

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

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February 24, 2006

Mr. Patrick Murphy, Director  
Department of Planning and Building  
City of Encinitas  
505 South Vulcan Avenue  
Encinitas, CA 92024

**RE: Review of the City of Encinitas' Draft Housing Element**

Dear Mr. Murphy:

Thank you for submitting Encinitas' draft housing element, received for review on December 28, 2005. As you are aware, the Department is required to review draft housing elements and report the findings to the locality pursuant to Government Code Section 65585(b). Telephone conversations with Mr. David DeCordova, Principal Planner and your consultant, Mr. Michael McLaughlin, facilitated the review.

While the element addresses many statutory requirements, revisions will be necessary to comply with State housing element law (Article 10.6 of the Government Code). In particular, the element should include a more detailed analysis of the sites inventory and governmental constraints. The enclosed Appendix describes the changes needed to comply with State housing element law.

The Department would be pleased to provide any additional assistance necessary, including a meeting in Encinitas, to facilitate the City's efforts to comply with State law. If you have any questions, or wish to schedule a visit, please contact Paul McDougall, of our staff at (916) 322-7995.

Sincerely,

A handwritten signature in cursive script that reads "Cathy E. Creswell".

Cathy E. Creswell  
Deputy Director

Enclosures

## APPENDIX CITY OF ENCINITAS

The following changes would bring the City of Encinitas' housing element into compliance with Article 10.6 of the Government Code. The supporting section of the Government Code is cited to accompany each recommended change.

Housing element technical assistance information is available on the Department's website at: [www.hcd.ca.gov](http://www.hcd.ca.gov). Refer to the Division of Housing Policy Development and the section pertaining to State Housing Planning. Among other resources, the Housing Elements section contains the Department's publication, *Housing Element Questions and Answers (Qs & As)* and the Government Code addressing State housing element law.

### **A. Housing Needs, Resources, and Constraints**

1. *Include an analysis and documentation of household characteristics, including overcrowding and housing stock conditions (Section 65583(a)(2)).*

Overcrowding - The element must include household overcrowding information by tenure. The data has been enclosed to assist you. Also refer to the Department's Qs & As publication.

Housing Stock Conditions - While the element includes a general description of housing conditions (pages 58-60), the element should estimate the number of units needing repair and replacement. The element could estimate housing conditions with windshield surveys, sampling or utilizing information from the local building departments, redevelopment agency or non-profit housing developers. This information will assist the City in setting appropriate objectives and effectively implementing rehabilitation loan programs.

2. *Include an inventory of land suitable for residential development, including sites having the potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites (Section 65583(a)(3)). The inventory of land suitable for residential development shall be used to identify sites that can be developed for housing within the planning period (Section 65583.2).*

#### Analysis of the Sites Inventory

- *Realistic Capacity* – To address this statutory requirement, the element must determine the number of housing units that can be accommodated on each site based on minimum density assumptions and land-use controls and site improvements. While the element describes that capacity assumptions account for net lot area and slopes (page 76), residential capacity assumptions, including mixed-use sites, should also account for all of the City's land-use controls, such as development standards, including floor area ratios and overlay zones and the City's mid-point density requirement (page 76).

- *Environmental Constraints* – The element must include a general analysis of any known environmental constraints that may impede development on identified sites in the planning period.
- *Infrastructure* – While the element states urban services are available to identified sites (page 76), the element must also describe the total infrastructure capacity available for water and sewer. This description and analysis may consider existing and planned capacity to demonstrate sufficient capacity to accommodate the City's total share of the regional housing need.
- *Suitability of Nonvacant Sites* – The element must demonstrate the suitability and feasibility of nonvacant sites through a description, relative to identified sites, of development trends, market conditions and regulatory incentives or standards to facilitate redevelopment. This discussion should also include a detailed analysis of the potential of existing uses to convert to residential or mixed-use in the planning period. For example, the element lists store-front commercial as existing uses on many mixed-use infill sites (Sites Inventory Appendix). To demonstrate the suitability and feasibility of these sites, the element should describe the characteristics and circumstances of these sites that may lead to conversion to residential or mixed-use in the planning period, such as interest from property owners, discontinuing uses and the condition and age of the structures.
- *Suitability of Smaller Sites* – The sites inventory includes many smaller sites (less than half an acre). The element must also include an analysis demonstrating the feasibility of development on these sites in the planning period, particularly for higher density and include programs to facilitate development on these smaller sites. This analysis should also address the financial feasibility of development for lower-income households on these smaller sites, given necessary economies of scale.
- *Zoning Appropriate to Encourage and Facilitate Housing for Lower-Income Households* – Pursuant to Section 65583.2(c)(3)(A) and (B), the element must demonstrate how existing densities are appropriate to encourage and facilitate housing for lower-income households, based on factors such as market demand, financial feasibility and development experience within zones. While the element indicates the City believes 25 units per acre is appropriate to facilitate housing for lower-income households, the element must demonstrate the appropriateness of this density, as described above. For your information, the statute establishes a default density for your area at 30 units per acre. This provision of law establishes a presumption of adequacy (for the density) for communities which identify zoning districts that meet this standard without completing an analysis.

### Sites with Zoning for a Variety of Housing Types

- *Emergency Shelters* – The element must describe whether the City has sufficient sites with appropriate zoning and development standards to encourage and facilitate emergency shelters consistent with identified needs. While the element includes sufficient discussion for transitional housing, the element (page 90) does not analyze whether zoning is available to encourage and facilitate emergency shelters. As a result, the element must demonstrate the City’s zoning does explicitly allow for and encourage emergency shelters with sufficient sites or include a program to provide the needed zoning and incentives.
  - *Housing for Agricultural Employees* – The element (page 90) describes the City permits housing for farm employees only as an accessory use to single-family detached or agricultural use with a use permit, which does not address statutory requirements for employee housing under Health and Safety Code Sections 17021.5 and 17021.6 or encourage and facilitate housing for agricultural employees commensurate with need. The element should either include an analysis demonstrating the adequacy of this zoning with sufficient sites or it should include a program to establish appropriate sites with zoning that encourages and facilitates a variety of housing types for agricultural employees.
3. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels and for persons with disabilities, including land use controls, building codes and their enforcement, site improvements, fees and other exactions and local processing and permit procedures (Section 65583(a)(4)).*

Land-Use Controls – While the element describes the City’s zoning and development standards in higher density districts, it should include a detailed analysis of these development standards in the higher density districts, especially for mixed-use districts. This analysis should identify floor area ratios and any underlying development standards for mixed-use districts and evaluate the cumulative effect of development standards such as lot coverage, height limit and floor area ratios on the ability to achieve maximum permitted densities and the cost and supply of housing. For example, the element (page 99) states the combination of floor area ratios and height limits can prevent maximum densities, but the City has adopted more flexible standards to address this constraint. However, in one case (page 98), the element only describes these more flexible standards as a relaxed 33-foot height limit requiring the first story to be parking. This does not explain how the flexible standards address the combination of floor area ratios and height limits as a constraint and as a result the element should be expanded to demonstrate how maximum densities can be achieved.

The element states that density is limited to the mid-point of the land-use category range, unless findings are made, such as extraordinary community benefit (page 76). This is a constraint impacting the cost and supply of housing. To address the City's mid-point policy, the element should either include a detailed analysis of the mid-point policy and regulation or include a program to address this constraint. The element should also clearly identify the mid-point's applicability in the mixed-use districts and analyze consistency with State Density Bonus Law (SDBL), (Government Code Section 65915 et. seq.).

The element generally discusses the City's growth management measure and identifies exemptions or the ability to carry over unallocated permits (page 107). However, the element should include a more detailed analysis to demonstrate the growth control does not impede the ability to accommodate the City's share of the regional housing need and evaluate impacts on the cost and supply of housing. Among other things, this analysis should identify the annual limit on the number of permits, number of unallocated permits, discuss procedures and the level of discretion to obtain an allocation and whether any limits exists on the size of development seeking an allocation.

The element should also analyze how the City's inclusionary ordinance is consistent with SDBL (Government Code Section 65915 et. seq.).

Local Processing and Permit Procedures – The element should include a more detailed analysis of permitted uses by zoning district and permit procedures. While the element (page 106) states single-family and multifamily are generally not subject to a conditional use permit, it must include a more complete analysis of permit approval procedures for multifamily and mixed-use applications in zones allowing or permitting these uses, including the level of discretionary review and decision-making criteria.

The element notes the City requires a conditional use permit where a residential application seeks a density bonus (page 106). This is inconsistent with SDBL. The element should either clarify this requirements consistency with SDBL or include a program to address it as a constraint.

Further, the element should discuss how design review is required for residential applications, including approval procedures and decision-making criteria. This analysis should also address design review in specific plan areas. The analysis should indicate the extent to which objective standards and guidelines exist to allow an applicant for a residential development permit to determine what is required in order to mitigate cost impacts.

Constraints on Housing for Persons with Disabilities – Although the element briefly describes how the City permits some residential care facilities and its variance process to provide reasonable accommodation, (pages 107-108), it should include a more detailed analysis of zoning, development standards and approval procedures. For example, among other things, the element should discuss: (1) any definitions of family in the zoning code; (2) maximum concentration requirements for residential care facilities; (3) any site planning requirements that may constrain housing for persons with disabilities; and (4) any requirements for on-site services for residential care facilities with six or fewer persons. A copy of the Department’s memo and analysis tool to assist you in addressing this statutory requirement is enclosed.

4. *An analysis of any special housing needs, such as those of the elderly, and large families (Section 65583(a)(6)).*

The element must include special needs information by tenure for elderly and large households and more specific information on the number of persons with disabilities. The data has been enclosed to assist you. In addition to the enclosed data, the element should utilize local resources and service provider to assist in this analysis, particularly for persons with disabilities. Also please refer to the Department’s Qs & As publication (page 9). This information will assist the City in developing effective and meaningful implementation programs.

## **B. Housing Programs**

1. *Include a program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available. The program shall include an identification of the agencies and officials responsible for the implementation of the various actions (Section 65583(c)).*

Some implementation programs include descriptions that “consider changes”, “consider implementation”, “assess feasibility”, and “continue to explore”. However, the housing program requires more specific actions to achieve the City’s goals and objectives and as a result, the housing program should include more specific commitment to actual implementation. Examples of programs needing strengthening include, but are not limited to:

Program 1K (Multifamily Zoning) – This program proposes to continue reviewing development standards. While ongoing review is valuable, the program identifies specific multifamily constraints and as a result should commit to modify, remove or mitigate those constraints.

Program 1L (Airspace Requirements) – While this program notes that eliminating subdivision requirements for airspace would remove a potential constraint, it must also actually commit to removing the requirement in order to achieve the objectives of the program.

Program 2A (Affordable Housing Overlay) – This program simply commits to consider implementation of an affordable housing overlay, however, it should include more specific action toward implementation such as revise zoning or amend policy in order to achieve program objectives.

Program 2B (Mixed-Use Zoning) – This program should move beyond just “assessing feasibility” in the planning period. Given the City appears to be relying on mixed-use sites and development to meet a significant portion of its regional housing need, the element should include specific action to encourage mixed-use development. For example, the program states the City will work to increase awareness. To be more specific, this action could encourage mixed-use development by developing and distributing a brochure marketing the City’s vision, site opportunities and available technical assistance and/or regulatory incentives by a date certain.

Program 7B (Transitional Housing) – Instead of continuing to explore sites, the program should commit to identify sites and develop an inventory with capacity commensurate with housing needs and then promote that inventory with developers of transitional housing.

2. *Identify actions that will be taken to make sites available during the planning period of the general plan with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, emergency shelters, and transitional housing (Section 65583(c)(1)).*

As noted in finding A2, the element does not include a complete analysis of the sites inventory; therefore the adequacy of sites cannot be established. Based on the results of a complete sites inventory analysis, the City may need to add or strengthen programs to address any shortfall of residential development capacity.

In accordance with recently enacted legislation (Chapter 724, Statutes of 2004), where the inventory does not identify adequate sites pursuant to Government Code Sections 65583(a)(3) and 65583.2, the element must provide a program to identify sites in accordance with subdivision (h) of 65583.2 for 100 percent of the remaining lower-income housing need, with sites zoned to permit owner-occupied and rental multifamily uses by-right during the planning period.

Also, as noted under finding A2, the element may need to add or strengthen programs that establish sufficient sites with zoning to encourage and facilitate emergency shelters and housing for agricultural employees.

3. *The housing element shall contain programs which "assist in the development of adequate housing to meet the needs of low- and moderate-income households (Section 65583(c)(2)).*

Program 11 should include specific actions to assist development of housing for lower- and moderate-income households, including special needs. Actions could include annually contacting and meeting with developers of housing for lower-income households, assistance with site identification and entitlement processing, fee waivers and deferrals, modifying development standards and granting concessions and incentives.

4. *Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, or provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities (Section 65583(c)(3)).*

As noted in finding A3, the element requires a more detailed analysis of potential governmental constraints. Depending upon the results of that analysis, the City may need to add programs to address and remove or mitigate any identified constraints.

Also, to address this requirement, the element should strengthen Programs 1F (Persons with Disabilities) and 1H (Inclusionary Housing Program). Program 1F should specifically establish a formal reasonable accommodation procedure by a date certain and address any constraints found as part of a complete analysis (see finding A3 above). Program 1H should include more specific action toward actual implementation, instead of action to "consider changes", the program should actually commit to amend the ordinance to include more flexibility for developers.

5. *The housing program shall promote equal housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin color, familial status or disability (Section 65583(c)(5)).*

The element must add program actions to assist in resolving fair housing complaints. Please refer to the Department's Qs & As publication (page 42).

**C. General Plan Consistency**

*The housing element shall describe the means by which consistency will be achieved with other general plan elements and community goals (Section 65583(c)).*

While the element states the housing element (page 9) is consistent with the rest of the general plan; to address this statutory requirement, the element must also discuss how consistency will be maintained during the planning period. The element could include a program to conduct an internal consistency review as part of its annual general plan implementation report required under Government Code Section 65400. This annual report can also assist future updates of the housing element.