



# *City of Encinitas*

## *Development Services Department*

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

June 12, 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: Responses to Supplemental Comments Regarding the May 25, 2018 Revisions to the City's Draft Housing Element**

Dear Ms. Huntley:

The following is the response of the City of Encinitas to the comments submitted to the City and HCD on June 7, 2018 and June 12, 2018 by the Public Interest Law Project (PILP) and the San Diego Volunteer Lawyer Program in reference to the City's Draft Housing Element submittals.

Many of these comments were previously submitted to the City as well as HCD and have been considered in drafting the City's Housing Element and responded to in the City's May 25, 2018 letter to HCD, which is incorporated by reference. Comments are responded to in the order discussed in the May 25 letter.

### **RHNA**

The comment letter continues to argue that the City's carry-over calculation from the previous planning period is 595 units, not 253 units as calculated by HCD. As detailed on pages 1 and 2 of the City's May 25 letter, the comment letter misapplies the Carryover Statute and HCD's guidance on the matter, and the City has correctly planned to accommodate 253 carryover units. As further detailed in the May 25 letter, the issue is moot, because the proposed Housing Element has designated more than enough sites to accommodate carry over units, even using the comment letter's incorrect figure of 595 units.

The City also properly credited production of ADUs for lower income households based on survey data collecting actual rent levels. The survey, and a discussion of its results, is included in Section 11.3 of Appendix B or the Housing Element.

### **Adequate Sites**

The comment letter claims that the Housing Element must accommodate 1,483 units for low and very low income households. As discussed on pages 2 and 3 of the City's May 25 letter and shown in Table 2-3, Program 1A of the Housing Element, the City's remaining RHNA obligation to be accommodated for low and very low income households is 1,141 units. Notwithstanding this, the current draft of the Housing Element would accommodate 1,743 units. Even discounting the projected yield from Site 06 (Armstrong Parcels), Site 11 (El Camino Real

South), and Site AD7 (Dewitt Property), the Housing Element would accommodate 1,620 units, far more than the comment letter claims must be accommodated.

As detailed throughout the City's May 25 letter and in this response, the analysis of each site identified in the Housing Element Inventory satisfies legal requirements and demonstrates the ability to accommodate the projected unit yield of at least 1,620 units. The comment letter requests additional site analysis under Government Code section 65583.2(g)(2), but it justifies its request using the incorrect conclusion that fewer than 50% of the sites identified in the Housing Element Inventory to accommodate the RHNA obligation are vacant. As discussed above, the remaining RHNA obligation for low and very low income households is 1,141 units. Fifty percent of this figure is 571 units. The City has designated sites to accommodate 673 units on vacant property, nearly 100 more than is required. Therefore, the additional evidence that must be provided when fewer than 50% of the sites identified in the Housing Element Inventory to accommodate the RHNA obligation are vacant is not required here, and the analysis of the non-vacant sites is legally adequate.

#### **Site 02 (Cannon Property)**

As stated in Appendix C of the Housing Element and page 5 of the City's May 25 letter, there are no known environmental issues on this site, nor is area deducted due to steep slopes. In addition, the Environmental Assessment concludes that the Housing Element would have a less than significant impact on biological resources with the incorporation of mitigation. Therefore, no reductions in projected site yield are necessary.

As discussed throughout the City's May 25 letter, the Housing Accountability Act requires the City to approve housing development projects at the densities shown in the General Plan (as reflected in the current draft of the Housing Element) unless specific findings can be made. Therefore, future reductions in unit count are unlikely if the current draft Housing Element and associated rezoning are approved by the voters.

The City acknowledges that if this site, or any site designated in the Housing Element Inventory, is developed at a lower density or a higher income level than is shown, then the City must make findings that the approval will not result in a net loss of housing available to meet the remaining need by income category under Government Code section 65863. The finding requires the City to "identify and make available" sites within 180 days, which can be satisfied if there is a surplus of available sites in the Housing Element (as proposed here), by rezoning, or by making other compatible findings.

#### **Sites 05a and 05b (Encinitas Boulevard and Quail Gardens)**

The comment letter questions the unit yield for the two sites identified here. As the sites were split into two sites, a more precise net acreage figure was developed, which results in a total of 119 units for the two sites. Pages C-10 through C-13 of Housing Element Appendix C provide more discussion on how the unit yield is calculated. Environmental mitigation and matters related to a reduced development yield are further discussed under Site 02 (Cannon Properties).

#### **Sites 08a and 08b (Rancho Santa Fe/Gaffney Goodsen)**

The comment letter incorrectly states that dividing Sites 08a and 08b into two parcels resulted in some landlocked parcels on Site 08b. The parcels identified as landlocked on Site 08b were unaffected by dividing the Sites into two. As discussed on page C-15 of Housing Element

Appendix C, the sites' owners have expressed interest in developing the parcels together, so this is not anticipated to pose a constraint to future development.

The comment letter cites the Least Cost Zoning Law to argue that the City must include appropriate standards that contribute to the economic feasibility of producing housing, and that designating sites owned by separate property owners (who have expressed that they intend to develop the sites together) somehow violates this standard. None of the City's development standards would keep the sites from developing together, and to further encourage lot consolidation, Program 1B contains a lot consolidation policy, stating that, "the rezoning [to permit 30 units per acre] will apply only to projects containing at least 16 units to ensure that lots are consolidated as needed." The City has proposed numerous other revisions to its development standards in connection with the Housing Element to encourage economically feasible development.

The comment letter claims more information is needed regarding development feasibility on Site 08b in light of the existing houses on the property and to account for topography. The site's net acreage has been reduced to account for topography in accordance with the City's development standards, and because more than 50% of the City's remaining RHNA obligation is accommodated on vacant sites, the discussion of existing uses is adequate.

Environmental mitigation and matters related to a reduced development yield are further discussed under Site 02 (Cannon Properties).

#### **Site AD1 (Sage Canyon)**

The comment letter repeats the claim that this site is not vacant. However, even using the revised definition of vacant sites in the current draft of the Housing Element, Sage Canyon is a vacant site which will be "suitable and available" (Gov't Code § 65583(a)(3)) for lower income housing if rezoned as intended. Comments regarding the owner's interest and suitability of the site for development are addressed on page 6 of the City's May 25 letter.

#### **Sites AD2a, AD2b, and AD2c (Baldwin & Sons)**

The comment letter incorrectly states that AD2b and AD2c are landlocked. Although it is correct that *some individual parcels* on these sites are landlocked, the sites are under common ownership and this fact should not pose a constraint to development. The comment letter notes that the yield assumes the sites would be developed together. This is correct and consistent with the expressed interest and intent of the property owner, which is discussed on page 6 of the City's May 25 letter and has been reflected in numerous public meetings.

Environmental mitigation and matters related to a reduced development yield are further discussed under Site 02 (Cannon Properties).

#### **Site 01 Greek Church Parcel**

As discussed on page 5 of the City's May 25 letter, given that the owner may wish to develop 50 units on the site, the City does not wish to reduce the capacity of the site.

#### **Site 06 (Armstrong Parcels)**

The City understands that HCD believes that Site 06 is unlikely to develop during the planning period, and HCD likely will not count the projected units for this site in its analysis of the draft Housing Element Update. However, the City intends to rezone Site 06 and keep the site in the inventory shown in Appendix C of the Housing Element Update, because the City believes the

site is well-suited for housing development. This would allow development to occur on the site without subsequent General Plan changes or rezoning efforts, although the City acknowledges that until additional evidence demonstrating that development is likely to occur on this site, these actions will not affect the City's efforts to accommodate its RHNA.

**Site 07 Jackel Properties**

The comment letter repeats comments regarding the Coastal Commission, which were responded to on pages 5 and 6 of the City's May 25 letter. Environmental mitigation and matters related to a reduced development yield are further discussed under Site 02 (Cannon Properties).

**Site 09 (Echter Property)**

The comment letter claims more information is needed regarding development feasibility of this site. Because more than 50% of the City's remaining RHNA obligation is accommodated on vacant sites, the discussion of existing uses is adequate.

As discussed on page 7 of the City's May 25 letter, the use restriction expired on December 5, 2014. The comment letter repeats comments regarding the Coastal Commission, which were responded to on page 7 of the City's May 25 letter. Environmental mitigation and matters related to a reduced development yield are further discussed under Site 02 (Cannon Properties).

Regarding the community's preference for agriculture on the site, the proposed development standards would allow housing to be developed in an "agrihood" concept that maintains the agricultural character and use of surrounding properties. As discussed throughout the City's May 25 letter, the Housing Accountability Act requires the City to approve housing development projects at the densities shown in the General Plan (as reflected in the current draft of the Housing Element) unless specific findings can be made. Therefore, future reductions in unit count are unlikely if the current draft Housing Element and associated rezoning are approved by the voters.

**Site 11 (El Camino Real South)**

The City understands that HCD believes that Site 11 is unlikely to develop during the planning period, and HCD likely will not count the projected units for this site in its analysis of the draft Housing Element Update. However, the City intends to rezone Site 11 and keep the site in the inventory shown in Appendix C of the Housing Element Update, because the City believes the site is well-suited for housing development. This would allow development to occur on the site without subsequent General Plan changes or rezoning efforts, although the City acknowledges that until additional evidence demonstrating that development is likely to occur on this site, these actions will not affect the City's efforts to accommodate its RHNA.

**Site 12 (Sunshine Gardens)**

The comment letter claims more information is needed regarding development feasibility of this site. Because more than 50% of the City's remaining RHNA obligation is accommodated on vacant sites, the discussion of existing uses is adequate. Environmental mitigation and matters related to a reduced development yield are further discussed under Site 02 (Cannon Properties).

**Site AD7 (Dewitt Property)**

The City understands that HCD believes that Site AD7 is unlikely to develop during the planning period, and HCD likely will not count the projected units for this site in its analysis of the draft

Housing Element Update. However, the City intends to rezone Site AD7 and keep the site in the inventory shown in Appendix C of the Housing Element Update, because the City believes the site is well-suited for housing development. This would allow development to occur on the site without subsequent General Plan changes or rezoning efforts, although the City acknowledges that until additional evidence demonstrating that development is likely to occur on this site, these actions will not affect the City's efforts to accommodate its RHNA.

**Site AD8 (Vulcan & La Costa)**

The comment letter claims more information is needed regarding development feasibility of this site. Because more than 50% of the City's remaining RHNA obligation is accommodated on vacant sites, the discussion of existing uses is adequate. Environmental mitigation and matters related to a reduced development yield are further discussed under Site 02 (Cannon Properties).

**Site AD9 (Seacoast Church)**

Pages C-44 and C-45 of Housing Element Appendix C describe how the site yield was calculated, which reduces the developable site area to account for the existing church and associated facilities.

**Site AD11 (Manchester Avenue West Sites)**

The comment letter cites the Least Cost Zoning Law to argue that the City must include appropriate standards that contribute to the economic feasibility of producing housing, and that designating sites owned by separate property owners (who have expressed that they intend to develop the sites together) somehow violates this standard. None of the City's development standards would keep the sites from developing together, and to further encourage lot consolidation, Program 1B contains a lot consolidation policy, stating that, "the rezoning [to permit 30 units per acre] will apply only to projects containing at least 16 units to ensure that lots are consolidated as needed." The City has proposed numerous other revisions to its development standards in connection with the Housing Element to encourage economically feasible development.

The comment letter claims more information is needed regarding development feasibility of this site. Because more than 50% of the City's remaining RHNA obligation is accommodated on vacant sites, the discussion of existing uses is adequate.

**Site AD14 (Harrison Sites)**

The comment letter claims more information is needed regarding development feasibility of this site. Because more than 50% of the City's remaining RHNA obligation is accommodated on vacant sites, the discussion of existing uses is adequate.

**Site AD31 (Meyer Proposal)**

The comment letter cites the Least Cost Zoning Law to argue that the City must include appropriate standards that contribute to the economic feasibility of producing housing, and that designating sites owned by separate property owners (who have expressed that they intend to develop the sites together) somehow violates this standard. None of the City's development standards would keep the sites from developing together, and to further encourage lot consolidation, Program 1B contains a lot consolidation policy, stating that, "the rezoning [to permit 30 units per acre] will apply only to projects containing at least 16 units to ensure that lots are consolidated as needed." The City has proposed numerous other revisions to its

development standards in connection with the Housing Element to encourage economically feasible development.

The comment letter claims more information is needed regarding development feasibility of this site. Because more than 50% of the City's remaining RHNA obligation is accommodated on vacant sites, the discussion of existing uses is adequate.

### **Site AD32 (Garden View Court)**

The comment letter claims more information is needed regarding development feasibility of this site. Because more than 50% of the City's remaining RHNA obligation is accommodated on vacant sites, the discussion of existing uses is adequate.

### **Governmental Constraints**

Proposition A. As discussed on page 8 of the City's May 25 letter, the City is currently taking actions to eliminate any constraints posed by Proposition A by developing a Housing Element that will receive approval from the majority of the voters in Encinitas. In addition, Housing Element Program 3C has been added and revised with more specific actions to help the City achieve timely voter approval of its next Housing Element Update.

Coastal Commission Approval. This item is discussed on pages 4, 5 and 8 of the City's May 25 letter. The City is complying with Coastal Act requirements and expects that the identified sites will be available and can realistically accommodate development within the planning period.

Minimum Density. The comment letter asserts that permitting single family development on sites diminishes the opportunity for medium density development. Under the proposed development standards, on sites designated for low and very low income housing, single family uses are not permitted if a property owner uses the higher-density overlay zone. In sites that are not subject to the overlay zone, single family and medium density projects will continue to be permitted. Based on the City's historical production, no additional sites or development standards are needed to facilitate the development of moderate income housing. This comment is addressed further on page 8 of the City's May 25 letter.

SB 2 Sites. Comments regarding SB 2 are addressed on pages 8 and 9 of the City's May 25 letter. Housing Element Program 2C and Section 8.3.6 of Housing Element Appendix B further provide information regarding how the City will address the demand for emergency shelters during the planning period.

Unit Limitations. As discussed on pages 9 and 10 of the City's May 25 letter, a program to facilitate the subdivision of sites is not required to facilitate development projected in the Housing Element.

### **Need for Additional Programs and Program Revisions**

Proposition A. Housing Element Program 3C identifies specific steps that the City will take to gain public support for its next Housing Element, and it commits to an early time frame for action to ensure that regardless of the outcome of the vote, the City has adequate time to respond and adopt a legally-adequate and timely Housing Element Update.

Housing Needs for Large Families. As discussed on page 9 of the City's May 25 letter, The City supports housing for all types of households, but the greatest current need is for housing for seniors, as the community continues to age. Therefore the City does not desire to prioritize family housing over senior housing.

SB 2 Sites. The comment letter repeats its concerns regarding sites for emergency shelters. This comment has been responded to above, on pages 8 and 9 of the City's May 25 letter and in Housing Element Program 2C and Section 8.3.6 of Housing Element Appendix B.

Program to Subdivide Sites. The comment letter repeats its concerns regarding a subdivision program. This comment has been responded to above and on pages 9 and 10 of the City's May 25 letter.

Community Opposition Program. The comment asks for additional revisions to Housing Element Program 3G to require less burdensome development review. The City has proposed all new development standards for sites designated for low and very low income housing in the Housing Element Inventory that are designed to accomplish this exact task. In addition, a rental housing project containing 20 percent low income housing and located on one of the sites will be exempt from CEQA and must be approved 'by right' under Government Code section 65583.2(h) and (i). Moreover the Housing Accountability Act requires the City to approve housing development projects at the densities shown in the General Plan (as reflected in the current draft of the Housing Element) unless specific findings can be made. Housing Element Program 3G, along with the City's revised development standards and state law protections for housing development projects, work together to address the comment letter's concerns.

Development Standards (July 12, 2018 email). The comment asks for modifications to the City's proposed Program 3H to clarify how it will be determined that development standards act as a barrier to affordable housing development. As discussed in Housing Element Program 3H, the City would include the analysis in its Housing Element Annual Report, which will identify the number of units proposed for development on a particular site along with the number of units actually approved. If the approved units are less than the proposed units, the report would identify if development standards were the cause of the reduction, and the Housing Element would require staff to request initiation of a Municipal Code amendment to address the constraint.

Should you have any further questions or comments, please feel free to contact me directly at 760/633-2712 or [bwisneski@encinitasca.gov](mailto:bwisneski@encinitasca.gov).

Sincerely,



Brenda Wisneski, AICP  
Development Services Director



Michael Rawson  
*Director*  
Extension 145  
mrawson@pilpca.org

June 7, 2018

**SENT VIA EMAIL ONLY**

Craig Castellane  
*Staff Attorney*  
Extension 132  
ccastellane@pilpca.org

Mayor Blakespear  
Encinitas City Council Members  
505 S. Vulcan Ave.  
Encinitas, CA. 92024  
[council@encinitasca.gov](mailto:council@encinitasca.gov)

Lauren Hansen  
*Staff Attorney*  
Extension 127  
lhansen@pilpca.org

Valerie Feldman  
*Staff Attorney*  
Extension 125  
vfeldman@pilpca.org

**RE: Supplemental Comments Regarding the May 25, 2018  
Revisions to the City's Draft Housing Element.**

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

Dear Mayor and Council Members:

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.

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

On behalf of our clients we submit these supplemental 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. We incorporate by reference our previous comment letters dated May 4 and May 24, 2018. Despite the City's multiple revisions, there still remain areas that prevent the City from complying 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 of 595 from the Last Planning Period**

Pursuant to formal HCD guidance, there are clearly only four circumstances under which a city can count sites for purposes of reducing, or crediting against, its carry-over obligation. As detailed in our comments submitted on May 24, 2018, none of those circumstances apply here.



	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	-34
Unit Capacity of Sites Not identified in a Housing Element	0	-342
<b>Total Remaining, or Carry-over</b>	<b>595</b>	<b>253</b>

**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.**

As stated in our comments submitted on May 24, 2018, the City must provide the survey data it relied upon to increase its ADU calculation and the revised draft should include a chart with annual rental information, as compared to the annual Area Median Income, which changes each year. This information is necessary to support the increase from 50 units to 79 units.

	Correct Calculation	City's Calculation
RHNA 2013-2021 Very low and Low income combined	1033	1033
Anticipated Accessory Units	-79*	-79
Units Constructed	-66**	-66
<b>Adjusted RHNA</b>	<b>888</b>	<b>888</b>

\*Increased from 50 to 79, pending a review of the survey data upon which this increase is based.

\*\*Increase from 0 to 66 in light of the information provided in the City's revisions.

**B. Adequate Sites**

**The City Must Identify Sites to Accommodate 1483 Units**

	Very Low and Low Income Units
<b>2013-2021 RHNA</b>	888
<b>RHNA Carryover (2003-2013)</b>	595
<b>Remaining RHNA</b>	<b>1483</b>

**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**

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The sites must be adequate to accommodate 1483 low and very low income units. The City calculates the total site unit yield for the sites identified for rezoning at 1,743 units but actual capacity is 1074, as discussed below, which is hundreds of units short of the current RHNA and carry-over.

In addition, as stated in our comments, the draft fails to provide a legally required analysis for each site at the density proposed. As a result, the sites cannot be found adequate to accommodate even the units proposed.

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

As detailed below, the City's Draft Housing Element, including revisions submitted on May 25, 2018, does not contain adequate sites to accommodate its current RHNA and the Carry-over RHNA from the last planning period. Gov. Code §65584.09.

#### An Analysis is Required for Each Site

Only sites that have a "realistic and demonstrated potential for redevelopment during the planning period" can be included in the inventory. Gov. Code § 65583(a)(3). An analysis of each site must be provided and proposed capacity must be reduced based on the number of units that can be realistically be accommodated on each site. While owner interest is an indicator that a site is has redevelopment potential, it cannot be the only factor considered to satisfy the required analysis.

This site-specific analysis is required of each site, not only non-vacant sites. *Id.* "The inventory shall specify for each site the number of units that can realistically be accommodated on that site and whether the site is adequate to accommodate lower-income housing..." Gov. Code § 65583.2(c) (emphasis added). The "analysis shall determine whether the inventory can provide for a variety of types of housing," and when sites are developed at minimum densities, the units calculated "shall be adjusted as necessary, based on the land use controls and site improvements requirement identified in paragraph (5) of subdivision (a) of Section 65583, the realistic development capacity for the site, typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction, and on the current or planned availability and accessibility of sufficient water, sewer, and dry utilities." Gov. Code §§ 65583.2(c), (c)(1) (emphasis added).

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

As stated in our previous comment letters, 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. 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.

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<b>City’s Calculation</b>	<b># of Units</b>	<b>% of RHNA</b>
Vacant	673	59%
Non-vacant	1070	94%
Total Unit Capacity	1743	153%
RHNA Allocation (including carryover) for very low and low income categories: 1141		

<b>Correct Calculation</b>	<b># of Units</b>	<b>% of RHNA</b>
Vacant	631	59%
Non-vacant	443	41%
Total Unit Capacity	1074	100%
RHNA Allocation (including carryover) for very low and low income categories: 1483		

It remains our position that the correct calculation for the RHNA and carry-over obligation from the last planning period is greater than the City’s calculation. It is also our position that that our calculation would require the City to analyze non-vacant sites pursuant to Government Code § 65583.2(g)(2) because said sites accommodate more than 50 percent of the City’s lower-income housing needs

However, even under the analysis required pursuant to Government Code section 65583(g)(2), the City must still analyze non-vacant sites, existing uses, and each site’s demonstrated redevelopment potential and the City has failed to adequately do so for each of the non-vacant sites in its proposed inventory available for lower income households .<sup>1</sup>

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<sup>1</sup> “For sites described in paragraph (3) of subdivision (b), the city or county shall specify the additional development potential for each site within the planning period and shall provide an explanation of the methodology used to determine the development potential. The methodology shall consider factors including the extent to which existing uses may constitute an impediment to additional residential development, the city’s or county’s past experience with converting existing uses to higher density residential development, the current market demand for the existing use, an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites.” Gov. Code § 65583.2(g)(1)(emphasis added);

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Sites	City's Proposed Capacity	Actual Capacity	Not Vacant Despite Vacant Designation	Lacks environ. constraint analysis	Lacks existing leases/ uses analysis	Lacks program to address owner. constraints	Lacks evidence site is "avail."	Lacks owner interest	Other Constraints
<b>Vacant</b>									
02 Cannon Property	173	160		✓					✓
05a Encinitas Blvd & Quail Gardens	94	80		✓					✓
08a Rancho Santa Fe (Gaffney/ Goodsen)	36	36		✓	✓	✓			✓
AD1 Sage Canyon	60	45	✓	✓			✓	✓	✓
AD2a Baldwin & Sons	74	74		✓		✓	✓	✓ a	✓
AD2b Baldwin & Sons	121	121		✓		✓	✓	✓ a	✓
AD12 Rancho Santa Fe East	115	115	✓				✓	✓	
<b>Non-vacant</b>									
01 Greek Church Parcel	50	45							✓
05b Encinitas Blvd & Quail Gardens	25	18		✓					✓
06 Armstrong Parcels	55	0		✓	✓				
07 Jackel Properties	33	0		✓					✓

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Sites	City's Proposed Capacity	Actual Capacity	Not Vacant Despite Vacant Designation	Lacks environ. constraint analysis	Lacks existing leases/ uses analysis	Lacks program to address owner. constraints	Lacks evidence site is "avail."	Lacks owner interest	Other Constraints
08b Rancho Santa Fe (Gaffney/ Goodsen)	113	0		✓	✓	✓			✓
09 Echter Property	246	0		✓	✓		✓		✓
11 El Camino Real South	48	0			✓		✓	✓	
12 Sunshine Gardens	84	70		✓	✓			✓	✓
AD2c Baldwin & Sons	30	0		✓			✓	✓	✓
AD7 Dewitt Property	20	0			✓			✓	
AD8 Vulcan & La Costa	50	50			✓				✓
AD9 Seacoast Church	35	35						✓	✓
AD11 Manchester Avenue West Sites	41	41			✓	✓		✓	
AD14 Harrison Sites	21	21			✓			✓	
AD31 Meyer Proposal	163	163			✓	✓		✓	✓
AD32 Garden View Court	56	0			✓			✓	
<b>Totals</b>	<b>1743</b>	<b>1074</b>							

\* At most, 1074 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. See site inventory inadequacy summary below for site-by-site descriptions of information the City must provide.

## **Site Inventory Inadequacies Summary**

### **Vacant Sites:**

#### **02 Cannon Property**

In its response to our environmental concerns, specifically the need to preserve habitat, the City stated that it did not have to provide information pertaining to environmental constraints because we had failed to provide evidence regarding habitat preservation. Response, p. 5.

The City has an obligation to analyze environmental concerns to determine whether they could impede affordable housing development during the planning period. Pursuant to Gov. Code § 65583.2, the housing element should 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.” Given the environmental concerns raised, the City should provide information to support the site’s viability for residential development on the proposed net acreage at the proposed density. If during the City’s analysis of the site, the City found no environmental constraints, it should state so in the draft.

In response to our comments regarding the need to reduce capacity to ensure a more practical reflection of development potential,<sup>2</sup> the City responded by stating that state law does not allow the City to reduce density that conforms to the general plan. It cited to housing element statutes that require by right development approval, not to site analysis and viability. Response, p. 4. In defense of its refusal to reduce site capacity to reflect realistic development potential, the City also states that community opposition is not a factor that it must legally consider. Response, p. 4.

If the City’s intention in preparing a site inventory is to actually facilitate the timely (during this planning period) development of affordable housing to address the unmet housing needs of its most vulnerable residents, and not just obtain HCD approval, site capacity must be reduced.

Moreover, proposing unrealistically high site capacities may lead to a violation of the No Net Loss Law, which requires 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

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<sup>2</sup>May 24, 2018, Comments, p. 8.

Proposition A to require voter approval for all land use and zoning changes (a constraint addressed below). Gov. Code § 65863.

**05a and 05b Encinitas Blvd & Quail Gardens**

The revisions divide the site designated Site 05 in the previous draft into two sites – Site 05a and Site 05b. No information is provided to explain why the total unit capacity has increased from 117 to 119 (Site 05a – 94 units, Site 05b – 25 units), while the acreage remains the same. May 25<sup>th</sup> Revisions, C-13-14.

In its response to the environmental concerns raised in our comments, the City states that there are no environmental issues applicable to Sites 05a and 05b, but fails to confirm or deny whether these sites have been rejected for environmental issues in the past.<sup>3</sup> Response, p. 5. More information pertaining to this is needed to support a finding of site viability for residential development during this planning period. Without more information, site capacity must be reduced to reflect realistic development potential during this planning period.

In its response, the City fails to address the mitigation efforts necessary for development at the capacity proposed given the site's proximity to the Encinitas Boulevard and Quail Gardens Drive.<sup>4</sup> See discussion under 02 Cannon Properties. This information is necessary.

**08a and 08b Rancho Santa Fe (Gaffney/Goodsen)**

The revised draft divides Site 08 into two sites – 08a and 08b. May 25<sup>th</sup> Revisions, pp. C-16-17. It appears that the parcels were divided to ensure that one site could be listed as vacant in the inventory. However, dividing the site results in 08b having “some landlocked parcels.” May 25<sup>th</sup> Revisions, pp. C-17.

The development of 113 units on a site that includes a landlocked parcel is not realistic, and the City's proposal to develop the site contingent upon the development of neighboring sites is problematic for many reasons, including the fact that separate owners own the parcels.

To develop on these sites during the planning period, a developer would have to acquire parcels from two separate 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.

In its response, the City states that a letter from the separate owners is sufficient to address this concern. Response, pp. 6-7. The owner letters are not sufficient because

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<sup>3</sup> May 24, 2018, Comments, pp. 9-10.

<sup>4</sup> May 24, 2018, Comments, pp. 8-9.

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they fail to address the issues of concern, including the need for a developer to enter into multiple property acquisition transactions, adding time and possibly expense to a deal and thus making the site infeasible for affordable housing development. In addition, the City sites to an agreement between the two owners, but the agreement referenced in not included in the housing element. May 25<sup>th</sup> Revisions, p. C 80-81. Relying on the owner letter to mitigate the common ownership constraint is concerning given the various requirements demanded of the City and HCD in the letter:

“Based upon this letter, the City and HCD must agree that these sites: a) are “Almost Vacant”; b) Have minimal slope impacts resulting in the property having an [*sic*] excellent development potential; and c) Have a realistic and demonstrated potential for redevelopment during the planning period for this Housing Element Update.”

May 25 Revisions, p. C 80.

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 and a timeline of actions to ensure actual development, during this planning period, on sites owned by different owners. Without additional assistance to ensure such sites are developed for lower income housing, the City cannot justify the inclusion of these sites.

Also, as stated in our previous comments, approximately five residential structures ranging from 1-2 stories and spread across multiple parcels are located on this site. 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 impede redevelopment. May 25<sup>th</sup> Revisions, pp. C-16-17, 80-81. Additional information pertaining to the 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).

In its response, the City fails to address concerns about topographical challenges that limit capacity,<sup>5</sup> and relies on statements made by the site owner regarding the slopes being of no concern. Response, p. 7. This is insufficient for purposes of site analysis. The City must provide information supporting the analysis it conducted to support a finding of realistic development of this site during this planning period.

The City also failed to address whether projects have been recently approved for this site.<sup>6</sup> Reply, p. 7.

In its response, the City fails to address the mitigation efforts necessary for development at the capacity proposed given the site's roadway constraints.<sup>7</sup> Reply, p. 7. For the same reasons as provided in the traffic mitigation section of the Cannon Site 02, this must be addressed or the capacity must be reduced for a realistic reflection of development potential during this planning period.

Without more information, site capacity must be reduced to reflect realistic development potential during this planning period.

### **AD1 Sage Canyon**

Site AD1, Sage Canyon, continues to be listed as vacant but is not vacant. It should be classified as nonvacant for various reasons, including the presence of powerlines on the site. As stated in our comments, powerlines may constrain development by limiting or restricting locations on the site where development can occur. More information must be provided.

The Draft states that the site is “currently subject to a purchase and sale agreement,” however, information pertaining to the status of the sale, including when escrow closes, is not provided. The draft housing element contains a letter from an individual who has “entered into a binding contract to acquire [the site] from the current owner,” 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 that the sale is subject to updates that the site owner is required to provide prior to closing, which is scheduled to occur “soon.” May 25<sup>th</sup> Revisionst, pp. C-20-22, 89.

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.

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<sup>5</sup> May 24, 2018, Comments, p. 13.

<sup>6</sup> May 24, 2018, Comments, p. 13.

<sup>7</sup> May 24, 2018, Comments, p. 11.

While the draft housing element includes a map with grade information and environmentally sensitive area boundaries, it fails to provide the information upon which the map lines were drawn or information pertaining to our concerns with the blue-line stream, soil, and inland coastal bluffs. May 25<sup>th</sup> Revisions, p. C-22. 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. Inclusion of the topographic and environmental studies that reduced the net acreage should be made available on the City's Housing Element Task Force site. Given the timeframe of the housing element's submission and review, the City should make this information available. While stating that the information is "available in the City's records for an approved tentative map," may be sufficient under Gov. Code § 65583.2 ("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." (emphasis added)), the City should provide this information on the housing task force website to support the site's viability for residential development on the proposed net acreage at the proposed density.

Response, p. 6.

#### **AD2a, ADb, and AD2c Baldwin & Sons**

The revised draft divides AD2 into three sites – AD2a, AD2b, and AD2c. May 25<sup>th</sup> Revisions, pp. C-23-24. It appears that the parcels, which are all under one ownership but include non-vacant parcels, were divided to ensure that two of the parcels (AD2b and AD2c) could be listed as vacant in the inventory. However, dividing the site results in parcels being "landlocked with no direct street access." May 25<sup>th</sup> Revisions, pp. C-23, 92.

The draft states AD2a is vacant with a proposed unit capacity of 74; AD2b is vacant with "some landlocked parcels" and a proposed capacity of 121; and AD2c is non-vacant with a landlocked parcel and a utility easement (powerlines). The net acreage for AD2c was reduced to reflect the powerlines, however, no information pertaining to the reduction analysis conducted is provided. This analysis should be provided.

The development of 151 units on sites that include landlocked parcels (AD2b and AD2c) is not realistic, and the City's proposal to develop these sites contingent upon the development of neighboring sites is problematic for many reasons, including the fact that it would require a developer to have to commit to purchase and develop all three parcels.

The proposed capacity is based on an assumption that all three sites will be developed together. If they were not developed together, there would be significant ingress and egress issues which would make development unpredictable, and therefore unrealistic.

In its response, the City fails to address the environmental issues that exist on this site.<sup>8</sup> Reply, p. 6. The City dismisses these serious concerns and states that its reliance on the owner's statement is sufficient: "The owner has represented that drainage, sewer, and

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<sup>8</sup> May 24, 2018, Comments, p. 11.

storm water issues can be resolved at site development.” Reply, p. 6. The owner’s representation is not sufficient to determine whether these pose constraints that would render affordable units infeasible on these parcels. The City must conduct its own analysis and reduce site capacity to reflect the number of units that can realistically be accommodated.

In its response, the City fails to address the mitigation efforts necessary for development at the capacity proposed given the site’s roadway constraints.<sup>9</sup> Reply, p. 6. For the same reasons as provided in the traffic mitigation section of the Cannon Site 02, this must be addressed or the capacity must be reduced for a realistic reflection of development potential during this planning period.

**Non-Vacant Sites:**

**01 Greek Church Parcel**

The unit capacity was not reduced from 50 to 45, despite our comments. May 25<sup>th</sup> Revisions, p. C-29, 93-94. As the owner indicated interested in building “40 to 50” units, averaging the unit amount to 45 is a more prudent choice to avoid an overestimation of the units that may be produced on this site.

**05a and 05b Encinitas Blvd & Quail Gardens**

See Vacant Sites section above.

**06 Armstrong Parcels**

Site 06 has “an existing retail garden center, paved surface parking lot, and private drive aisles.” The retail garden center and surface parking lot are “in use.” May 25<sup>th</sup> Revisions,, pp. C-32-33. It is not clear if a letter of intent from the owner has been included in the draft. Since this is a non-vacant site, a description for the existing use (including lease information) must be included as well as an analysis as to whether the existing use would impede residential development. 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).

As stated above, even if non-vacant sites are not relied on to accommodate 50 percent or more of the lower-income housing needs, the City must still analyze non-vacant sites, existing uses, and each site’s demonstrated redevelopment potential. Gov. Code §

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<sup>9</sup> May 24, 2018, Comments, p. 11.

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65583.2(g)(1) (requires the City to consider factors including “the extent to which existing uses may constitute an impediment to additional residential development,” and “an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development.” An analysis must be conducted for this site to comply with Gov. Code § 65583.2(g)(1). This analysis is missing from the May 25<sup>th</sup> revisions to the Draft Housing Element.

The site capacity must be reduced by the number of units proposed on the developed parcel (containing the existing retail garden center), as there is no indication of redevelopment potential on this parcel.

The site is described in the draft as having “existing wetland vegetation,” and steep slopes. Information should be provided pertaining to the environmental constraints on this site, and the methodology used to reduce site capacity accordingly.

Without more information, site capacity must be reduced to reflect realistic development potential during this planning period.

### **07 Jackel Properties**

In response to our comments that the site cannot be included until the Coastal Commission agrees to release the site from its zoning class (Visitor Serving Commercial), the City simply restates its position that rezoning of the site is “contingent on Coastal Commission action.” Response, p. 5.

The City states that it has “consulted with Coastal Commission staff to ensure the rezonings will be supported by the Commission.” However, no information pertaining to the Coastal Commission’s response to the City’s request for rezoning is provided, nor could the Coastal Commission staff convey that the changes would be approved by the commission. This communication should be made available. Response, p. 4. May 25<sup>th</sup> Revisions, pp. C-33-34, 95-7.

In its response, the City does not address the environmental concerns raised in our comments, nor does it address whether additional right of way access routes in its Streetscape project will impact the site.<sup>10</sup> Response, pp. 5-6. This information should be provided.

In its response, the City fails to address the mitigation efforts necessary for development at the capacity proposed given the site’s proximity to the Encinitas Boulevard and Quail Gardens Drive.<sup>11</sup> See discussion under 02 Cannon Properties. This information should be provided.

### **08 Rancho Santa Fe (Gaffney/Goodsen)**

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<sup>10</sup> May 24, 2018, Comments, pp. 9-10.

<sup>11</sup> May 24, 2018, Comments, pp. 9-10.

See Vacant Sites section above.

### **09 Echter Property**

The May 25<sup>th</sup> revisions to the Draft Housing Element fails to include a description for existing use and an analysis as to whether the existing use would prevent redevelopment. May 25<sup>th</sup> Revisions, pp. C-36-37, 98. In its response, the City states that information prepared by the owner adequately describes existing uses. However, under housing element law, a conceptual plan prepared by an owner of the site does not release the City from its obligation to conduct an analysis of factors required by state law. The City must conduct an analysis and proposed capacity must be reduced based on the number of units that can be realistically accommodated. Gov. Code §§ 65583.2(c), 65583(a)(3). 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).

As stated above, even if non-vacant sites are not relied on to accommodate 50 percent or more of the lower-income housing needs, the City must still analyze non-vacant sites, existing uses, and each site's demonstrated redevelopment potential. Gov. Code § 65583.2(g)(1) (requires the City to consider factors including “the extent to which existing uses may constitute an impediment to additional residential development,” and “an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development.” An analysis must be conducted for this site to comply with Gov. Code § 65583.2(g)(1).

In its response, the City stated that Coastal Commission approval will be required before rezoning can occur which will not be completed until 2019. Response, p. 7. There is no indication that the Coastal Commission is likely to approve the removal of the restriction, especially considering how important the restriction for agricultural use was in order to obtain approval of the Encinitas Ranch Specific Plan. Until this “in-perpetuity” restriction to remain agriculture is removed by the Coastal Commission, this site should be removed.

The City did not respond to the concern we raised about the community's desire to maintain its agricultural use.<sup>12</sup>

### **11 El Camino Real South**

Site 11 contains “existing greenhouse and temporary agricultural structures.” May 25<sup>th</sup> Revisions, pp. C-41-42. It is not clear if a letter of interest from the owner has been provided. Since this is a non-vacant site, a description for the existing use (including lease information) must be included as well as an analysis as to whether the existing use would impede residential development. Without this information, HCD must presume

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<sup>12</sup> May 24, 2018, Comments, p. 13.

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).

As stated above, even if non-vacant sites are not relied on to accommodate 50 percent or more of the lower-income housing needs, the City must still analyze non-vacant sites, existing uses, and each site's demonstrated redevelopment potential. Gov. Code § 65583.2(g)(1) (requires the City to consider factors including “the extent to which existing uses may constitute an impediment to additional residential development,” and “an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development.” An analysis must be conducted for this site to comply with Gov. Code § 65583.2(g)(1).

Without more information, development on this site at the capacity proposed, during this planning period, is unrealistic.

### **12 Sunshine Gardens**

The letter of interest states that the leases for existing uses 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.” May 25<sup>th</sup> Revisions, pp. C- 27, p. C-80-81. In its response, the City states that information provided in the inventory and prepared by the owner adequately describe existing uses. However, under housing element law, the City must conduct an analysis and proposed capacity must be reduced based on the number of units that can be realistically accommodated. Gov. Code §§ 65583.2(c), 65583(a)(3). Three small photos of unidentified structures (unclear as to whether they are residential or commercial), and a parking lot with vehicles and recycling bins, do not constitute an analysis of existing use. The City must provide an analysis as to whether the existing uses would prevent redevelopment of the site for residential development.

As stated above, even if non-vacant sites are not relied on to accommodate 50 percent or more of the lower-income housing needs, the City must still analyze non-vacant sites, existing uses, and each site's demonstrated redevelopment potential. Gov. Code § 65583.2(g)(1) (requires the City to consider factors including “the extent to which existing uses may constitute an impediment to additional residential development,” and “an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development.” An analysis must be conducted for this site to comply with Gov. Code § 65583.2(g)(1).

In its response, the City attempts to sidestep its obligation to address environmental constraints by stating that the commenters failed to provide sufficient evidence: “No evidence is provided in the Joint Letter that the costs of mitigating drainage and sewage issues are prohibitive.” Response, p. 7. Pursuant to Gov. Code § 65583.2, “[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.”

Given the environmental concerns raised,<sup>13</sup> the City should provide information to support the site's viability for residential development on the proposed net acreage at the proposed density. Refusing to provide information on grounds that the commenter had failed to meet her burden is insufficient to release the City of its obligation to address environmental concerns that could impede affordable housing development during the planning period.

In its response, the City fails to address the mitigation efforts necessary for development at the capacity proposed given the site's roadway constraints.<sup>14</sup> Reply, p. 7. For the same reasons as provided in the traffic mitigation section of the Cannon Site 02, this must be addressed or the capacity must be reduced for a realistic reflection of development potential during this planning period.

Most concerning is the reference in the site description to the General Plan favoring agricultural use on this site. More information pertaining to this is necessary.

Without more information, site capacity must be reduced to reflect realistic development potential during this planning period.

#### **AD2 Baldwin & Sons**

See Vacant Sites section above.

#### **AD7 Dewitt Property**

Site AD7 contains “[e]xisting operational businesses” in the form of “4 single-story small commercial buildings, temporary storage structures, paved parking lot.” May 25<sup>th</sup> Revisions, pp. C-45-46. It is not clear if a letter of interest from the owner has been provided. Since this is a non-vacant site, a description for the existing use (including lease information) must be included as well as an analysis as to whether the existing use would impede residential development. 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).

As stated above, even if non-vacant sites are not relied on to accommodate 50 percent or more of the lower-income housing needs, the City must still analyze non-vacant sites, existing uses, and each site's demonstrated redevelopment potential. Gov. Code § 65583.2(g)(1) (requires the City to consider factors including “the extent to which existing uses may constitute an impediment to additional residential development,” and “an analysis of any existing leases or other contracts that would perpetuate the existing

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<sup>13</sup> May 24, 2018, Comments, p. 15.

<sup>14</sup> May 24, 2018, Comments, p. 15.

use or prevent redevelopment of the site for additional residential development.” An analysis must be conducted for this site to comply with Gov. Code § 65583.2(g)(1).

Without more information, development on this site at the capacity proposed, during this planning period, is unrealistic.

### **AD8 Vulcan & La Costa**

In its response, the City states that information provided in the inventory and prepared by the owner adequately describe existing uses.<sup>15</sup> Response, p. 7. However, under housing element law, it is insufficient. The City must conduct an analysis and proposed capacity must be reduced based on the number of units that can be realistically accommodated. Gov. Code §§ 65583.2(c), 65583(a)(3). 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).

As stated above, even if non-vacant sites are not relied on to accommodate 50 percent or more of the lower-income housing needs, the City must still analyze non-vacant sites, existing uses, and each site's demonstrated redevelopment potential. Gov. Code § 65583.2(g)(1) (requires the City to consider factors including “the extent to which existing uses may constitute an impediment to additional residential development,” and “an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development.” An analysis must be conducted for this site to comply with Gov. Code § 65583.2(g)(1).

In its response, the City fails to address the mitigation efforts necessary for development at the capacity proposed given the site's roadway constraints.<sup>16</sup> Reply, p. 7. For the same reasons as provided in the traffic mitigation section of the Cannon Site 02, this must be addressed or the capacity must be reduced for a realistic reflection of development potential during this planning period.

### **AD9 Seacoast Church**

The letter of owner interest for Site AD9 references an attached preliminary feasibility study, however, the study was not included in the draft. The study should be provided to

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<sup>15</sup> Draft, p.C-46-47, 101 (Site AD8 identifies “existing operational businesses” The draft housing element states that the “majority of the site is occupied by temporary structures such as greenhouses.” Draft, p. C-29. The owners state that the site has “currently under used, flower field, shop, old residence, etc...” and that the owners “have no intention of keeping the flower field and/or any of the old structures on the land, they will be demolished to make way of development and building on the entire 2 acre site.”)

<sup>16</sup> May 24, 2018, Comments, p. 16.



determine viability of the site for the number of units proposed. May 25<sup>th</sup> Revisions, pp. C-49-50, 105.

### **AD11 Manchester Avenue West Sites**

Site AD11 consists of parcels with multiple owners. May 25<sup>th</sup> Revisions, pp. C-51-52, 106. To develop on this site during the planning period, a developer would have to acquire parcels from two separate 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. The joint letter of intent from the owners state that they have a “non-binding letter of intent, as both property owners would have to find agreeable price and terms.” Draft, p. 106. This is not sufficient to mitigate this constraint because it fails to address the multiple issues of concern, including the need for a developer to enter into multiple property acquisition transactions.

Without a program to remove the constraints caused by lack of common ownership, the constraint 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). 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 the site is developed for lower income housing, the City cannot justify the inclusion of this site for lower income households.

In addition to the multiple owner constraint, the site has single family residences and a single-story structure. May 25<sup>th</sup> Revisions, pp. 51. The owners state that they intend to demolish the residences and structure “upon agreement with the City of Encinitas to rezone and develop the land.” May 25<sup>th</sup> Revisions, p. 106. However, a description for the existing use (including lease information) must be provided to determine if the site can be developed during this planning period (not necessarily possible if there is an existing lease given the limited time remaining in this planning period). Gov. Code § 65583(a)(3).

As stated above, even if non-vacant sites are not relied on to accommodate 50 percent or more of the lower-income housing needs, the City must still analyze non-vacant sites,

existing uses, and each site's demonstrated redevelopment potential. Gov. Code § 65583.2(g)(1) (requires the City to consider factors including "the extent to which existing uses may constitute an impediment to additional residential development," and "an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development." An analysis must be conducted for this site to comply with Gov. Code § 65583.2(g)(1).

### **AD14 Harrison Sites**

Site AD14 has existing operational businesses in the form of a "2-story office building and a surface parking lot," and a "2-story residential structure." May 25th Revisions, pp. C-53-54, 107. While the letter of interest from the owner states that the owner has limited his tenant lease terms, the limit is only to the "time normally required to procure the City's discretionary approval," which is vague. The owner also states that all of his tenants are "month-to-month," however; this does not provide information pertaining to how long (60 days under state law, for example) the tenants must be provided notice before they are displaced. A description for the existing use, including specific lease information, must be included as well as an analysis as to whether the existing use would impede residential development. 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).

As stated above, even if non-vacant sites are not relied on to accommodate 50 percent or more of the lower-income housing needs, the City must still analyze non-vacant sites, existing uses, and each site's demonstrated redevelopment potential. Gov. Code § 65583.2(g)(1) (requires the City to consider factors including "the extent to which existing uses may constitute an impediment to additional residential development," and "an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development." An analysis must be conducted for this site to comply with Gov. Code § 65583.2(g)(1).

### **AD31 Meyer Proposal**

Site AD31 is owned by multiple (at least four) owners, one owner has submitted a letter of interest in the form of an email, and multiple owners have signed an agreement to "work cooperatively in an effort to enter into a formal agreement." In the email, the owner states that he has received permission from the other owners to express their interest in either a swap for L-7 or a rezoning of the site. May 25th Revisions, pp. C-55-56, 108-115.

To develop on this site during the planning period, a developer would have to acquire parcels from multiple separate 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.

Without a program to remove the constraints caused by lack of common ownership, the constraint 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). 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 and a timeline of actions to ensure actual development, during this planning period, on sites owned by different owners. Without additional assistance to ensure such sites are developed for lower income housing, the City cannot justify the inclusion of these sites.

In addition to the multiple owner constraint, the site has developed parcels, containing single-story residences, an outdoor storage area associated with agricultural use, a flower growing business, greenhouse and sales temporary structures, and existing agricultural uses. May 25th Revisions, pp. C-55-56, 108-115. Since this is a non-vacant site, a description for the existing use (including lease information) must be included as well as an analysis as to whether the existing use would impede residential development. Without this information, HCD must presume that the existing uses will delay a swap or 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).

As stated above, even if non-vacant sites are not relied on to accommodate 50 percent or more of the lower-income housing needs, the City must still analyze non-vacant sites, existing uses, and each site's demonstrated redevelopment potential. Gov. Code § 65583.2(g)(1) (requires the City to consider factors including “the extent to which existing uses may constitute an impediment to additional residential development,” and “an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development.” An analysis must be conducted for this site to comply with Gov. Code § 65583.2(g)(1).

### **AD32 Garden View Court**

Site AD32 contains existing operational businesses, a 2-story gym and a surface parking lot. Draft, pp. C-57-58, 116. While the description states that the owner has expressed interest in replacing parking for the gym with residential development, information pertaining to leases or confirmation of the absence of a lease is not provided. The letter of interest from the owner references an attached site plan, but the site plan is not included

in the draft. The site plan should be included in the draft. Redevelopment, at the capacity proposed, on the parking lot of site during this planning period is unrealistic.

Since this is a non-vacant site, a description for the existing use must be included as well as an analysis as to whether the existing use would impede residential development. 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).

As stated above, even if non-vacant sites are not relied on to accommodate 50 percent or more of the lower-income housing needs, the City must still analyze non-vacant sites, existing uses, and each site's demonstrated redevelopment potential. Gov. Code § 65583.2(g)(1) (requires the City to consider factors including "the extent to which existing uses may constitute an impediment to additional residential development," and "an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development." An analysis must be conducted for this site to comply with Gov. Code § 65583.2(g)(1).

Without more information, development on this site at the capacity proposed, during this planning period, is unrealistic.

### **C. Governmental Constraints**

#### **Proposition A**

As stated in our previous comments, Proposition A has acted as a ban on the City's housing element compliance for the last 5 years. May 4, 2018 Comments, p. 16. The City acknowledges this constraint but does not identify any specific actions to remove the constraint. May 25th Revisions, p. B-49.

Encinitas added the following (underlined) statement to the revised housing element:

In November 2016, as required by Proposition A, the City placed a proposed Housing Element and related General Plan amendments and re-zonings on the ballot as Measure T. Measure T was not approved by the voters, and Proposition A did act as a constraint on the City's ability to comply with state housing element law. However, in any community where there is substantial opposition to an adopted housing element, residents may act to prevent its adoption through litigation, especially under the California Environmental Quality Act, or by collecting enough signatures to place a referendum on the ballot.

May 25<sup>th</sup> Revisions, B-49. The language added in the revised draft is an attempt to justify the City's actions through analogizing Proposition A to situations others cities **may** confront. However, the potential for other cities to enact measures limiting growth does not diminish **this** city's obligation to address and mitigate the constraints of Proposition A.

### Coastal Commission Approval

The City has proposed a timeline of November 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. 1-14, 1-15. 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 non-vacant sites must show they have a realistic development potential before the end of the planning period.

### Minimum Density

As stated in our comments,<sup>17</sup> 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. In its response letter of May 25, 2018, Encinitas states that the lack of a required minimum density has not been a constraint because most projects are density bonus projects constructed above the permissible maximum density. Encinitas' reply states that two-thirds of all residential units in the City between 2003-2013 were approved under density bonus provisions. Response, p. 8. But, given the dismal production of affordable housing during that time, and as stated in our comments, there is a clear preference in the public and among elected officials<sup>18</sup> 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

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<sup>17</sup> Comments, p. 17 (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-61.)

<sup>18</sup> Comments, p. 19-20. (NIMBY Opposition: "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 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).)

permitted density.

In its response, Encinitas also states that it modified Program 2B to include actions that will create moderate-income housing, however, the only objective under Program 2B that targets moderate-income housing discusses “affordability by design” to adopt maximum size limits. This program alone is not sufficient and, as stated in our comments, 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

While the revised draft includes more detailed descriptions of the transportation available within the LI and BP zones, it is not clear whether the sites identified in the draft as suitable for emergency shelters (0.32 acres of vacant land, North Coast Business Park suites, and other land within the LI and BP zones) have adequate transportation access points. Draft, pp. B-62-66. Given that the sites discussed are located throughout a 28 acre area and it is not clear whether public transportation is accessible throughout the entire area, more information is needed to ascertain whether sites proposed for emergency shelters are accessible by public transportation.

The limited availability of vacant land within the LI and BP zones raises concern about actual capacity. The draft must ensure that it identifies sufficient appropriate land (8,500 square to 10,000 square feet pursuant to the draft's estimate) to accommodate 86 individuals.

Given the anti-homeless sentiment prevalent in the City and in the draft<sup>19</sup> and the existence of homelessness in the City,<sup>20</sup> additional information and programs supporting the viability of sites in the Light Industrial and Business Park zones must be provided.

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<sup>19</sup> The draft describes homeless individuals as others who are not residents of Encinitas, “homeless persons may be attracted to the City's mild climate.” Draft, p. B-25. This description is concerning and furthers the land use decisions Encinitas has used for decades to exclude housing for people with lower incomes and essentially bar people of all socioeconomic status from accessing housing in Encinitas. Homeless individuals who reside in Encinitas are homeless because they cannot afford housing in Encinitas, not because they choose to be homeless in Encinitas because of its “mild climate.” The reason they cannot afford housing in Encinitas is a direct result of Encinitas' decades-long refusal to comply with state laws, including Housing Element law, that require cities to facilitate the development of affordable housing.

<sup>20</sup> The statement “and most of these churches have been involved in ending homelessness in Encinitas” is concerning since homelessness has not ended in Encinitas, as evidenced by the homeless resident data included in the draft and the recent homeless encampment sweeps. (November 2017, City Council was informed of the process used to remove Encinitas' homeless encampments, include one homeless encampment removed from Encinitas Boulevard on November 22, 2017, [http://encinitas.granicus.com/MetaViewer.php?view\\_id=7&event\\_id=1594&meta\\_id=82390](http://encinitas.granicus.com/MetaViewer.php?view_id=7&event_id=1594&meta_id=82390), accessed May 30, 2018).

Unit Limitations on Multi-Family Sites

In response to our comments regarding inventory sites having a greater capacity than what is proposed in the draft, draft was revised to state “should the owners desire to sell only the developable portion of their properties for housing, the property could be subdivided, and a developer would need to purchase only the developable portion.” Response, p. 9.

However, no program is provided to subdivide property and the City stated on the next page of its reply that “[t]here is no particular need to include a program to subdivide sites.” Response, p. 10

As stated in our comments, this is a constraint and must be addressed in the housing element.<sup>21</sup>

**D. 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.<sup>22</sup> 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.

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<sup>21</sup> Comments, p. 18 (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.).

<sup>22</sup> Housing Element Law recognizes that some actions will be on-going throughout the planning period. *Id.*

Proposition A

In the earlier draft, the City stated that Proposition A “has been a constraint on the City’s ability to comply with state Housing Element law.” Now, the revised draft housing element states that Proposition A “may act as” a constraint” if “a proposed Housing Element does not achieve community support.” May 25<sup>th</sup> Revisions, p. 1-26. This is not an accurate reflection of the impact of Proposition A.

Proposition A has acted as a constraint and will continue to do so since the City will not comply with state Housing Element law without support from residents, because of the City’s interpretation of Proposition A. When discussing steps the City will take to mitigate Proposition A from constraining the City’s compliance with state law, it replaced “develop strategies” with “take actions.” However, the actions listed are not sufficient. In fact, the proposed actions are simply actions it has already taken and have proven to be unsuccessful in mitigating Proposition A as a government constraint: prepare a housing element based on its RHNA allocation, establish a Housing Element Task Force, hold public meetings to identify candidate sites, identify sites most acceptable to the community, contact nonprofit developers and property owners to identify sites, work with property owners, and establish a schedule so that the vote will be held in advance of the housing element due date. May 25<sup>th</sup> Revisions, pp. 1-25-26.

Most concerning is the timeframe provided: the City will “[c]ommence developing the sixth cycle Housing Element in 2019 when the City receives its RHNA allocation” and, in predicting that voters will not approve the next housing element, schedule votes for 2020 and 2021. May 25<sup>th</sup> Revisions, p. 1-27. Government Code section 65583(c) requires a description of what actions the City will take to remove this constraint, not what actions the City will take within the constraints of the constraint. This program must be revised in order to set forth a schedule of actions and an appropriate timeline.

Program to Accommodate Special Housing Needs

The revised draft recognizes the need for affordable units for larger families (“larger units were not affordable”), but the proposed steps target to moderate income families, not low income families.

Our comments regarding larger families pertain to lower income, not moderate income, households. As stated in the comment letter, 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.

To address the housing needs of large families, the draft proposes a strategy to encourage “affordability by design” by limiting the maximum size of units with a given number of bedrooms to ensure that the units are “affordable to moderate income households.” May 25<sup>th</sup> Revisions, p. 1-19-20. (This is the only objective under Program 2B that addresses larger units, the other objectives target lower income households, and those at risk of homelessness.)



There should be a program in the housing element to incentivize housing that addresses the housing needs of large, low income families. As stated in our comments, 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.

### Program to Subdivide Sites

The Draft must include a program to subdivide sites to help reduce the cost of developing affordable housing. As indicated above in the constraint analysis, such a program is necessary to allow a developer to avoid having to purchase an entire parcel when only a fraction of the parcel can be developed. The Draft must include a program to facilitate the subdivision of parcels. This could be accomplished by waiving fees when the subdivision will result in the development of affordable housing.

### Community Opposition Program

In our comment letter of May 24, 2018, we emphasized the need for a program to mitigate the nongovernmental constraints caused by neighborhood opposition to density and affordable housing. Comments, pp. 18-20. We cited to NIMBY statements made by the current Mayor of Encinitas to show that opposition is not just expressed by the public, but a force that permeates all levels of discussion. We emphasized that a program that addresses opposition is necessary to ensure actual compliance with housing element law.

The City added a new Program, "Program 3G: Seek to create community support for housing at a variety of income levels," and a new non-governmental constraint section, "7.6 Community Opposition to Housing Development." May 25<sup>th</sup> Revisions, pp. 1-28, B-42; Response, p. 9.

Section 7.6 recognizes community opposition to housing development in general, but fails to address opposition to affordable housing. As discussed at length in our comment letters, opposition to affordable housing is the crux of the matter and must be specifically analyzed in the Draft Housing Element.

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Program 3G states that it will “work with the community, in conjunction with Program 3C (Proposition A), to achieve community support for housing at a variety of income levels.” While Program 3G addresses the constraint issue, it fails to adequately analyze or attempt to mitigate it.

The objectives for the program include providing education to residents about local housing needs and state law, ensuring that housing developed at higher densities complies with design guidelines, and amending the capital improvement provide to provide additional infrastructure improvements. These objectives are a starting point, but additional objectives must be provided to actually mitigate the constraint.

The objectives should include a program or development standards that will require less burdensome review of multi-family development, and concrete and objective development and design standards that require ministerial review for approval to 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. The responsible agencies should also include City Council, Planning Commission, and appropriate elected officials, including the Mayor.

**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 hesitate to contact us by email at [ijadipm@gmail.com](mailto:ijadipm@gmail.com) or [vfeldman@pilpca.org](mailto:vfeldman@pilpca.org).

Sincerely,



Parisa Ijadi-Maghssoodi  
Pro Bono Attorney



Valerie Feldman  
Staff Attorney

cc: Robin Huntley, Department of Housing and Community Development