desires to maintain higher parking standards for projects containing no affordable housing.

**B. Height Must Be 37 Feet.**

Two letters received by HCD stated that the City must permit building heights of 37 feet to achieve three-story buildings.

Response: The proposed development standards permit flat roofs with a height of 33 feet and pitched roofs with a height of 37 feet. These height limits may be exceeded by an additional five feet to accommodate necessary equipment and screening. See proposed zoning code amendments Section 30.16.010(B)(6)(a). (These comments regarding the need for a 37-foot height limit may have been submitted in opposition to lower height limits proposed by the Planning Commission.)

**C. Support 30-Foot Height Limit.**

Two letters received by HCD support the imposition of a 30-foot height limit within the R-30 zone and provide examples of three-story buildings that do not exceed 30 feet in height.

Response: Some three-story buildings may be feasible with a 30-foot height limit. However, substantial evidence was presented to the City that somewhat greater heights would be needed in most cases to achieve three stories due to the City's standards for height measurement; the 9-foot ceiling height standard in most new development; and the cost of subterranean and podium parking. The City desires to accommodate standard construction practices and not mandate the use of a particular elevator system that does not require a rooftop projection.

**D. Height Measurement from Lower of Natural or Finished Grade Is a Constraint.**

Correspondence submitted to HCD stated that building height should be measured from finish pad to enable developers to achieve three-story buildings.

Response: The proposed development standards will enable the Planning Commission to approve modifications to the designation of "natural grade" for purposes of measuring building height within the R-30 zone where grading is required due to geotechnical concerns; drainage or flood control requirements; accessibility requirements; remediation; or where a modification is needed to permit development at the minimum density of 25 units per net acre. These findings are contained in the proposed zoning ordinance (Section 30.16.010(B)(6)(d)).

**E. Private Storage of 200 Sf Is Excessive; Total Public & Private Open Space of 300 Sf Is Excessive.**

One letter submitted to HCD noted that the proposed standards for private storage and private open space are excessive.

Response: The proposed development standards do not require private storage of 200 sq. ft., but rather 200 *cubic* feet, which is a typical requirement. The requirement for 300 sq. ft. of public and private open space combined is also not an excessive requirement. The City received no other objections to these particular standards.

**F. Third Story Stepback Is a Constraint.**

Two letters were submitted to HCD noting that the third story stepback is a constraint. Please see response to HCD's July 5 letter.

**G. Ability to Achieve 30 Units Per Acre.**

Correspondence submitted to HCD cited concern with the ability to achieve the 25 – 30 du/acre density based on the proposed development standards. .

Response: The City's calculations of site capacity are based on a density of at least 25 units per *net* acre to be conservative, although applicants are entitled to achieve 30 units per net acre, or even higher densities with a density bonus. This methodology results in a realistic but conservative estimate of actual site capacity; fewer sites would need to be rezoned if the City used a less conservative methodology.

In establishing these standards, the City largely relied on the expertise of its consultant, Kimley-Horn Associates and has attempted to respond to the development community's comments regarding development standards that may not allow 30 units per acre to be achieved. However, it is difficult to test these standards until they are applied to real development projects. The Housing Element therefore contains Program 3H, to monitor development standards and initiate zoning amendments if the standards as applied appear incompatible with obtaining the required densities.

**H. Calculation of Net Acreage Reduces Capacity.**

One letter was submitted citing concern that calculating density based on net acreage reduces site capacity.

Response: It is correct that if site capacity were calculated based on gross acreage rather than net acreage, the capacity of each site would be higher. However, Government Code Section 65583.2(c)(2) requires that the gross capacity be adjusted based on the land use controls imposed on the site and typical densities of other approved projects. The City would be overestimating the capacity of each site if it did not adjust gross site area for steep slopes, existing easements, significant wetlands, and the like.

**I. Inclusionary: Requirement of 20 Percent Infeasible; Affordability in Perpetuity Infeasible.**

Two letters were submitted to HCD citing concern with an inclusionary requirement of 20% and the affordability restriction in perpetuity.

Response: The adopted inclusionary ordinance submitted for Coastal Commission review proposes an inclusionary requirement of 15 percent, not 20 percent. This requirement was adopted and supported by the development community in exchange for a broader menu of alternatives, including use of ADUs as inclusionary units.

The City has retained Keyser Marston Associates to conduct an economic feasibility study to determine if the inclusionary requirement could be increased, with a focus on the sites up-zoned to R-30. KMA is completing additional work in response to comments from the development community and the Planning Commission.

Other cities and counties require affordability in perpetuity for inclusionary units included within market-rate projects. In a for-sale project, the requirement affects only the buyer of the affordable unit after the unit is sold and has no effect on the developer's proceeds from sale of the unit. In a rental project, the City desires that the reduced rents for the affordable units be underwritten by the lender; for initial financing, it makes little difference if the restriction is for 55 years or in perpetuity. The provisions in the inclusionary ordinance are not applicable to a 100 percent affordable project financed by tax credits.

**J. Inclusionary Requirement Should Be Raised To 25% With No Alternatives To On-Site Production.**

Two letters were submitted to HCD recommending that the inclusionary requirement be increased to 25% and no alternatives to on-site production should be made available as an option.

Response: KMA is currently completing an economic feasibility study to determine if the adopted 15 percent inclusionary requirement can be increased without creating constraints to housing development.

For an inclusionary requirement imposed on rental housing, AB 1505 (now Government Code Section 65850(g)) requires that the ordinance provide alternatives to on-site production of housing. For sites proposed to be up-zoned to R-30, the ordinance does not allow payment of in-lieu fees, but requires that any alternative selected (off-site construction, ADUs, etc.) result in

the actual construction, creation, or preservation of affordable housing. For off-site construction, a finding must be made that the site will not tend to cause residential segregation, and the site must be located in the same community area as the project as a further control.

Segregation normally references separation by race and ethnicity. No evidence is provided regarding the expected ethnicity of persons living in future affordable housing in Encinitas. The City now has a substantially higher proportion of white residents, and a much lower proportion of black, Asian, and Latino or Hispanic residents, than the County as a whole. There is no evidence that permitting inclusionary housing to be located off-site will concentrate low-income housing in any area dominated by non-white residents.

In regard to low-income segregation, please see discussion above regarding the Meyer Proposal.

It is incorrect that the City Manager has the authority to approve an affordable housing plan that proposes an alternative. Rather, the body with approval authority over the planning application (Planning Commission or City Council) must approve an affordable housing plan as part of the planning application and make any required findings. The recorded affordable housing agreement, which implements the approved housing plan, must be in a form approved by the City Attorney and is executed by the City Manager.

**K. Opposition To Planning Commission Proposed Changes.**

Correspondence was submitted to HCD citing concern with many of the development standards recommended by the Planning Commission.

Response: The Planning Commission recommended several changes in the development standards proposed for the R-30 zone. The City Council concluded that most of these would operate as a constraint on housing development and did not adopt them. The only recommendation adopted is described in the City's response to HCD's July 5 letter.

**L. Allow To Go Into Effect Outside the Coastal Zone before Coastal Commission Approval.**

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..

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.

**Other**

**A. Letter from Public Interest Law Project.**

The June 30, 2018 letter submitted to HCD from the Public Interest Law Project largely reflects the concerns expressed by HCD in its letter of July 5, 2018. In addition to the City's response below, please see the above discussion in response to HCD's July 5 letter.

Response: The City continues to dispute that it has not conducted the site-specific analysis required by Government Code Section 65583.2(g). Appendix C contains a detailed, site-specific analysis of each site designated for lower income housing. Information regarding lease terms must be disclosed by owners or tenants. Where the City has information regarding leases, it incorporates that information into its analysis and at times did not select certain sites based on knowledge of long-term leases. However, the existence of a long-term lease does not necessarily affect the suitability of a site for development, as in the present retail environment, with many retailers unable to compete with on-line merchants, tenants may abandon space despite the existence of a long-term lease.

**B. Letter from Everett DeLano.**

The July 18, 2018 letter from Everett DeLano describes limits on HCD's authority and does not require a response from the City.