



City of Encinitas

Development Services Department

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

May 8, 2018

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: Public Comments Submitted on the City Of Encinitas Draft Housing Element Submittal

Dear Ms. Huntley:

Thank you for forwarding emails submitted to HCD in reference to the City's Draft Housing Element submittal. The following references the emails and responses from the City:

Emails from:

Bobby Wilkes April 26, 2018

Carolyn Levin, April 26, 2018

Sharon Cooper, April 26, 2018

Leslie Smith, April 30, 2018

Emails from the above residents raised concerns related to impacts of up-zoning properties along Quail Garden Drive. The following is intended to address each email since the comments are similar.

Concentration of Units. As shown in the attached aerial photo, four sites located along Quail Garden Drive are proposed to be up-zoned. Three sites, offering the capacity of up to 424 units, are located at the intersection of Encinitas Boulevard and Quail Garden Drive. The fourth site, the Echter site, is located at the northwest corner of the intersection of Quail Garden Drive and Leucadia Boulevard. The sites were selected based on their suitability for development, vacant or underutilized status, and the interests of the owners in redeveloping the properties during the planning period. No sites were added in this area as the consequence of the removal of site L-7.

Increased Traffic. Quail Gardens Drive currently carries an average of 9,400 vehicles per day. The roadway has the capacity to carry up to 20,000 vehicles per day. Three of the sites are located at the southern stretch of Quail Gardens Drive and the fourth is at the northern end. Both Leucadia Blvd. and Encinitas Blvd are major thoroughfares that provide access to the I-5 freeway. Since the sites are located near these major roadways, it is likely the bulk of the

vehicles would travel towards these roadways instead of Quail Gardens Drive, and the City does not expect the development of these sites to create any significant traffic impacts.

Other Sites. Suggestions were to utilize other sites, including the Michaels craft store on North El Camino Real and a portion of the Encinitas Community Park on Santa Fe. The Michaels craft store, which is currently vacant and is located in a multi-tenant center, would be suitable for multifamily development, but the owners have not yet indicated that they are interested in redeveloping the property. Encinitas Community Park is a 44-acre multi-use park that accommodates a skate park, a dog park, a soccer field, two baseball fields, three multi-purpose fields, one softball field, two practice fields, passive play areas, and a walking trail. Locating housing at this location would displace many of these highly utilized and developed amenities, creating substantial additional costs to replace them.

Email from Teresa Barth, May 4, 2018

Housing Obligation. The comment indicated 66 low income units were produced between January 1, 2010 and December 31, 2017. However, this comment does not recognize the low income accessory dwelling units that were constructed during this period. Based on recent surveys, 79 low income accessory dwelling units (ADU) were constructed during this period. The remaining housing need is 1,141 low income housing units.

Removal of Site L7. Following lengthy public testimony and deliberation, on April 18, 2018, the City Council voted to remove Site L7 from sites to be up-zoned. The City Council also directed that the site density be increased to R3 and to release a Request for Proposal to either swap the property for a site more suitable for affordable housing, or to sell the property, with the proceeds to be used to develop affordable housing on another site. It is expected that any City funds would be leveraged with tax credits, SB 2 funds, and other available state and federal funds to create a significant affordable project, and would not be used to purchase individual single-family homes.

Strawberry Fields. At the April 4, 2018 City Council meeting, public testimony was provided by an individual representing the applicant who has submitted an application develop the property with a senior care facility. The subject application was submitted in 2017 and is currently incomplete. As stated in the letter dated March 14, 2018, the property owner indicates support for the application, but has not requested that the site be removed for consideration. Since the outcome of the discretionary application is unknown, ultimate development of the site as a senior care facility is uncertain.

Include Additional Sites. To ensure a sufficient number of affordable units, the City Council is scheduled to consider additional sites on May 9, 2018.

Email and Letter from Lisa Shaffer, May 4, 2018

Removal of L7. See above

Email from Sally Bolus, May 3, 2018

Concentration of Units. See above.

Removal of L7. See above.

Site Distribution. The City Council is scheduled to consider additional sites on May 9, 2018 which will include options from each community.

Email from Bob Kent, May 8, 2018

City Owned Property. See above regarding removal of L7.

Strawberry Fields. See above.

Adequacy of Other Sites. The sites to be up-zoned have been evaluated to ensure availability of utilities, and the projected unit capacity reflects potential site constraints such as steep grades or known environmental resources. Sewer capacity is adequate to accommodate the planned additional development.

Include Additional Sites. See above regarding additional sites.

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

Sincerely,

A handwritten signature in blue ink that reads "Brenda Wisneski". The signature is fluid and cursive, with the first name being more prominent.

Brenda Wisneski, AICP
Development Services Director



Sidonia St

Site 9 Echter Site
246 Units

Leucadia Blvd.

Quail Gardens

Site 5 Encinitas Blvd &
Quail Gardens 117
Units

Site AD02 Baldwin
223 Units

Site 12 Sunshine Gardens
84 Units

Encinitas Blvd.

Barbara Kautz

From: Huntley, Robin@HCD <Robin.Huntley@hcd.ca.gov>
Sent: Thursday, April 26, 2018 9:06 AM
To: Diane Langager; Barquist, Dave; Barbara Kautz
Subject: FW: Subject: City of Encinitas 2013-2021 Housing Element Update

Below is another comment received regarding Encinitas' draft housing element submittal. Please provide HCD with your response.

Robin Huntley
Housing Policy Manager, Housing Policy Division Housing & Community Development
2020 W. El Camino Avenue, Suite 500 | Sacramento, CA 95833
Phone: 916.263.7422

-----Original Message-----

From: Bobby Wilkes [mailto:bob_wilkes@sbcglobal.net]
Sent: Thursday, April 26, 2018 8:53 AM
To: Huntley, Robin@HCD <Robin.Huntley@hcd.ca.gov>
Subject: Subject: City of Encinitas 2013-2021 Housing Element Update

Dear Ms Huntley,
I am a resident and President of Quail Park HOA in Encinitas, Ca that sits along Quail Gardens Drive. This street is currently being considered for rezoning to affordable housing (4 lots in less than a 1/4 mile) and is used as a major cut through from Leucadia Ave to Encinitas Blvd. It is a single lane each way with a median in the middle. Several issues with this: If there is an accident or flat tire (as has occurred), you cannot get through and traffic has to be redirected back to one of those two major streets as there is no way out. Secondly, even with current traffic, trying to merge on to Quail Gardens drive from the neighborhoods is a challenge from 7-9 am and 3-6 pm. The removal L-7 on the north end of QGD from the affordable zoning plans, now puts all the stress at the south end of QGD. Just adding a proposed minimum of 350 units on one of the 4 lots to be zoned for affordable housing, along with the proposed private school with 300 students at the south end of Quail Gardens Drive, will substantially deteriorate the already stressed traffic along this street. I am very concerned about our quality of life and the values of our property deteriorating due to thees proposed changes. I don't know the answer here, but it is a huge concern and may cause several of people to move. Thank you for listening

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Barbara Kautz

From: Huntley, Robin@HCD <Robin.Huntley@hcd.ca.gov>
Sent: Thursday, April 26, 2018 9:10 AM
To: Diane Langager; Barquist, Dave; Barbara Kautz
Subject: FW: Housing element

Here are some additional comments received by HCD. Please let HCD know your response.

Robin Huntley
Housing Policy Manager, Housing Policy Division Housing & Community Development
2020 W. El Camino Avenue, Suite 500 | Sacramento, CA 95833
Phone: 916.263.7422

-----Original Message-----

From: Carolyn Levin [mailto:levin.carolyn@gmail.com]
Sent: Thursday, April 26, 2018 9:06 AM
To: Huntley, Robin@HCD <Robin.Huntley@hcd.ca.gov>
Subject: Housing element

I have been a resident of Quail Gardens Ct. a gated community that has only one entrance/exit, which is on to Quail Gardens Dr., for 27 years. Quail Gardens Dr., which is a single lane in each direction with medians and bike lanes (which I would never dare use) was not a through street when we moved in; now, it is being used as a highway bypass for the 5. The traffic going west on Encinitas Blvd. often backs past Quail Gardens Dr. during morning and evening rush hours, making a right turn impossible and forcing a back up onto Quail Gardens Dr. all the way to Leucadia Bl. at times. In addition, traffic for the Academy backs up on Westlake and across Encinitas Bl onto Quail Gardens Dr before school, adding to the morning jam. We are unable to exit our community much of the morning.

While I am overjoyed that you removed L7 from your list, I am concerned about the congestion at the corner of Encinitas Bl. And Quail Gardens Dr., which has already been damned by several traffic surveys and should not be allowed to worsen. Do not allow Sanderling to build a school, and carefully consider the number of units you plan to add at each end of this segment of Quail Gardens Dr.

Also of note, the Botanical Gardens' events often cause back ups, and the farm school is full of children - most drivers do not notice the speed limit signs.

Accidents can make the road impassable, and emergency vehicles already have trouble getting through.

Help! Why not put your affordable housing along El Camino Real, such as in the Michaels shopping center area which has been sitting empty for quite some time... or in another (economically valuable) area that might never see any good use? Why cram everything onto our block??

Thank you - Carolyn Levin

Sent from my iPhone

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Barbara Kautz

From: Huntley, Robin@HCD <Robin.Huntley@hcd.ca.gov>
Sent: Friday, April 27, 2018 7:03 AM
To: Diane Langager; Barquist, Dave; Barbara Kautz
Subject: FW: Affordable housing in encinitas

Please see the comments below that HCD received regarding Encinitas' housing element. I look forward to hearing the City's response.



Robin Huntley

Housing Policy Manager, Housing Policy Division
Housing & Community Development
2020 W. El Camino Avenue, Suite 500 | Sacramento, CA 95833
Phone: 916.263.7422



From: Sharon Cooper [mailto:sharon52coop@hotmail.com]
Sent: Thursday, April 26, 2018 11:30 PM
To: Huntley, Robin@HCD <Robin.Huntley@hcd.ca.gov>; council@encinitasca.gov; cblakespear@encinitasca.gov; jmosca@encinitasca.gov; tboerner@encinitasca.gov; tkranz@encinitasca.gov; kgoodsell@encinitasca.gov; mmuir@encinitasca.gov
Subject: Affordable housing in encinitas

Robin and members of Encinitas City Council,

I am a resident of Quail Park , a small community on Quail Gardens Drive . I am very concerned about the placement of the proposed affordable housing on QUail Gardens Drive. I know you have received quite a lot of input from my neighbors sharing with you the concerns we have about the very stressed traffic patterns that already cause our community problems. Adding 350 residential units at the south end of Quail Gardens Drive will exacerbate those conditions and very possibly have a very adverse effect on our property values.

I do understand the state's requirement that Encinitas provide more affordable housing within our borders. I have a suggestion that could be a potential win for the residents living along Quail Garden Drive and help the city provide the needed affordable housing.

I know that L-7 on the north end of Quail Gardens Drive has been removed as a potential site for the housing. I also understand that the city owns the L-7 property .
Is it possible for the city to use some of the Encinitas Community Park land below Santa Fe Drive for affordable housing? A park ,equal to the size of the park land that would be used for affordable housing, could be developed in the L-7 area .

The land near Santa Fe Drive would be ideal for affordable housing because it is near major intersections, bus routes, and shopping. As an added bonus, those residents would have a beautiful park just out their door because there will still be a good amount of park land left. Because Santa Fe Drive is already a major thoroughfare, it can much more easily handle the increased traffic and population density that would occur as a result of the housing development without causing major problems for present Encinitas residents.

I believe that it is important to take care of all of our citizens and make sure that there is adequate housing. However, it is also important to maintain the quality of life that the residents of Quail Gardens Drive have worked very hard to achieve.

Please help us find a win/win solution to this important problem. Thank you for your consideration.'

Sharon Cooper 1116 Quail Gardens Drive Encinitas, Ca 92024 760-632-0057

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Barbara Kautz

From: Huntley, Robin@HCD <Robin.Huntley@hcd.ca.gov>
Sent: Monday, April 30, 2018 11:55 AM
To: Diane Langager; Barquist, Dave; Barbara Kautz
Subject: FW: City of Encinitas 2013-2021 Housing Element Update

Comments on Encinitas' draft housing element from Leslie and Ken Smith are shown below. I look forward to reading the City's response.



Robin Huntley

Housing Policy Manager, Housing Policy Division
Housing & Community Development
2020 W. El Camino Avenue, Suite 500 | Sacramento, CA 95833
Phone: 916.263.7422



From: Leslie Smith [mailto:lesliejonesmith@gmail.com]
Sent: Monday, April 30, 2018 10:59 AM
To: Huntley, Robin@HCD <Robin.Huntley@hcd.ca.gov>
Subject: City of Encinitas 2013-2021 Housing Element Update

My apologies; I neglected to add the subject the first time!

Regards,
Leslie

On Mon, Apr 30, 2018 at 10:57 AM, Leslie Smith <lesliejonesmith@gmail.com> wrote:

Dear Ms Huntley,

My husband and I are residents of the Quail Park residential complex located in Encinitas along the east side of Quail Gardens Drive. We are directly across from the San Diego Botanic Garden.

Quail Gardens Drive is a narrow, very busy two-lane road with bicycle lanes and no traffic controls. In addition to the local residential traffic, hundreds of drivers use the street daily as an alternate route to avoid the freeway. Also the botanic garden is open 7-days/week to visitors, field trips, etc. and has increasingly frequent large events (weddings, parties, concerts, special botanical shows) that generate heavy traffic.

Thus, we are already faced with great difficulty exiting (and even entering) our common driveway. Visibility is very poor due to curvature in the road and a hill to the south, and vehicles speed well over the limit, which adds to the danger.

Since L-7 was removed from the list, all the burden is placed on the south end of the road to somehow support at least 350 proposed units on one of the 4 lots to be zoned for affordable housing. Together with a proposed private school with 300 students at the south end of Quail Gardens Drive would severely impact this already crowded and dangerous road.

We strongly object to the proposed level of housing density and urge you to consider our reduced quality of life with increased traffic and noise, lower home values, and reduced safety for us and the entire community of residents in the area. We feel the City should not be concentrating so much housing in one area.

Thank you for your consideration, and please feel free to call us.
Leslie and Ken Smith
760-207-1913

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Barbara Kautz

From: Huntley, Robin@HCD <Robin.Huntley@hcd.ca.gov>
Sent: Tuesday, May 01, 2018 3:35 PM
To: Diane Langager; Barquist, Dave; Barbara Kautz
Subject: FW: Comment on draft Encinitas Housing Element Update
Attachments: Letter to CA HCD re Encinitas Housing Element final.pdf

Attached are comments received from Steve and Jayshree Gerken. HCD looks forward to reviewing the City's response.



Robin Huntley

Housing Policy Manager, Housing Policy Division
Housing & Community Development
2020 W. El Camino Avenue, Suite 500 | Sacramento, CA 95833
Phone: 916.263.7422



From: Steve and Jayshree Gerken [mailto:sgerken@sbcglobal.net]
Sent: Tuesday, May 1, 2018 3:19 PM
To: Huntley, Robin@HCD <Robin.Huntley@hcd.ca.gov>
Subject: Comment on draft Encinitas Housing Element Update

To: Robin Huntley
Housing Policy Manager, Housing Policy Division
Housing & Community Development Department

Dear Ms. Huntley,

I am a resident of Encinitas, Ca. I have participated in the city's housing element update for the past five years. I would like to provide some written comments to the state's Housing and Community Development department regarding the draft housing element update published April 13, 2018. I appreciate this opportunity to continue to participate in the development of my city's housing element. I have attached my comments to this email and I will mail a hard copy to your attention. If you have any questions, I can be reached by email, by mail or by telephone.

Sincerely,

Steve Gerken, Ph.D., MBA
Encinitas resident
202 Lindsey Ln, Encinitas CA
Tel: 858.663.7861
email: sgerken@sbcglobal.net
500 | Sacramento, CA 95833
Phone: 916.263.7422

To: Huntley, Robin@HCD <Robin.Huntley@hcd.ca.gov>
Subject: City of Encinitas 2013-2021 Housing Element Update Draft

This email and any files attached are intended solely for the use of the individual or entity to which they are addressed. If you have received this email in error, please notify the sender immediately. This email and the attachments have been electronically scanned for email content security threats, including but not limited to viruses.

May 1, 2018

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

RE: Encinitas draft HCD application of April 13, 2018

Dear Ms. Huntley,

The Development Services Department of the City of Encinitas submitted a draft of the Housing Element. Update (HEU) to the Housing and Community Development Department (HCD). I wish to submit additional information in response to this draft document that I believe is beneficial to the HEU process. For your information, I am a resident of Encinitas since 2002 and I have participated in the planning for the Encinitas HEU at the city of Encinitas for over five years, including the earlier HEU which resulted in the Proposition T ballot measure. After the Proposition T housing element was not adopted by voters in 2015, I have continued to participate through attending meetings, dialogue with residents and staff, and attending and speaking at city council meetings about the HEU. Suffice it to say, I have been an active participant in the HEU.

I read the draft HEU submitted by the city of Encinitas to HCD on April 13, 2018 after it was posted on the city web-site. Since the city has been acting with extreme haste (in the mayor's words) in the preparation and filing of the draft HEU, I understand errors and omission may be part of such a complex document. Therefore, I want to bring to the attention of HCD some technical errors in the writing of the document that may have some bearing on the review. I also want to include some information omitted in the report regarding the development status of some of the sites listed in the HEU. And lastly, I want to also offer suggestions and alternative solutions that may help develop the best HEU.

Significant changes to the draft HEU

At the April 18, 2018 Encinitas city council meeting, the council voted to eliminate the L-7 site from the HEU. This vote occurred after significant organized community protest was acknowledged by the council. Elimination of L-7 is a major change to the HEU. It contained the single largest contribution of RHNA low and very low-income housing to the HEU. As the mayor expressed in the press and in public meetings, the city needs to show it has some skin in the game and affirm its commitment to the HEU by including the one site in the city that can immediately be developed into low and very low-income housing. With the elimination of L-7, the city has withdrawn its participation in providing immediately developable lands. Therefore, the HEU needs to be rewritten. The HEU should be returned to the city and rewritten. HCD's review clock should be restarted to give all interested parties due process to respond to this major change,

especially since the council refused to discuss site AD-2 which has even more onerous environmental and financial impacts compared with L-7. Site AD-2 didn't benefit from the loudest scream paradigm like L-7 whose residents complained the loudest and were capitulated to by the city council. Additional site selection was not discussed after the mayor instructed council and the audience that the council was not gathered to address site selection, but to address policies related to the HEU. **This was a major procedural error that needs time to be corrected by the council because they eliminated L-7 without that matter being on the agenda.**

HEU Major Errors

The errors listed below are brought to your attention because they may affect the site selection review and approval process by HCD. Minor errors have been ignored that would appear to have no impact on HCD decisions.

1. The HEU must comply with the city's general plan. Discussions were held April 18 by city council on policies that need to be changed or amended to allow for the adoption and implementation of the HEU. The city general plan section 1.4, General Plan Consistency, states that "The Housing Element is one of seven elements of the Encinitas General Plan and must be consistent with all of those elements." The Land Use Element, for instance, establishes the location, type, intensity and distribution of land uses throughout the City, and the presence and potential for jobs affects the current and future demand for housing at the various income levels in the City.

Land Use Policy 1.9 states that its goal is to: "Maintain a proper balance between acreage of commercial land and population served." However, the HEU omits discussion of any impact that rezoning of site 12, Sunshine Gardens, and site 5, Encinitas Blvd and Quail Gardens parcels, will have on the proper balance between acreage of commercial land and population served. These two sites are the very last vacant or under-utilized parcels in the commercial corridor of Encinitas Blvd. that can be developed. **There needs to be a discussion of how the city will allow for professional, retail and services for the growing population of Encinitas if it eliminates all vacant commercial land on a key prime arterial route and rezones it to high-density residential.**

2. The city council has stated that because of lack of time to prepare a full EIR, it will utilize the EIR adopted for the previous HEU. Eighteen public HEU meetings were held leading up to the City Council meeting of April 18, 2018. The land use at these public meetings stated that the new housing would be distributed evenly across all five communities, which is very similar to the earlier HEU land use policy. In Resolution 2016-51, certifying the EIR for the public vote on Prop T (previous HEU), it states that "The primary objectives of the proposed project include the following objectives related to the HEU: #8 Distribute attached and multifamily housing to the City's five communities." (ref: *Exhibit B to resolution 2016-51, Section D, page 14*).

Looking at the city map of the location of the proposed housing sites, (page 1-11 of draft HEU, see exhibits), the HEU proposes to concentrate up to 53% of new housing along one mile of the city's 172 miles of roadway. These are sites 03 (L-7 city parcel-117 DU), 05 (Encinitas Blvd. and Quail Gardens Parcels-117 DU), AD2 (Baldwin and Sons Properties-223 DU), 09 (Echter property-246 DU) and 12 (Sunshine Gardens Parcels- 84 DU). Clearly the draft HEU is not compliant with the EIR and the general plan for distribution of housing. **The HCD should question this proposed level of intensification of use of a rural segment of the city. HCD should also evaluate compliance with the EIR.**

HEU Omissions

1. A public records request showed that site AD2 (Baldwin and Sons parcels) appears to have been added to the HEU sites list by city staff sometime around March 2018. Thus, site AD2 did not participate in the 18 public meetings and the past 2 ½ years of public discussion. Site AD2, also known as ALT-5 in the previous HEU site selection, was not included in the previous HEU because of unmitigable environmental problems. The EIR reported a litany of environmental problems with this site. Most likely, this was a major contributing factor for why site AD2 was not included in the current HEU planning. While the city is desperately trying to comply with the new 2018 state laws for new housing sites that can be developed on land deemed vacant and developable within 2-3 years, site AD-2 does not meet the criteria of easily developable sites and not within 2-3 years. The property owner has been trying to build market rate homes on this site for over ten years and has yet to be able to develop the site. The map that was approved ten years before the Prop T EIR did not identify all the environmental problems associated with the site. was done before the EIR.

The litany of environmental problems makes this site problematic for any type of development and are major factors for why it has not been developed. According to the EIR for the previous housing element, site AD2 (called ALT5 in EIR) must address:

- **BIOLOGICAL RESOURCES:** Potentially significant direct impacts to sensitive plants and wildlife could occur on the undeveloped housing sites ALT-4, ALT-5,
- **WETLANDS:** All three housing strategies and the SMUP Alternative would have the potential to impact jurisdictional waters or wetlands based on the potential presence of wetland resources on the following housing sites: ALT-4, ALT-5.
- **CULTURAL RESOURCES:** All three housing strategies and the SMUP Alternative would have the potential to impact jurisdictional waters or wetlands based on the potential presence of wetland resources on the following housing sites: ALT-4, ALT-5,

- HAZARDS AND HAZARDOUS MATERIALS: Development of any of the three housing strategies and the SMUP Alternative would result in potentially significant impacts related to accidental release of hazardous materials.
- TRAFFIC: Removal of site AD2 mitigated the traffic issues on Quail Gardens Dr. allowing site L-7 to be included in the housing sites in the previous HEU.

I recommend HCD examine site AD2 and remove it from the list of vacant, immediately developable sites and add one or two of the parcels to the list of non-vacant sites for development for the following reasons:

I recommend HCD examine if the southerly parcel(s) of AD2 can be attached to the Sunshine Gardens non-vacant parcel. This would allow the southern parcel(s), which may have less environmental impact due their distance from Biological resources, wetlands, cultural sites. Also, site 12, Sunshine Gardens, will have its site access to the prime arterial, Encinitas Blvd., which would eliminate the unmitigable impact of traffic generation on Quail Gardens Dr., but only if it is attached to site 12 with restrictions to development requiring ingress/egress via Encinitas Blvd. This analysis may allow southern parcel(s) of site AD2 to participate in the non-vacant land site selection process.

In summary, had the owners of site AD2 participated in any of the 18 public hearings over the last two and one-half years, the environmental issues could have been vetted and best solutions for high-density housing on their parcel(s) could have been prepared in a fully transparent fashion. As such, with the lack of any public discussion and lack of transparency by staff in developing the final draft HEU that suddenly included site AD2 for site selection, AD2 should be removed from the vacant, easily developable list.

Finally, the long list of environmental problems certified in the EIR from the former HEU, I strongly recommend HCD remove site AD2 from the vacant, easily developable housing list and move it to the non-vacant housing list for detailed, public consideration.

MAJOR ERRORS

- 1) The HEU states that telephone poles are crossing SITE ad2 AND Quail Gardens Dr. These are high voltage power lines coming from the Saxony substation about ½ mile to the west. Relocation will take considerable more engineering and regulatory approval to relocate than just moving some telephone poles. (see photos)
- 2) The HEU proposes that 55% of its new housing element sites be located on Quail Gardens Dr. is not an arterial. Quail Gardens Dr. is an 11-foot-wide, two-lane collector road, designed to collect cars from the neighboring residences. This is an important fact because this is a low capacity road where the speed limit has been proposed by city council and adjacent farms and residences to be reduced to 25 MPH.

- 3) Quail Gardens Dr. is already **nearing 80% of capacity** according to the latest city traffic study. The intersection of Quail Gardens Dr at Encinitas Blvd, the adjacent prime arterial, is already at a **level of service F**. No traffic study has been done to address the addition of 55% of the new HEURHNA homes impact on Quail Gardens Dr. The HCD should demand that some traffic studies be done before allowing Encinitas to add so many sites to a country collector road now that HCD is aware that traffic is already at unacceptable levels. While the land on Quail Gardens Dr is vacant, it is not easily developable given what is already known about traffic on this road.
- 4) **The nearest school is located three miles away), not ½ mile away**. The draft HEU mistakenly labels a school district farm as a school. There is no school at the school district farm. Therefore, all children in the Quail Gardens Dr. sites will have to be driven 3 miles to school daily on a collector road that is already nearing capacity.
- 5) Encinitas has 172 miles of paved roadway. Of significant concern to the community was that **the draft HEU proposes to locate 55% of all new housing within a 1 mile stretch of a country road**. This is a violation of the city's general plan land use element. It is a violation of the HCD guidelines that housing be distributed throughout a city. Some of the undescribed impacts from this draft plan will fall heavily upon students who will attend the Encinitas elementary school, Capri Elementary. Capri elementary is already at or near capacity with 705 students enrolled. **Adding another 600 to 700 children (1 child per household estimate) to a single school site will overwhelm the school site and local resources** include the rural roads leading to the schools and the school itself.
HCD should be recommended that the city be allowed to identify other sites dispersed equally throughout the city so as to distribute the full impact of growth in a more manageable fashion, including distributing the school children across the city's nine schools rather than just one. To have fun with the local parlance of the rural character of our community, **"it just ain't fair."**

Good News

At the April 4, 2018 city council meeting on the housing element, it became apparent that the city was very concerned that it may not have sufficient sites to meet the new 2018 vacant land requirements. The great news is that several landowners spoke publicly at the April 4 council meeting. Several stated that this council agenda was the first they had heard of the city's new HEU. So in spite of the outreach by city staff, there appears to be the opportunity for more undeveloped housing sites than city staff has identified. Specifically, the owner of five acres of undeveloped land adjacent to Sage Canyon (AD1 site) asked that

their property be included on the list. Then, the representative of Sea Coast Church asked that half of their 4 ½ acres be added to the list of undeveloped properties.

Also, Encinitas has 8 city properties, not one (L7) that could potentially meet the vacant, easy to develop criteria. Just one example is that the facilities lot off Encinitas Blvd could be moved to another site such as the water district facilities site.

The representative of the Strawberry Fields (site 10) said they were willing to work with the city so their development meets the HCD requirements for the new HEU. So an undetermined number of units already in the planning phase on undeveloped land are ready to be committed to the unit count.

And finally, the representative of low income housing stated that proximity to transit was actually not critical for low and very low-income housing. The representative stated at a public hearing that because the families renting this housing tend to work more than one job, they are unable to rely on public transportation and thus rely heavily on automobiles. Therefore, many of the undeveloped sites (OE sites in Olivenhein) listed in the Proposition T HEU (which is still approved by HCD) and identified in the current list of vacant sites, should now be available for development. And since the city listed one or more sites (AD2, L-7) that are not on any transit line and > ¼ - ½ to a local bus line, it is logical that the city can revise its site selection criteria for having easy access to mass transit, shopping centers, etc. Thus, the city has many undeveloped sites that can be brought forward to meet their requirements for RHNA housing.

In summary, I would like to ask the HCD to:

- 1) Restart the 45 day review period since the city substantially changed the HEU at the April 18 city council meeting. The time is necessary to reevaluate what the new HEU looks like and respond to the city about any new impacts that the removal of L-7 had on the draft HEU.
- 2) Please instruct the city to remove sites AD2 from the immediately developable vacant sites as it has been determined by the Prop T EIR to present environmental issues that cannot be resolved in sufficient time to be developed in 2-3 years.
- 3) Ask the city to list the additional properties such as Sea Coast Church and the 5 acres next to Sage Canyon and the Olivenhein properties to the list of immediately developable vacant lands.
- 4) Since the city has rejected the premise that site should be near mass transit, ask the city to relist the Olivenhein sites, the Manchester site, and the seven other properties owned by the city to the list of immediately developable sites.
- 5) Ask the city to assess the financial impact of locating housing instead of commercial on the last two undeveloped commercial properties on the Encinitas Blvd. commercial corridor.

- 6) Ask the city to not shortcut the EIR process. This would certainly delay the HEU as due process would have been denied and any court would mandate that the state laws be followed, regardless of the argument that the city ran out of time. There is always time to follow the law. It just may cost the city money in lawsuits. That's is the cost for delayed planning by the city.
- 7) Consider merging one (two?) of the Southerly AD2 sites with Sunshine Gardens (site 1), if those sites agree to have their access onto the prime arterial Encinitas Blvd. and not the local collector road Quail Gardens Dr. Also, HCD must agree that sites 10 and 05 will have no financial impact to city by removing these large, multi-acre commercial properties from the Encinitas Blvd. commercial corridor.

Sincerely,

Steven C Gerken

Steven C. Gerken
Encinitas resident
202 Lindsey L,
Encinitas

References

Proposition T Environmental Impact Report: <http://www.encinitasca.gov/I-Want-To/Housing-Plan-Update/Final-Environmental-Impact-Report>

EIR Findings of Fact: City Council Resolution 2016-51
<http://www.encinitasca.gov/Portals/0/City%20Documents/Documents/Development%20Services/Planning/Advanced%20Planning/Housing%20Plan%20Update/Final%20EIR%20-%20May%202016/CC%20Resolution%20No.%202016-51.pdf>

Photos

Power lines described as telephone poles





Barbara Kautz

From: Huntley, Robin@HCD <Robin.Huntley@hcd.ca.gov>
Sent: Thursday, May 03, 2018 11:59 AM
To: Diane Langager; Barquist, Dave; Barbara Kautz
Subject: FW: City of Encinitas' Affordable Housing Element

HCD received the comments shown below regarding Encinitas' draft housing element. Please provide the city's response to me.



Robin Huntley

Housing Policy Manager, Housing Policy Division
Housing & Community Development
2020 W. El Camino Avenue, Suite 500 | Sacramento, CA 95833
Phone: 916.263.7422



From: Sally Bolus [mailto:sbolus@roadrunner.com]
Sent: Thursday, May 3, 2018 11:11 AM
To: Huntley, Robin@HCD <Robin.Huntley@hcd.ca.gov>
Subject: City of Encinitas' Affordable Housing Element

Dear Ms. Huntley:

I am an advocate of affordable housing. My son, who is a web site designer for a small company, currently lives in an affordable housing unit in San Diego, and without access to this type of housing I believe that he and many of his friends would be forced out of California.

I am writing, however, to convey my perceptions and concerns regarding the evolution of the City of Encinitas' plan for the development of affordable housing. My first concern is that almost half of the 12 strong candidate sites identified for up-zoning to allow for the construction of affordable housing were all located on a 1.5 mile stretch of a single road in a city which encompasses approximately 19 square miles. This short stretch of a road called Quail Gardens Drive was to absorb approximately 57% of the total 1431 units of affordable housing in the City. I understand that the City is required to give priority to vacant land in selecting sites for up-zoning, and three of the five sites along Quail Gardens Drive are vacant. In this case, however, application of this priority has had the unintended consequence of concentrating a large portion of the potential housing in a single neighborhood within the City.

My second concern is that after submitting it's original listing of candidate sites to the State, the City removed one of the "strong candidate" sites referred to as L-7 through a 3-2 vote of the City Council. I believe that the removal of this site resulted from an organized campaign by the homeowners with property directly adjacent to, or in close proximity, to the L-7 site. Although all housing prices in Encinitas have risen well above the median price of San Diego County as a whole, the homeowners involved in this effort own some of the largest and most expensive properties in the City. I can think of no motive for this group's opposition other than the NIMBY

phenomenon. Unfortunately, one member of the City Council succumbed to this political pressure and reversed his original vote to allow for the removal of the L-7 property from the original listing of candidate sites..

In conclusion, I propose that affordable housing sites be distributed throughout all five communities of the City in a balanced manner so that the unique character of all five communities can be maintained. It is unfair that a single stretch of road in only one of five communities bear the brunt of the congestion and traffic that multi-family housing will undeniably generate. Additionally, I ask that the selection of sites be dependent on factors other than the NIMBY preferences of wealthier City residents and the political aspirations of City Council members.

Sincerely,

Sally M Bolus
1016 Quail Gardens Ct
Encinitas CA 92024

This email and any files attached are intended solely for the use of the individual or entity to which they are addressed. If you have received this email in error, please notify the sender immediately. This email and the attachments have been electronically scanned for email content security threats, including but not limited to viruses.

Barbara Kautz

From: Huntley, Robin@HCD <Robin.Huntley@hcd.ca.gov>
Sent: Friday, May 04, 2018 11:14 AM
To: Diane Langager; Barquist, Dave; Barbara Kautz
Subject: FW: City of Encinitas Draft Housing Element
Attachments: Strawberry Fields letter from owner 4-4-18 report.pdf

Please see the comments and attached submitted by Teresa Barth. HCD requests your response.



Robin Huntley

Housing Policy Manager, Housing Policy Division
Housing & Community Development
2020 W. El Camino Avenue, Suite 500 | Sacramento, CA 95833
Phone: 916.263.7422



From: Teresa Barth [mailto:teresabythesea@yahoo.com]
Sent: Friday, May 4, 2018 10:56 AM
To: Huntley, Robin@HCD <Robin.Huntley@hcd.ca.gov>
Subject: City of Encinitas Draft Housing Element

Robin Huntley
Housing Policy Manager, Housing Policy Division
Housing and Community Development
2020 W. El Camino Avenue
Suite 500
Sacramento, CA 95833

May 4, 2018

Dear Ms. Huntley,

I am writing this letter as both a resident and a former Mayor of Encinitas to express my deep concern about the recent actions taken by the city council, at the April 18 meeting, to remove the city owned vacant property on Quail Gardens Drive (identified as L7). This parcel was included in the DRAFT Housing Element submitted to HCD on April 13.

The Council in a 3-2 vote, decided to rezone L7 from R25 to R3 with an intent to sell the property and use those proceeds, on a yet to be defined site(s) to develop affordable housing. This action is a complete reversal of a vote taken at the April 4th meeting to rezone L7 for affordable housing.

The Draft Housing Element shines a very bright light on where we are today: for the seven year period covered January 1, 2010 - December 31, 2017, the City has produced only 66 of its 1,286 state mandated obligation which represents reaching only 5% of the target.

It's through this lens that I am so disappointed that L7 was removed, without first providing a viable replacement property. The current Housing Element List now only includes privately held parcels, which taking into account the City's inclusionary housing ordinance, will produce much less affordable housing, over a longer period of time. By not fully upzoning L7, the number of affordable housing units to be built over the next several years has been cut almost in half--at a point in time, where we are already so far behind in meeting our obligations, from both a legal and most importantly from a human perspective. Also, the future sale of L7 does not guarantee any new affordable housing will be built, since without land, we cannot build an affordable housing community. Even if land is identified, it could take years before the housing is built and will most likely be met with the same neighborhood resist that caused the city council to reverse their position on L7. With Encinitas' current median home value for multi-family units at \$680,000, even if the proceeds from the sale, estimated to be approximately \$7 million, were used to purchase existing market rate units the city could only purchase approximately 10 units.

Additionally, another site that is included, identified as the Strawberry Fields, is not a viable site. At the April 4th meeting Mike Falkner, representing the property owners, requested the council to remove the property from the list because of a pending development of a senior care facility, which does not count as an affordable development. Comments by council acknowledged this but they decided to leave the parcel on the list anyhow. Attached is the letter from the property owner which was included in the April 4th staff report.

With the removal of this ineligible site and L7, the city can not meet its mandated affordable housing obligation.

Based on these facts, I respectfully request that HCD require the city to resubmit a Housing Element that accurately addresses the loss of a highly-likely affordable housing site (L7); remove an ineligible site (Strawberry fields) and include additional site(s) to ensure a sufficient number of anticipated affordable units, including a realistic "buffer".

The City of Encinitas has too long been out of compliance with state law and needs to submit to HCD a Housing Element that complies with the intent and spirit of the law.

Sincerely,
Teresa Arballo Barth
Former Mayor and Council member
City of Encinitas

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they are addressed. If you have received this email in error, please notify the sender immediately. This email and the attachments have been electronically scanned for email content security threats, including but not limited to viruses.

Barbara Kautz

From: Huntley, Robin@HCD <Robin.Huntley@hcd.ca.gov>
Sent: Friday, May 04, 2018 11:18 AM
To: Diane Langager; Barquist, Dave; Barbara Kautz
Subject: FW: Encinitas Housing Element Update
Attachments: LRS letter to HCD 5-3-18.docx

Please see the attached comments from Lisa Shaffer. HCD looks forward to the city's response.



Robin Huntley

Housing Policy Manager, Housing Policy Division
Housing & Community Development
2020 W. El Camino Avenue, Suite 500 | Sacramento, CA 95833
Phone: 916.263.7422



From: LISA SHAFFER [mailto:lrshaffer@roadrunner.com]
Sent: Friday, May 4, 2018 11:01 AM
To: Huntley, Robin@HCD <Robin.Huntley@hcd.ca.gov>
Subject: Encinitas Housing Element Update

569 Kristen Court
Encinitas, CA 92024

May 4, 2018

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

Re: City of Encinitas 2013-2021 Housing Element Update

Dear Ms. Huntley:

I am a former Encinitas City Council member and Deputy Mayor. I live just off Quail Gardens Drive, very close to four vacant parcels that have been the subject of intensive discussion in the development of the City's Housing Element update.

My comments are simple. The City should be required to upzone the parcel identified as L7 on Quail Gardens Drive. This 7.6 acre site is owned by the City and, as such, is the only site on which the City could ensure that a real housing project

will be built during the current cycle with more than the minimum percentage of units set aside for low or very low income occupants. In fact, it could be designated as 100% affordable units.

As you may be aware, the City Council voted to submit a plan to HCD that included L7 in the list of proposed upzoning sites. Then, under pressure from NIMBY neighbors, one Council member changed his vote and the site was removed from consideration. There are no valid arguments for excluding L7 – just entitled, misinformed neighbors who resist change.

The City of Encinitas is challenged in finding adequate sites to meet state requirements and by the extra burden of our local initiative that requires a public vote. In order to address the concern of some voters that upzoning is just a gift to land owners and developers and doesn't actually lead to more affordable housing, I think it is essential that the City commit to at least one sizable project that is mostly or all affordable units. Building on City-owned land is the only way to make this happen during the current housing cycle. If the City Council majority does not have the political will to commit to L7, I hope HCD will give them no choice. To do anything less will make the whole process appear to be a sham.

Thank you for your consideration,

Lisa R. Shaffer

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569 Kristen Court
Encinitas, CA 92024

May 4, 2018

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

Re: City of Encinitas 2013-2021 Housing Element Update

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As you may be aware, the City Council voted to submit a plan to HCD that included L7 in the list of proposed upzoning sites. Then, under pressure from NIMBY neighbors, one Council member changed his vote and the site was removed from consideration. There are no valid arguments for excluding L7 – just entitled, misinformed neighbors who resist change.

The City of Encinitas is challenged in finding adequate sites to meet state requirements and by the extra burden of our local initiative that requires a public vote. In order to address the concern of some voters that upzoning is just a gift to land owners and developers and doesn't actually lead to more affordable housing, I think it is essential that the City commit to at least one sizable project that is mostly or all affordable units. Building on City-owned land is the only way to make this happen during the current housing cycle. If the City Council majority does not have the political will to commit to L7, I hope HCD will give them no choice. To do anything less will make the whole process appear to be a sham.

Thank you for your consideration,

Lisa R. Shaffer



PUBLIC INTEREST LAW PROJECT

Michael Rawson
Director
Extension 145
mrawson@pilpca.org

May 4, 2018

SENT VIA EMAIL ONLY

Craig Castellonet
Staff Attorney
Extension 132
ccastellanet@pilpca.org

Mayor Blakespear
Encinitas City Council Members
505 S. Vulcan Ave.
Encinitas, CA. 92024
council@encinitasca.gov

Lauren Hansen
Staff Attorney
Extension 127
lhansen@pilpca.org

Valerie Feldman
Staff Attorney
Extension 125
vfeldman@pilpca.org

RE: City of Encinitas 2018 Draft Housing Element

Melissa A. Morris
Staff Attorney
Extension 111
mmorris@pilpca.org

Dear Mayor and Council Members;

Noah Kirshbaum-Ray
Legal Assistant
Extension 110
nkirshbaum-ray@pilpca.org

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. We have reviewed the City's Draft Housing Element ("Draft" or "Draft Element") submitted to the Department of Housing and Community Development (HCD) for review on April 13, 2018, and revisions submitted on April 26, 2018. 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 element is deficient in several respects each outlined below. We detail the actions the City must take to comply with Housing Element Law.

Linda Hill
Office Manager
Extension 123
lhill@pilpca.org

Deborah Collins
(Retired)

Judith Gold (1952 - 2016)

A. RHNA

The City Must Plan for the Correct Carry-over Calculation from the Last Planning Period

The City Cannot Offset the Unmet Need from the Prior Planning Period with Sites that were Neither Identified in a Housing Element or Rezoned Pursuant to a Housing Element Rezoning Program to Ensure Suitability

HCD guidance informs jurisdictions how to calculate whether there was an unmet need from the prior planning period that must be accommodated in the current planning period. HCD Memorandum: Application of Gov. Code Section 65584.09, June 20, 2007, Updated: June 3, 2010 ("HCD 1233 Memo"). Specifically, a city may subtract (1) the number of units (by income level) that were constructed or approved during the prior planning period; (2) the number of

units that could be accommodated on appropriately zoned sites that were “specifically identified in the element adopted for the previous planning period”; (3) the number of units accommodated on sites that were rezoned for residential development “pursuant to the site identification programs in the element adopted for the prior planning period”; and (4) the number of units accommodated on sites rezoned for residential development in connection with the “element’s site identification programs...” The remaining balance constitutes the City’s “unaccommodated needs.” HCD 1233 memo.

The City subtracts units that were constructed and a further reduction of 342 units because there was allegedly zoning in place to allow residential development during the last planning period even though the City did not adopt a housing element that identified and made sites available. However, this reduction is not permissible.

Encinitas did not accommodate any units under factors 2 or 3 identified in the HCD 1233 memo because it did not adopt a housing element for the prior planning period. It also did not accommodate any units under factor 4 in the HCD 1233 memo because it did not rezone any sites to accommodate its low and moderate income housing needs pursuant to a program to identify adequate sites as required by Government Code section 65583(c)(1). The City simply looked back at the last planning period, now many years later, and chose sites that were zoned at a high residential density, and reported that those sites were “made available” for low and very low income housing solely because of their zoning without any other analysis as required by Housing Element law. However, that is not the standard to determine if sites were identified and “made available.” Pursuant to HCD’s formal guidance, the correct and simple carry-over calculation is the RHNA for the last planning period (691) decreased by the number of affordable units actually constructed in the last planning period (62 deed restricted and 34 non-deed restricted). The City’s RHNA for the last planning period for very-low and low-income units is 595 units.

	Correct Calculation	City’s Calculation
RHNA 2003-2010 Very low/Low income combined	691	691
Units Constructed-deed restricted	-62	-62
Units Constructed non-deed restricted	-34 ¹	-34
Unit Capacity of Sites Not identified in a Housing Element	0	-342
Total Remaining, or Carry-over	595	253

Ensuring sites are zoned at a high residential density is only one factor that is considered in determining whether sites are “made available.” Zoning is the threshold issue. Sites

¹ PILP and SDVLP have contested the City’s method of reducing the 2003-2010 RHNA by non-deed restricted units (34) on grounds that the City had provided no evidence as to the affordability of these units. However, in this draft housing element, the City provides information pertaining to the affordability of these units, specifically relying on the actual rents and sale prices reported in applications for Certificates of Occupancy. Draft, p. B-92. As a result, PILP and SDVLP have included the 34 unit reduction in calculating the carryover.

that are zoned at a high residential density meet the threshold requirement, but to qualify as adequate to accommodate low and very low income housing, the sites must meet the suitability standards set forth in Government Code Sections 65583 and 65583.2.

These sites were not determined to be adequate by HCD pursuant to an approved housing element, were not analyzed by the City under the statutorily required suitability factors, and were not actually made available for low and very low income housing. The City cannot claim these sites to reduce their carryover. The City's RHNA for the last planning period for very-low and low-income units is 595 units.

The City Cannot Reduce the RHNA for the Current Planning Period for Units Constructed Without Evidence that the Units are Affordable to Very Low and Low Income Households.

Encinitas reduces its current RHNA by 66 units to reflect units constructed without providing any information to support the affordability of those units. Draft, p. B-91. Without evidence that those units are either deed-restricted or affordable based on the rents and sale prices these units cannot be used to reduce the RHNA.

	Correct Calculation	City's Calculation
RHNA 2013-2021 Very low and Low income combined	1033	1033
Anticipated Accessory Units	-50	-50
Units Constructed	0	-66
Adjusted RHNA	983	917

B. Adequate Sites

The City Must Identify Sites to Accommodate 1578 Units

The City must identify sites that are available and suitable for residential development to accommodate both the current Regional Housing Needs Allocation (RHNA) and the carry-over from the last planning period (2008-2013) when the City did not adopt or implement a housing element. Government Code §§ 65583(a)(4) and 65584.09.

	Very Low and Low Income Units
2013-2021 RHNA	983
RHNA Carryover (2003-2013)	595
Remaining RHNA	1578

The Inventory of Adequate Sites in the Draft Housing Element is Not Sufficient to Meet the Current RHNA and Carry-over from the Last Planning Period

At a minimum, the sites must be adequate to accommodate 1,578 low and very low income units. The total site unit yield for the proposed 11 sites is 1,431, more than one hundred units short of the current RHNA and carry-over (1,578). Draft, p. 1-10.

This unit yield is predicated on all of the sites being developed for affordable units at a capacity of 25 units/acre at rental or sales prices affordable to lower income households. Based on past development patterns in Encinitas it is unlikely that all of the sites identified for affordable housing will be developed with affordable housing. Without a surplus the City will soon find itself in violation of the No Net Loss Law. A surplus is necessary for a city to maintain sites for the actual production of lower income housing units during the planning period. If the City approves a project at a lesser density or for a different income level than the City would have to rezone another site within 180 days, which the City will not be able to do because the City interprets Proposition A to require voter approval for all land use and zoning changes (a constraint addressed below). Gov. Code § 65863

Even if the proposed sites were adequate to meet the carryover and current RHNA, the draft housing element is deficient to the extent it is void of the legally required analysis of each site at the density proposed, including information pertaining to existing leases and evidence supporting a “realistic and demonstrated potential to redevelop” during the planning period. Gov. Code Section 65583(a)(3). As a result, not only does the inventory of sites fail to provide for the current and carryover RHNA, the sites cannot be found adequate to accommodate even the 1,431 units proposed.

The Inventory of Adequate Sites in the Draft Housing Element is Deficient

As detailed below, the City’s Draft Housing Element does not contain adequate sites to accommodate its current RHNA and the Carry-over RHNA from the last planning period. Gov. Code §65584.09. There is inadequate analysis to support the development potential of non-vacant sites, contracts for the development of some sites for purposes other than affordable housing, for several sites additional information is needed to determine the site’s suitability, and for some sites additional programs to facilitate consolidation are necessary for the sites to be included to facilitate affordable housing production.

Sites Without Common Ownership Cannot Be Deemed Adequate Without a Program to Facilitate their Development

Site 08 Rancho Santa Fe (Gaffney/Goodsen), lacks common ownership of the included parcels. Lack of common ownership is a constraint to the development of affordable housing.

To develop on these sites during the planning period, a developer would have to acquire parcels from multiple owners in a limited period of time. The need to enter into multiple property acquisition transactions to develop on one site reduces the economic feasibility of an affordable housing development, thereby reducing the likelihood of development on

the site during the planning period.

Moreover, it violates the Least Cost Zoning law which mandates the City to “designate and zone sufficient vacant land for residential use with appropriate standards” which means “densities and requirements with respect to minimum floor areas, building setbacks, rear and side yards, parking, the percentage of a lot that may be occupied by a structure, amenities, and other requirements imposed on residential lots pursuant to the zoning authority which contribute significantly to the economic feasibility of producing housing at the lowest possible cost given economic and environmental factors, the public health and safety, and the need to facilitate the development of housing affordable to persons and families of low or moderate income” Gov. Code § 65913.1 (emphasis added).

The Draft does not have a program to remove the constraints caused by lack of common ownership. As a result, this site is inadequate because it fails to have a “realistic and demonstrated potential for redevelopment during the planning period.” Gov. Code Section 65583(a)(3).

For this site to be adequate, the City must adopt a program to help developers consolidate the parcels. The draft housing element must contain programs and a timeline of actions to ensure sites with multiple owners result in actual development. Without additional assistance to ensure such sites are developed for lower income housing, the City cannot justify the inclusion of sites with multiple owners for lower income households.

The Proposed Vacant Sites Cannot Be Deemed Adequate Without Further Analysis

The inventory of sites includes six “vacant” sites, however, whether or not these sites are actually vacant is not discernable from the draft housing element, or from the information presented at the Joint City Council/Housing Element Task Force immediately preceding the draft housing element submission to HCD. In addition, the owner of one of these allegedly vacant sites has requested that his site be removed from consideration.

Site 01, Greek Church

Site 01, Greek Church Parcel, is specified as “Primarily vacant, open space.” It is not clear why the site is not categorized as “vacant.” While the use of “primarily” may be explained by the fact that the entire site is not proposed for development (the draft housing element states “Owner has indicated they are interested in developing 2.00 acres of the 2.50 acre parcel”), given the definition of vacant in the draft housing element, is not clear why the acreage proposed for development is not categorized vacant. Draft, p. C-7.

More information pertaining to structures or constraints on the site should be provided. In addition, the unit capacity is 50 but the owner indicated interested in building “40 to 50” units. Averaging the unit amount as 45 may be a more prudent choice to avoid an overestimation of the units that may be produced on this site.

Site AD1, Sage Canyon

Site AD1, Sage Canyon, is for sale. The draft housing element contains a letter from an individual who has “entered into a purchase agreement,” however, no letter from the owner is provided nor is any information pertaining to the status of the sale or whether the purchase will be for multi-family housing. The letter regarding the purchase agreement states “The site is currently entitled for a residential subdivision consistent with the existing R-3 zoning. Please be advised that I would be interested in modifying the existing plans to create additional housing units should the City choose to increase the allowable density as part of the Housing Element Update. Draft, p. C-17, C-52.

Interest from the owner of this site must be provided as must the terms of the purchase agreement. Based solely on the information available, it appears this site is not available to accommodate affordable housing.

Site AD2, Baldwin & Sons Properties

At the April 18, 2018, Joint City Council and Housing Element Task Force meeting, Baldwin & Sons Properties’ representative Nick Lee stated that he was proposing to build market rate residential units on this site, with affordable units only provided through density bonus. Joint City Council and Housing Element Task Force, April 18, 2018, <http://www.ci.encinitas.ca.us/Government/Agendas-Webcasts> (Accessed May 4, 2018).

Mr. Lee stated that he will analyze the standards, but with the current standards expressed by the Joint City Council and Housing Element Task Force meeting, he will sending a letter to City Council and HCD requesting removal of the site.

This site cannot be included to meet the lower income RHNA.

The Proposed Non-Vacant Sites Cannot Be Deemed Adequate Without Further Analysis

When non-vacant sites are relied on to accommodate 50 percent or more of a city’s lower income housing needs, an existing use will be presumed to impede development:

When a city or county is relying on nonvacant sites described in paragraph (3) of subdivision (b) to accommodate 50 percent or more of its housing need for lower income households, the methodology used to determine additional development potential shall demonstrate that the existing use identified pursuant to paragraph (3) of subdivision (b) does not constitute an impediment to additional residential development during the period covered by the housing element. An existing use shall be presumed to impede additional residential development, absent findings based on substantial evidence that the use is likely to be discontinued during the planning period. Gov. Code § 65583.2(g)(2).

The City relies on non-vacant sites to accommodate more than 50 percent of the City's lower income housing needs.²

	# of Units	% of Units
Vacant	656	45.8%
Non-vacant	775	54.1%
Total	1431	100%
RHNA Allocation (including carryover) for very low and low income categories: 1578		

As stated below, the non-vacant sites in the draft housing element have existing uses that are presumed to be impediments to residential developing. The draft housing element is void of any evidence, much less substantial evidence, that supports a finding that the uses are likely to be discontinued during the planning period. In addition, the draft housing element is void of the methodology used to determine additional development potential.

Site 08, Rancho Santa Fe (Gaffney/Goodsen)

Site 08, Rancho Santa Fe Parcels (Gaffney/Goodsen), consists of four parcels, one of the parcels has a separate owner than the other three parcels, and two of the parcels are developed.

The owners specified their interest in developing “198 affordable senior apartments” and on site there are already “Approximately five residential structures ranging from 1-2 stories and spread across multiple parcels.” However, there is no information provided describing the five residential structures, nor is there information pertaining to the existence of leases or contracts. Because this is a non-vacant site, a description for the existing use of each property must be included as well as an analysis as to whether the existing use would prevent redevelopment. The only reference to existing use is a “Viable Housing Site Summary” for one parcel submitted for Measure T consideration: “Site Description: The study area is predominantly vacant with three homes, located along a local collector, two-lane roadway. One home serves as a care facility with six or fewer persons.” Draft, pp. C-21-22, C-55-66.

Additional information pertaining to the five residential structures must be provided to overcome the presumption that the existing uses will impede residential development, and to support a finding of “realistic and demonstrated potential for redevelopment during the planning period.” Gov. Code §65583(a)(3).

² The City's timeline expects sites to be available in 2019 (after voter and Coastal Commission approval). This means that non-vacant sites identified for affordable housing must be available for residential development before the end of the planning period, or two years from the date the site is upzoned. Draft, p.

Site 09, Echter Property

On Site 09, Echter Property, 9.85 acres of the 16.90 gross acres are designated for housing and the site includes “Large service tanks,” “Interior roads,” and “Single-family residence in southwest corner.” The draft housing element states that the owner has expressed interest in developing 250 residential units in conjunction with a working agricultural practice. However, rather than including in the draft housing element the letter of interest from the site owner, as required, the draft housing element contains a letter issued to the owner by a development services agent regarding a concept plan for the site. A letter from the owner indicating interest is necessary. Draft, pp. C-23-24, C-67-71. There is also information that this parcel is restricted to Agricultural use in-perpetuity and needs approval from the Coastal Commission to remove that restriction.

The draft housing element must also include a description for existing use and an analysis as to whether the existing use would prevent redevelopment.

Without this information, HCD must presume that the existing uses will impede residential development, and find that the site does not have a “realistic and demonstrated potential for redevelopment during the planning period.” Gov. Code § 65583(a)(3).

Site 10, Strawberry Fields

The draft housing element description for Site 10, Strawberry Fields Parcel, fails to contain a letter from the owner indicating interest. Because this is a non-vacant site, a description for existing use must be included with an analysis as to whether the existing use would prevent redevelopment of the site. This information was not included in the draft housing element and must be added to comply with state law. Draft], pp. C-25.

Enclosed with the staff report for the April 4, 2018, Joint City Council and Housing Element Task Force meeting was a letter from the landowner supporting a developer’s permit application for a 200-unit senior care facility. Joint City Council and Housing Element Task Force Agenda Report, April 4, 2018, Materials, p. 135. Proposed plans to develop the site for a purpose other than affordable housing prevents the City from relying on the site to meet the housing needs of lower income households.

During the public comment portion of the April 4, 2018, meeting, a representative of the developer, Greystar, stated that the site should be removed from housing element consideration for lack of services, environmental impact, and other reasons. The representative stated that his company has a contract with the site and had submitted a senior project development proposal, requesting to develop immediately since the current land use is consistent with the senior development proposal.

At the April 18, 2018, Joint City Council and Housing Element Task Force meeting, City Councilmember Tasha Boerner Horvath and Task Force member Bruce Ehlers encouraged the removal of this site. Joint City Council and Housing Element Task Force, April 18, 2018, <http://www.ci.encinitas.ca.us/Government/Agendas-Webcasts> (Accessed

May 4, 2018). Councilmember Boerner Horvath addressed the inadequacy of the site, stating that the site would be impossible to use because the owner has said he no longer wants his site to be listed. Bruce Ehlers suggested that the removal of Strawberry Field was inevitable.

This site cannot be identified to accommodate affordable housing and the Draft should be revised to reflect this change..

Site 12, Sunshine Gardens

The draft housing element includes a letter of interest from the owner of Site 12, Sunshine Gardens Parcels. However, the letter of interest states “Our commitment is contingent upon the City of Encinitas finalizing development standards that adequately support this level of density and we are concerned and do not believe that the current zoning limitations of two-stories and 30-foot height maximum will achieve the required results.” Draft, pp. C- 27, p. C-80-81.

Reviewed in conjunction with the City’s plan to place relevant zoning and height changes on the November 2018 ballot with subsequent Coastal Commission review, the owner’s conditional commitment undermines the likelihood that this site will be developed during this planning period at the proposed density (84 units).

Also concerning are the existing “1-story commercial building” and the “variety of retail uses” on the site. The letter of interest states that the leases are “short term” and “will all expire prior to the zoning and entitlement process.” The owner provides assurance that the structures are “temporary and can be demolished very easily.” Draft, pp. C- 27, p. C- 80-81. The City must provide a description for existing uses and an analysis as to whether the existing uses would prevent redevelopment of the site for residential development.

Without an analysis of existing uses, the site’s existing uses are presumed to impede residential development resulting in the site having no “realistic and demonstrated potential for redevelopment during the planning period.” Gov. Code § 65583(a)(3).

Site AD8, Vulcan & La Costa

Site AD8, Vulcan & La Costa, contains “existing operational businesses” but no information pertaining to whether the existing use would prevent residential development on the site. The draft housing element states that the “majority of the site is occupied by temporary structures such as greenhouses.” Draft, p. C-29 While the draft housing element contains an email from ““Cowboy” Steve Morris” indicating interest in submitting the land for consideration, it is not clear if Mr. Morris represents the landowner, Ronholm Craig Nichols John F. Existing uses are vague and contain no information pertaining to existing leases or other contracts: “flower field, shop, old resident, etc...” Draft, p.C-82.

The draft housing element must include a description of existing use and an analysis as to whether the existing use would prevent redevelopment of the site for additional residential development.

The information included for this site in the draft housing element is insufficient to overcome the presumption that the existing uses will impede residential development.

Without Additional Information Pertaining to Environmental Constraints, Three 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.

Site AD1, Sage Canyon

Site AD1, Sage Canyon, states “some known environmental constraints that shrink the gross buildable area” which include “Steep Topography in some areas,” “Some steep slopes adjacent to El Camino Real,” “Environmentally sensitive areas,” “Existing drainage canal,” and “Telephone pole lines overhead.” The Draft reduces the parcel size from 5.23 to 2.40 acres and states the net acreage was “determined from the net buildable area based on numerous studies of the topographic and environmental constraints by the owner.” The draft housing element is void of information pertaining the City’s review of the owner’s studies or an analysis supporting the site viability determination.

The owner’s topographic and environmental constraints studies, upon which the City made its determination, and the City’s analysis should be made available to the public. Draft, p. C-17.

Site 05, Encinitas Blvd & Quail Gardens

Site 05, Encinitas Blvd & Quail Gardens Parcels, may have been rejected for environmental issues in the past and may be unsuitable for residential development at the proposed acreage and density due to easements, powerlines, wetlands, and steep topography. These concerns were raised during public comment at the April 4, 2018, Joint City Council and Housing Task Force meeting.

The draft housing element acknowledges environmental concerns with the site including “Steep topography on some portions” and “Some manufactured slopes that are determined to not be a constraint on future development.” The draft housing element

states “Acreage reduced per City Code.” However, an analysis is not provided or cited to in the draft housing element, and must be provided as evidence of site viability. Draft, pp. C-13, C-14.

Site AD2, Baldwin & Sons Properties

The draft housing element lists constraints associated with Site AD2, Baldwin & Sons Properties, as “Some landlocked parcels,” a “Utility easement,” and “telephone pole lines overhead.” The parcel size was reduced from 11.59 to 9.05 “based on numerous studies of the topographic and environmental constraints and a 50’ riparian buffer requirement for off-site wetlands that encroaches on Parcel 2570203600.” However, it is not clear why the acreage reduction applies to Parcel 2581309300, when the wetlands encroach on Parcel 2570203600. Draft, pp. C-19, C-20.

During public comment at the April 4, 2018, Joint City Council and Housing Task Force meeting, community members raised concerns including that this site had been rejected from consideration in the past (during the site selection for Measure T) for environmental reasons. The public expressed concern with the wetlands adjacent to this site.

Site Inventory Inadequacies Summary

Site	City's Proposed Capacity	Actual Capacity	Lacks environmental constraint analysis	Lacks existing leases and uses analysis	Lacks program to address common ownership	Lacks evidence that site is "available"	Lacks owner interest
Vacant							
01 Greek Church Parcel	50	45					
02 Cannon Property	173	173					
05 Encinitas Blvd & Quail Gardens	117	117	✓				
07 Jackal Properties	33	33					
AD1 Sage Canyon	60	60	✓			✓	✓
AD2 Baldwin & Sons	223	0	✓			✓	✓
Non-vacant							
08 Rancho Santa Fe (Gaffney/Goodsen)	149	149		✓	✓		

09 Echter Property	246	246 ³		✓			✓
10 Strawberry Fields	246	0		✓			✓
12 Sunshine Gardens	84	84		✓			✓
AD8 Vulcan & La Costa	50	50		✓			✓
Totals	1431	957*					

As stated above, the City must revise the draft housing element before the proposed sites can be considered suitable for affordable housing under the factors of Government Code Section 65583(a)(3).

At a minimum, the City must include a program to address common ownership, and provide additional information to show that site suitability has been determined pursuant to analyses of environmental constraints, and existing uses and leases. If this information was provided to support the suitability of these sites, the City's actual capacity would be 957 as reflected in the chart above; which is far below the 1,578 unit capacity the City must accommodate.

The inventory of sites in the draft housing element fails to provide for the current and carryover RHNA of 1,578 units, and is inadequate to accommodate even the 1,431 units proposed. At most, 957 units can be accommodated on the sites proposed if, and only if, the City provides statutorily mandated information to justify the suitability of those sites and demonstrates a strong likelihood that the owners of Site 09 can remove the requirement that the site be used for agricultural purposes in perpetuity.

C. Governmental Constraints

Proposition A

The City requires increased density and height limits in order to identify adequate sites in its inventory and to comply with other state land use laws. §§65583 (Housing Element Law); 65913.1 (Least Cost Zoning Law); 65863 (No Net Loss Law). The City must also have the ability to upzone sites with appropriate development standards, such as increase height, in order to implement its required program to maintain adequate sites during the planning period. §65583(c)(1). And lastly, the City must be able to upzone sites, with appropriate development standards, to replace any sites identified to accommodate the lower income RHNA but are later developed at a decreased density or for housing that accommodate a higher income level. § 65863. The City's Proposition A, codified as Municipal Code 30.00.010, *et seq.*, requires any increase in density or height limits be approved by a majority of the City's voters. The cost, length of time, and uncertainty of

³ In addition to additional information about existing use, this parcel is subject to requirement that it be used for agricultural purposes in perpetuity and requires Coastal Commission action to remove that restriction.

the outcome all pose a significant constraint on the development of housing for lower income households. And, in terms of housing element compliance Proposition A has acted as a ban on the City's compliance for the last 5 years. The City acknowledges this constraint but does not identify any specific actions to remove the constraint. Draft, p. B-48.

The City cannot only focus on how it will reduce this constraint in the future once this Draft Housing Element is adopted and implemented (and approved by the voters) but it must actually act to remove this constraint now. Government Code section 65583(a)(5) requires not only an analysis of governmental constraints but "shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584...". This requirement is separate and distinct from the obligation to include a program to remove governmental constraints described in Government Code section 65583(c)(3). The Draft Housing Element must show the City's efforts to remove this constraint now. A nearly impossible task as the City has taken no action to try and modify Proposition A or its impact. Developing housing elements to submit to the voters is not an effort to remove the constraint of requiring such an election and the lack of city action has clearly resulted in the City failing to meet its share of the regional housing need, expect, of course, for the housing needs of above-moderate income households.

Coastal Commission Approval

The City has proposed a timeline of 2019 for all rezoned sites to be available for residential development. This is less than two years before the end of the current planning period. Draft, pp. 1-12, 1-13. The City's reliance on non-vacant sites creates a constraint on development when the City's inventory of sites to accommodate the lower income RHNA will not be available until 2019 and sites non-vacant sites must show they have a realistic development potential before the end of the planning period.

Development Standards

The Draft Element evaluates each individual development standard and concludes that each individual standard, with some exceptions, does not impose a constraint on residential development. Draft, pp. B-42-58. But the analysis is too simplistic because first, most of the included analysis only pertains to whether the standard would be a constraint on affordable housing production, and second, more than one of these standards could apply at once and in concert these standards could impose a constraint on residential development. For instance, the height limit acts as a constraint on residential development that would accommodate moderate income households. Or, the scenic overlay may apply to sites that also are limited to the mid-point density limit. The application of these standards to all income levels should be evaluated as well as the effect when multiple requirements apply to any one site.

The Draft Housing Element should be revised to consider the impact of the development standards as they apply to actual projects not each as a singular requirement.

The City is considering new development standards and we will submit additional comments on the new proposed development standards when they are finalized.

Minimum Density

The site inventory to accommodate the lower income RHNA requires a minimum density and there a potentially realistic capacity calculation can be accomplished for those sites. But other sites, even those with a maximum density of 15 units/acre still permit single family development and have no minimum density requirement. Draft, p. B-59. Permitting single family development on sites included to accommodate housing affordable to moderate income households diminishes the opportunity for medium density projects and can drive up land costs with competition for the sites between different types of development. Also, where there is a clear preference in the public and among elected officials for low density residential development the lack of minimum density on these sites is a constraint on development that would create housing opportunities at the maximum permitted density. *See* section [public statements about density and character], below The City must create a program to remove this constraint, either eliminating single family homes as a permitted use in these zones or establishing a minimum density that would not make single family homes feasible in these zones.

Location of SB2 Sites

The City plans to amend its zoning code to permit emergency shelters in the Light Industrial (LI) and Business Park (BP) zones in order to comply with the decade old requirements of SB 2. The City should evaluate whether the other permitted activities within the LI and BP zones are compatible with the residential nature of an emergency shelter. More information is required to evaluate whether these two zones will not act as a constraint on the development of an emergency shelter. For instance, how many vacant parcels are located within these two zones, whether any of the vacant sites, other than the .46 acre parcel identified in the Draft Housing Element are near transportation, or near other residential uses, as opposed to incompatible industrial uses. HCD's memo on SB 2 compliance and its Building Blocks offer sample analysis to determine if the zone identified to allow emergency shelters without discretionary review are appropriate shelter locations. *See* HCD Memo May 7, 2008, updated April 19, 2013.

Unit Limitations on Multi-Family Sites

Several sites included in the inventory to accommodate the lower income RHNA have a greater capacity than what is proposed by the City, either due to the owner's preference (Greek Church) or a response to neighborhood concerns (Echter site). The limit on capacity based on these stated interests does not itself pose a constraint, although it certainly creates an expectation that increased density, even when it is permitted, is not welcome or desirable in the City. What is an immediate identifiable constraint is that that the entire parcel would have to be purchased even if only a fraction of the parcel could be developed. Increasing development land costs without the opportunity to recoup the

costs through development of the entire site. Requiring a developer to purchase a 20 acres parcel when s/he will only be able to develop a fraction of that parcel poses a constraint on the development of any of the sites where the City has imposed a limit on the number of units that can be developed on the site despite the overall size and capacity of the site.

D. The Draft Housing Element Fails to Address All Nongovernmental Constraints

The housing element must include “[a]n analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels...” Gov. Code § 65583(a)(6). In addition to the analysis included in the Draft Housing Element concerning available financing, requests to develop at lesser densities, and permit approval time, the City should evaluate additional non-governmental constraints.⁴ The Draft Housing Element should analyze vacancy rates in rental housing, NIMBY opposition to development.

Vacancy Rates

Depending on the outcome of that analysis, which presumably will show a very low vacancy rate due to a shortage of rental units available in the City, the City should evaluate what programs might mitigate this constraint. For instance the City might enact a moratorium on condominium conversions or adopt a policy the conversions cannot be approved unless the vacancy rate is over a particular percentage, such as 7 percent.⁵ At a minimum a conversion ordinance should provide adequate relocation assistance, both financial assistance and rental locations services, if there will a loss of rental units due to conversion to condominiums.

NIMBY Opposition

Neighborhood opposition is another non-governmental constraint that exists in Encinitas that can be mitigated. Statements such as the following make it clear that opposition to density is not just expressed by the public:

“So why can’t we just say no to this? None of us wants more traffic congestion. We don’t want to degrade the community’s character. And we certainly don’t want to exacerbate the flooding problems in Leucadia when it rains. But the reality is that the city doesn’t own the property — and the landowner has property rights. At the City Council and at the Planning Commission, we do everything possible to be scrupulously fair — protecting

⁴ Gov. Code section 65583(a)(6) includes the following examples of non-governmental constraints: the availability of financing, the price of land, the cost of construction, the requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Section 65583.2, and the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a locality’s share of the regional housing need in accordance with Section 65584. Gov. Code § 65583(a)(6).

⁵ <http://www.northeastern.edu/rugglesmedia/2016/04/20/how-vacancy-rate-points-to-an-unaffordable-housing-market/>

the community while recognizing and upholding the owner's rights.”
(emphasis added)

“We can advocate at the state-level against laws that will create even more density in our city. I'll soon be arguing that prohibiting cities from requesting studies or information from developers means that we cannot assess the full impact of densification — for example parking, character, crime prevention, etc.”

“I personally don't like some of the changes in our community and I understand why residents are opposed to projects like this [referencing the Hymettus Estates site plan]. I understand the attachment to a piece of land that used to be open space — and now will host homes, people, and cars.”

“Straight Talk About Housing Density in Encinitas,” Mayor Blakespear, May 29, 2016
<http://catherineblakespear.com/52916-straight-talk-housing-density-encinitas/> (accessed April 22, 2018).

The Site selection process for this draft housing element is a good example of the influence of NIMBY opposition in Encinitas and the impact it has on the City's continuing non-compliance with housing element law. On April 4, 2018 the City Council met to select the sites it would include in its housing element to accommodate the lower income RHNA. These sites had been discussed and debated for months and did not include all of the vacant sites, city owned, sites, or suitable sites for affordable housing but it still incurred much debate and many speakers not only came out to ask the Council to remove site L-7 but also submitted a petition with hundreds of signatures to ask the Council to remove site L-7. The Council voted 3-2 to include L-7 in the City's draft element and submitted that element to HCD for review. Two weeks later, after meeting with neighbors of the L-7 site, Vice Mayor Mosca proposed at a City Council meeting that the City vote again on site L-7 and reversed course so that L-7 was not removed from the housing element by a vote of 3-2.

This is one example of the enormous constraint NIMBY opposition poses in Encinitas and a constraint that is not analysed in the Draft Housing Element. Although, the City might not be able to completely erase the burden on multi-family development that is due to NIMBY opposition it must attempt to mitigate this constraint and include a program or development standards that will require less burdensome review of multi-family development.

Establishing concrete and objective development and design standards that require ministerial review for approval will aid in limiting the impact a subjective and lengthy discretionary process has on residential development, in particular the development of affordable housing which requires density in order to be financially feasible.

E. The Draft Housing Element programs Requires Additional Programs and All Programs Require Specifics To Comply With The Law.

In order to accomplish the goals identified in the housing element and make progress toward the City's quantified objectives, the City's housing element must contain programs which set forth " a schedule of actions during the planning period, each with a timeline for implementation...such that there will be a beneficial impact of the programs within the planning period." Gov. Code § 65583(c).

In a word the programs require specifics: specific actions and a specific timeline.⁶ Many of the programs included in the Draft Housing Element do not contain specifics, especially concerning areas that require immediate action in order to remove acknowledged constraints on development. See Draft, Appendix C, pp. 1-8.

Proposition A.

The City rightfully recognizes that the public vote required by Proposition A imposes a constraint on residential development and prevents timely compliance with state law. Draft, p. 1-22. But the City offers no specific actions it will take through Program 3C either now, or in the future to comply with Housing Element Law in the next planning period. Instead, the program states the City will develop strategies by January 2020. Government Code section 65583(c) requires more than this generality, but rather a description of what actions the City will take to remove this constraint. This program must be revised in order to set forth a schedule of actions and an appropriate timeline.

HCD's Building Blocks recommend identifying quantifiable outcomes whenever possible as part of any housing element program. Contrast Program 3C described above with the City's Program 1C to increase the number of Accessory Dwelling Units (ADU). Program 1C provides a description of various policies the City could continue to enforce or new possible policies with a stated goal of approving 40 ADU's a year. The specifics and measurable outcome in Program 1C is in sharp contrast to the vague idea of "develop strategies" of Program 3C. Even when including a measurable outcome is not possible, specific policies or steps are still possible and necessary. Program 3C should be revised to reflect the requirements of Housing Element law and HCD guidance.

Correctly Characterize the Density Bonus Law Requirements.

The Draft housing element should be revised to correctly describe the requirements of the state Density Bonus Law. Program 2D incorrectly states that concessions and incentives must be allowed if a development requires the concession or incentive make the units affordable. Draft, p. 1-18. This characterization is over broad. Density Bonus law requires concessions and incentives when the developer can show that they would lead to decreased costs for the project. Developers do not have to demonstrate that the incentives and concessions were required for them to provide the affordable units.

Program 2E Accommodate Special Housing Needs. The City commits itself to update the Zoning Code definitions to correctly define and permit transitional housing ,

⁶ Housing Element Law recognizes that some actions will be on-going throughout the planning period *Id.*

supportive housing and emergency shelters. But the City identified in its analysis of special housing needs that large families in particular are rent burdened, and often extremely rent burdened, spending more than 50 percent of their income on housing, Draft, p. B-22.

Once this significant issue is identified the Draft Housing Element should include a program to help address the need for more subsidized units available to large families and decrease the heavy rent burden these families shoulder. There should be a program in the housing element to incentivize housing that addresses this special housing need. For instance, the City could prioritize any available funding for units that have 3 or more bedrooms, or waive development fees for units of that size. The City should design a program that will help to accommodate this special housing need with enough specific sand a definite time line to comply with Government Code section 65583(c).

SB 2 sites

SB2 was enacted in 2007 to ensure that every community permitted emergency shelters in at least one zone without discretionary review. Gov. Code § 65583(a)(4). The zone identified should have sufficient capacity to accommodate the need for shelter identified in the housing element's analysis of special housing needs. *Id.* The City's element cannot be in compliance with state law until it complies with the requirements of SB2. *See* HCD's Memo dated May 7, 2008, updated April 19, 2013. In addition, the City should elaborate on the availability of sites in the Light Industrial and Business Park zones.

Promote Housing Opportunities for All

The program must "[p]romote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability." Gov. Code § 65583(c)(5). In addition to contributing funding to investigate fair housing complaints as described in Program 5B, the City must assess its land use decision and the impact of those decisions on protected classes. Draft, p. 1-26. The Draft recognizes has not adopted an approved housing element for decades and has not accommodated the housing needs of lower income households for decade and that has had a disparate impact on people of color. The Draft states that people of color have higher levels of poverty in Encinitas than whites. Draft, Table B-4. And yet the City has made land use decisions for decades that excludes housing for people with lower incomes and essentially barred people of color form accessing housing in Encinitas. The City should revise the Draft to address the long term pattern of refusing to accommodate the housing needs of lower income households in Encinitas.

Conclusion

We thank you for considering our comments and look forward to the reviewing a revised housing element that addresses the above-described legal inadequacies. Should you have any questions regarding these comments or need further clarification, please do not

Encinitas Draft Housing Element Comments

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hesitate to contact us by email at ijadipm@gmail.com or vfeldman@pilpca.org.

Sincerely,



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enclosures