

Exhibit 2019-19-D

Housing Plan Update 2019 Changes in response to HCD Letter

As required by Government Code Section 65585(e), the City Council has considered the findings made by the California Department of Housing and Community Development (HCD) included in HCD's letter to the City dated February 4, 2019. Consistent with Government Code Section 65585(f)(1), the City has changed the Housing Plan Update 2019 in response to the findings of the Department to substantially comply with the requirements of Article 10.6 of the Government Code as interpreted by HCD. The changes made in the Housing Plan Update 2019 in response to HCD's letter are described below, organized by describing changes in the City's Housing Plan Update 2019 after the direction HCD provided in its February 4, 2019 letter.

HCD Comment: *Revisions are necessary to comply with state housing element law (Article 10.6 of the Government Code).*

City Response: After receiving HCD's February 4, 2019 letter regarding the City's draft Housing Plan Update 2019, which includes the Fifth Cycle Housing Element, the City made substantive changes throughout the document to incorporate HCD's direction. An overview of the revisions made in response to HCD's comments to ensure that the adopted Housing Element is in substantial compliance with State law is included below, including references to the location in the Housing Element where additions and/or revisions have been made in response to HCD's letter. With the referenced additions and revisions, the City Council believes that the Housing Plan Update 2019 substantially complies with the requirements of State law.

HCD Comment: *In addition, all approvals necessary to implement appropriate zoning and development standards, including California Coastal Commission approval of a Local Coastal Plan amendment, are required for HCD to find Encinitas' housing element compliant with state housing element law. Pending California Coastal Commission approval, HCD expects zoning and development standards are immediately available on the two rezoned sites outside the coastal zone (Sites 06 and 08) and that applications for sites within the coastal zone are processed prior to, and in anticipation of, California Coastal Commission approval of the Local Coastal Plan amendments.*

City Response: City staff has actively engaged with the California Coastal Commission staff that will be reviewing the Housing Plan Update 2019 to ensure timely processing of the Local Coastal Plan amendment by the California Coastal Commission. In addition, the City has amended Program 1A of Section 1 of the Fifth Cycle Housing Element to provide that changes in the General Plan, Specific Plans, and zoning code that outside of the Coastal Zone will become effective 30 days after adoption by the City Council, consistent with the timeframes required by the Government Code. In addition, Program 1A commits the City to processing applications while the California Coastal Commission is undertaking its review and approval process. Finally, the Housing Element Update's

implementing resolutions and ordinances also specify that the Effective Dates of each action are 30 days after adoption for portions of the City outside of the Coastal Zone.

HCD Comment: *As stated in HCD's June 12, 2018 findings, HCD does not consider Site numbers 06a and 06b, Armstrong Parcels, adequate sites to meet any portion of the Regional Housing Needs Allocation for lower-income households. As such, they should not be considered adequate, available or additional sites pursuant to Gov. Code Section 65863 (No-Net Loss Law).*

City Response: The City has decided to include Site numbers 06a and 06b in the Housing Element, because it believes that there is a possibility that a project will develop on these sites during the planning period. However, the City added a new footnote to Table 2-6 of Section 1 of the Fifth Cycle Housing Element acknowledging that the City should not consider these sites available pursuant to Government Code Section 65863 absent additional information regarding site availability and owner interest in developing a residential project. In addition, the City added new text to Program 1A of Section 1 of the Fifth Cycle Housing Element explaining that even excluding these units, the rezoning program exceeds the remaining RHNA lower income obligation by 308 units (27 percent), with 583 units accommodated on vacant sites (51 percent of the City's remaining lower income RHNA). Finally, Program 1D, which addresses the City's commitment to complying with Government Code Section 65863 was also amended to include similar language acknowledging that the City cannot rely on Site numbers 06a and 06b when complying with the "No Net Loss" law unless the circumstances discussed above have occurred.

HCD Comment: *Measure height from the finished pad as opposed to the lower of natural or finished grade.*

City Response: As described in Sections 8.2.4 and 11.6 of Appendix B of the Fifth Cycle Housing Element, the City has identified provisions that apply in the R-30 Overlay zone to allow height to be measured from finished grade instead of the lower of natural or finished grade by right on sites achieving at least 25 dwelling units per net acre. Corresponding amendments to Encinitas Municipal Code Section 30.16 and the City's Specific Plans have also been adopted to implement HCD's direction.

HCD Comment: *Increase allowable 3-story heights to a minimum of 35 feet for a flat roof and 39 feet for a pitched roof, allowing an additional 5 feet for necessary projections on the roof.*

City Response: As described in Sections 8.2.4 and 11.6 of Appendix B of the 2019 Housing Element Update, the City has agreed to amend its development standards to allow heights of three stories and 39 feet (plus additional height for necessary projections) in the R-30 Overlay Zone where developments achieve a minimum density of 25 units per net acre. Corresponding amendments to Encinitas Municipal Code Section 30.16 and the City's Specific Plans have also been adopted to implement HCD's direction.

HCD Comment: *The calculation of net acreage should not deduct private access roads, parking lots, driveways, and drive aisles.*

City Response: As described in Sections 8.2.5 and 11.6 of Appendix B of the Fifth Cycle Housing Element, the City has agreed to amend its development standards to not deduct private access roads, parking lots, driveways, and drive aisles on lower income sites where developments achieve a minimum density of 25 units per net acre. Corresponding amendments to Encinitas Municipal Code Section 30.16 and the City's Specific Plans have also been adopted to implement HCD's direction.

HCD Comment: *Ensure all standards, including, but not limited to design review standards, are objective in nature, containing no subjectivity. The following are examples of subjective standards that are not objective in nature. In order to facilitate timely project review and provide certainty to developers, they must be eliminated or revised to be objective in nature.*

- *Encinitas Municipal Code 23.08.080 (Regulatory Conclusions Generally) item D.*
- *Encinitas Municipal Code 30.16.010 (Development Standards) paragraph (B)(2)(b)*

City Response: The City has revised Program 3B of Section 1 of the Fifth Cycle Housing Element to commit to the modification of any standards related to the ability to achieve maximum densities allowed in a zoning district and to ensure that such standards are objective if they will be used to evaluate a residential development project. As revised, Program 3B includes a commitment to repeal EMC 23.08.080, paragraph (D) and EMC 30.16.010, paragraph (B)(2)(b) and to amend Land Use Element Policy 8.3 which limits projects to the mid-range density unless certain findings can be made. Program 3B has been further revised to include two phases. The specific changes described above will be made concurrently with adoption of the Housing Element; adoption of any additional code amendments relating to density, ground floor commercial uses, and revisions to the City's architectural review standards to adopt more clear and objective standards will be complete in April of 2020.

HCD Comment: *Program 3C fails to adequately mitigate the effects of the Right to Vote Amendment (Proposition A). . . . Accordingly, Program 3C must be revised to commit the city to take necessary action(s) to amend or invalidate Proposition A, relevant to state housing laws, including, but not limited to, Article 10.6 of the Government Code and State Density Bonus Law.*

City Response: The City has revised Program 3C of Section 1 of the Fifth Cycle Housing Element to comply with HCD's direction. To address Proposition A as a potential constraint on housing production in the City, the City will seek declaratory relief from a court to find portions of Proposition A are preempted by state law. In addition, the City will pursue a voter-approved amendment to Proposition A if the effort to obtain judicial relief is not successful. In the meantime, the City will work on preparation of its Sixth Cycle Housing Element concurrently with efforts to reform Proposition A. As shown in the timeframe included in the revised Program 3C's, there will be ample time

during this planning period for a court to consider the item and for the City to schedule multiple elections if necessary to comply with HCD's direction to address Proposition A, given its potential to constrain to housing development.