

Chapter 1.0

# Introduction



## Chapter 1 | Introduction

Pursuant to California Government Code (GOV) § 65759, this Environmental Assessment (EA) has been prepared to identify the potentially significant environmental effects from the proposed City of Encinitas (“Encinitas” or “City”) Draft 2013-2021 Housing Element Update (HEU or Project). To ensure consistency with current State housing law, the Project updates the existing Encinitas Housing Element (EHE) and includes revised goals and policies, and new, modified, and continuing implementation programs. A housing element is one of seven State-mandated General Plan elements. GOV § 65583 details the content and process by which a housing element is prepared. Among other requirements, housing elements must identify, analyze, and make adequate provision for the existing and projected housing needs of all economic segments of the community. Thus, as required by State housing law, the proposed HEU makes adequate provision for the existing and projected housing needs of all economic segments of the community. Therefore, a major focus of this HEU is to address the provisions of accommodating future housing growth and identifying specific sites suitable for residential development. The HEU integrates/updates supporting socioeconomic, demographic, and household data.

The Project involves General Plan, Zoning Code, and Specific Plan Amendments to as many as 17 low- and very-low income candidate sites (as many as 36 parcels). The candidate sites’ maximum realistic yield (MRY), based on the proposed amendments permitted a maximum density of 30 dwelling units (DU) per net acre, would be 2,494 DU.<sup>1</sup> As compared to the adopted zoning MRV,<sup>2</sup> the Project’s MRV could result in a net increase of as many as 2,312 DU. The Project also proposes various conforming amendments to the Encinitas General Plan (EGP), Encinitas Municipal Code (EMC) Title 30, *Zoning Code*, Local Coastal Plan, Specific Plans (North 101 Specific Plan and Encinitas Ranch Specific Plan), and ancillary amendments to other planning documents, as necessary for clarification and consistency purposes. Chapter 3.0, *Project Description*, discusses the Project in detail.

GOV §§ 65580–65589.8 require that jurisdictions evaluate their housing elements every eight years. The current statutory update in the San Diego Association of Governments (SANDAG) region covers the eight-year Fifth Housing Element Cycle (January 1, 2013 to December 31, 2020). The currently proposed HEU (Fifth Cycle), subject of this EA, represents a comprehensive update to the City’s existing Housing Element, and is specifically proposed to update the EHE. The HEU is proposed to comply with State housing law and reflect SANDAG’s Regional Housing Needs Assessment (RHNA) Plan Fifth Housing Element Cycle.<sup>3</sup> The HEU includes revised goals and policies, and new, modified, and continuing implementation programs. The HEU is included in its entirety in Appendix C, *Draft 2013-2021 Housing Element Update*.

The Project’s proposed General Plan, Zoning Code, and Specific Plan Amendments are specifically intended to accommodate the City’s remaining RHNA allocation of 1,511 DU. The HEU includes other conforming EGP and EMC amendments, as necessary for consistency purposes. Specifically, the HEU includes: General Plan Land Use Plan amendments; rezoning of housing sites; Zoning Code amendments; amendments to the North 101 Corridor Specific Plan and Encinitas Ranch Specific Plan; a Local Coastal

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<sup>1</sup> The MRV is based on “candidate” sites and estimated solely for environmental analysis purposes. Additionally, due to differing sets of governing regulations, these yields are greater than the yields that the HCD will credit the City in providing an adequate sites inventory.

<sup>2</sup> The candidate sites’ existing land use designations and zoning are detailed in Appendix B, *Candidate Sites Table*.

<sup>3</sup> San Diego Association of Governments Website, *Regional Housing Needs Assessment Plan Fifth Housing Element Cycle Planning for Housing in the San Diego Region 2010-2020*, [http://www.sandag.org/uploads/publicationid/publicationid\\_1661\\_14392.pdf](http://www.sandag.org/uploads/publicationid/publicationid_1661_14392.pdf), Accessed April 5, 2018.

Program Amendment; and adoption of other programs necessary to implement the EHU, as set forth in the Implementation Program. A detailed description of the HEU, including the required discretionary approvals, is provided in Chapter 3.

The Final Environmental Assessment/Program Environmental Impact Report for At Home in Encinitas, the City of Encinitas Housing Element Update (SCH #2015041044) (2016 PEIR) (RECON, May 12, 2016)<sup>4</sup> was prepared to address the potentially significant environmental effects from At Home in Encinitas, a proposed City of Encinitas Housing Element for the Fifth Cycle 2013-2021 planning period. The 2016 PEIR analyzed three housing strategies, including the Modified Mixed-Use Places (MMUP) strategy (i.e., the strategy with the greatest development yield). The MRY under the MMUP strategy was estimated to include 3,261 DU and 1,610,066 square feet (SF) of non-residential land uses.<sup>5</sup> As compared to the MMUP strategy's MRY, the Project's MRY represents a net decrease of 767 DU (-24% DU) and a net decrease of 1,610,066 SF of non-residential uses (-100% SF). The City adopted the environmentally preferred alternative, as the City's Housing Element and placed it on the November 2016 ballot, along with required General Plan, Specific Plan, and Zoning Code amendments, for voter approval, as required by the EGP Land Use Element and Proposition A adopted by the voters in 2013. The voters did not approve the ballot measure.

Since completion of the 2016 PEIR, the City has invested a considerable amount of effort into further updating the Fifth Cycle Housing Element, as described in Chapter 3, and has modified the April 2016 Draft Fifth Cycle 2013-2021 HEU, the 2016 PEIR's original project to arrive at the current proposed Project: the HEU.

## 1.1 ENVIRONMENTAL ASSESSMENT PURPOSE

This document is intended to provide an EA pursuant to GOV § 65759 in the form of a Draft Environmental Impact Report (EIR), to provide public agency decision-makers and the public with an analysis of the Project's potentially significant environmental effects, and identify feasible alternatives and mitigation measures that would avoid or substantially lessen any significant effects.

On July 14, 2015, the City and the Building Industry Association of San Diego County (BIA) entered into a Settlement Agreement to resolve litigation filed by the BIA. The BIA Settlement Agreement provided, in part, that the City must adopt: (1) an updated Housing Element; (2) conforming amendments to other General Plan elements; and (3) Zoning Ordinance amendments needed to implement the Housing Element.

On June 24, 2016, the City and DCM Properties Inc. (DCM) entered into a Settlement Agreement to resolve litigation filed by DCM. The DCM Settlement Agreement provided, in part, that the City must adopt: (1) an updated Housing Element; (2) zoning program to rezone sites consistent with the updated Housing Element. The proposed Housing Element, and the other General Plan Zoning Ordinance amendments described in the two settlement agreements are all included in Project Description; see Chapter 3.0.

The above Settlement Agreements (with DCM and the BIA) were incorporated into "Judgments Pursuant to Stipulation," approved by the San Diego County Superior Court on July 28, 2015 (BIA) and August 11,

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<sup>4</sup>Document is available for review at the City of Encinitas Planning & Building Department, 505 South Vulcan Avenue, Encinitas, CA 92024-3633, and on the City's website at: <http://www.ci.encinitas.ca.us/I-Want-To/Housing-Plan-Update>.

<sup>5</sup>2016 PEIR Table 3-4c.

2016 (DCM), respectively, which included similar language. The Judgments provide in part that environmental review will be completed under the terms of GOV § 65759 and the Judgment, as follows:

1. “This judgment expressly incorporates the terms of the attached Settlement Agreement, including but not limited to, the provisions of Government Code § 65759, which provides in part that the California Environmental Quality Act (“CEQA”) “does not apply to any action necessary to bring its general plan or relevant mandatory elements of the plan into compliance with any court order or judgment under this article;” provided the City will conduct the environmental assessment required by that provision. Pursuant to GOV § 65759, CEQA does not apply to any discretionary actions necessary to bring the Housing Element and relevant mandatory elements of the General Plan into compliance with State Law.” Therefore, CEQA does not apply to the discretionary actions detailed in Chapter 3.0, which are necessary to bring the EHE and relevant mandatory EGP elements into compliance with State Law.
2. Under § 65759 and the judgments, CEQA does not apply to “any discretionary actions necessary to bring the Housing Element and relevant mandatory elements of the General Plan into compliance with State Law.” Therefore, CEQA does not apply to the following actions included in the Project Description (see Chapter 3.0):
  - a. Adoption of the Housing Element;
  - b. Adoption of all EGP amendments needed to bring the EGP into compliance with State law, including amendments to the Land Use Element for conformance with the densities provided in the EHE and to modify building height limits; and
  - c. Adoption of Zoning Ordinance and Specific Plan amendments, as needed (including the North 101 Corridor Specific Plan and the Encinitas Ranch Specific Plan to provide sites that can ensure the continued availability to accommodate at least 1,141 lower income dwelling units throughout the entire Housing Element planning period. The California Department of Housing and Community Development (HCD) has stated that adoption of the zoning as proposed is required for the EHE to be found in conformance with State law.
3. Even though CEQA does not apply to these actions, the City must complete an Initial Study and prepare an “environmental assessment” in the form of a Draft Environmental Impact Report, if any of the proposed actions may have a significant effect on the environment (§ 65759(a)). This EA constitutes the “environmental assessment” required by Government Code § 65759.
4. Pursuant to Government Code § 65759 (a)(3), this EA is deemed to be part of the City’s General Plan.

As Lead Agency, the City has determined the proposed actions could have a significant effect on the environment and preparation of an “environmental assessment” that substantially conforms to the required content for a draft environmental impact report (DEIR) is required (GOV § 65759(a)). Therefore, this document constitutes the required “environmental assessment” and conforms to the required content for a DEIR found in State CEQA Guidelines Article 9 (§ 15120 et seq.).

Based on the City’s determination to prepare an EA pursuant to GOV § 65759, and as permitted by State CEQA Guidelines § 15060(d), an initial study was not prepared for the Project. Refer to

Section 1.2.2, *Environmental Assessment Scope*, below for a discussion concerning the “potentially significant impacts” addressed in detail in this EA.

As previously noted, the City has invested a considerable amount of effort into updating the EHE, since completion of the 2016 PEIR. The updates include, among others, different/ additional candidate sites for rezoning to comply with new State law provisions, as further described in Chapter 3.0. Because additions or changes are necessary to make the 2016 PEIR adequately apply to the proposed Project (e.g., the 17 candidate sites for rezoning currently being considered), this EA is presented in the form of a Draft EIR and substantially conforms to the content for a Supplemental EIR pursuant to State CEQA Guidelines § 15163, *Supplement to an EIR*:

- a) *The Lead or Responsible Agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if:*
    - 1) *Any of the conditions described in Section 15162 would require the preparation of a subsequent EIR, and*
    - 2) *Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.*
  - b) *The supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised.*
  - c) *A supplement to an EIR shall be given the same kind of notice and public review as is given to a draft EIR under Section 15087.*
  - d) *A supplement to an EIR may be circulated by itself without recirculating the previous draft or final EIR.*
  - e) *When the agency decides whether to approve the project, the decision-making body shall consider the previous EIR as revised by the supplemental EIR. A finding under Section 15091 shall be made for each significant effect shown in the previous EIR as revised.*
5. Although CEQA does not apply to the proposed actions, the City will substantially conform to the CEQA process, to the extent it can be completed within the time limitations specified in GOV § 65754). The City intends to issue an EA, consider all comments, adopt all feasible mitigation measures, and prepare a Mitigation Monitoring and Enforcement Program (MMRP).
6. Pursuant to GOV § 65759(a)(3), this EA is deemed to be a part of the EGP and shall only be reviewable as provided in GOV § 65759.

## **1.1.2 ENVIRONMENTAL ASSESSMENT AUTHORITY**

This EA has been prepared by the City as Lead Agency, in conformance with the provisions of GOV § 65759, and in substantial conformance with the criteria, standards, and procedures of the CEQA of 1970, as amended (Public Resources Code, § 21000 et seq.), and the State CEQA Guidelines (California Code of Regulations Title 14 § 15000 et seq.), as applicable to the preparation of an EA.

### **1.1.2.1 LEAD AGENCY**

The City of Encinitas is the Lead Agency for the Project, pursuant to State CEQA Guidelines Article 4 (§§ 15050 and 15051). State CEQA Guidelines § 15367 defines Lead Agency as “the public agency which has

the principal responsibility for carrying out or approving a project.” As Lead Agency, the City conducted a preliminary review of the Project and determined that an EA in the form of a Draft EIR that substantially conforms to the content for a Supplemental EIR was required. This EA’s analysis and findings reflect the City’s independent and impartial conclusions.

### **1.1.2.2 RESPONSIBLE AND TRUSTEE AGENCIES**

Although CEQA does not apply to the proposed actions, certain Responsible and Trustee Agencies will either approve the Project or have jurisdiction over natural resources affected by the Project. State CEQA Guidelines § 15381 defines a Responsible Agency as “a public agency which proposes to carry out or approve a project, for which a Lead Agency is preparing or has prepared an EIR or Negative Declaration.” For the purposes of CEQA, the term “Responsible Agency” includes all public agencies other than the Lead Agency which have discretionary approval power over the project.” State CEQA Guidelines § 15381 defines a Trustee Agency as “a state agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California.”

Responsible/Trustee Agencies for the Project include the following, among others:

- California Coastal Commission (CCC) - The CCC is responsible for determining whether to certify the Local Coastal Plan Amendment (LCPA). The CCC’s certification of the LCPA would occur after the HEU’s adoption. LCPA-relevant portions of the HEU and associated amendments would not take effect unless/until the LCPA is certified.
- California Department of Housing and Community Development: HCD is responsible for reviewing the HEU and finding whether the HEU substantially complies with State laws relating to housing elements.
- California Department of Transportation (Caltrans) - Caltrans has responsibility over the State highway system, including freeway entrance and exit ramps. Future improvements to Caltrans facilities may be required; see Section 4.13, *Transportation and Traffic*.
- San Diego County Air Pollution Control District (SDAPCD) - The SDAPCD regulates San Diego County’s air pollution sources and would be responsible for issuing construction permits for future development.
- San Diego Regional Water Quality Control Board (RWQCB) – In the San Diego Region, the RWQCB regulates discharges from construction activities under the Construction General Permit and from Phase I municipal separate storm sewer systems (MS4s) under the Regional MS4 Permit. The RWQCB also regulates water quality through monitoring of compliance with the Clean Water Act (CWA) Section 401 certification process. The RWQCB would also be a Trustee Agency, as it holds regional water quality in its trust through the National Pollutant Discharge Elimination System (NPDES) compliance review process.

## **1.2 ENVIRONMENTAL ASSESSMENT TYPE, SCOPE, AND ORGANIZATION AND CONTENT**

### **1.2.1 ENVIRONMENTAL ASSESSMENT TYPE**

Although CEQA does not apply to the proposed Project, this EA substantially conforms to the required content for a DEIR found in State CEQA Guidelines Article 9 (§ 15120 et seq.) and the required content for

a Supplemental EIR found in State CEQA Guidelines § 15163. A Supplemental EIR need contain only the information necessary to make the previous EIR adequate for the project, as revised. The supplemental information could involve: 1) conditions requiring a Subsequent EIR, including changes in the project or circumstances under which the project is undertaken, or new information of substantial importance (State CEQA Guidelines § 16152); or 2) only minor additions or changes necessary to make the previous EIR adequately apply to the project in the changed situation.

## 1.2.2 ENVIRONMENTAL ASSESSMENT SCOPE

The scoping conducted as part of the 2016 PEIR is discussed in 2016 PEIR Section 1.2.2 (page 1-5). Based on the 2016 PEIR baseline data and findings, as well as the 2016 PEIR Notice of Preparation and response letters (see 2016 PEIR Appendix A-2), the following “potentially significant impacts” are addressed in detail in this EA:

- Aesthetics
- Air Quality
- Biological Resources
- Cultural Resources
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use
- Noise
- Population and Housing
- Public Services and Recreation
- Transportation and Traffic
- Utilities and Service Systems

## 1.2.3 ENVIRONMENTAL ASSESSMENT ORGANIZATION AND CONTENT

### 1.2.3.1 ORGANIZATION AND CONTENT

This EA is organized in substantial conformance with the most recent State CEQA Guidelines for Draft EIRs. The following summarizes this EA’s organization and content:

- **Executive Summary** contains a summary of the proposed Project and its consequences. Each significant effect is identified, along with the proposed mitigation measures to avoid or reduce that effect. The alternatives capable of reducing or avoiding the Project’s effects are identified. The known areas of controversy and issues to be resolved are also identified.
- **Chapter 1.0 Introduction** contains an overview of the EA’s legal authority, purpose, and intended uses, as well as its scope and organization.
- **Chapter 2.0 Environmental Setting** describes the Project’s regional and local setting including its locational context; existing physical characteristics and land use; available public infrastructure and services; and relationship to other relevant plans. The precise locations and boundaries of the proposed Project (i.e., candidate sites) are presented on detailed maps, in regional and local contexts.
- **Chapter 3.0 Project Description** contains the following: Project history and background; a statement of the Project’s objectives; a general description of the Project’s technical and environmental characteristics; the discretionary actions required to fully adopt and implement the Project; and a statement of the intended uses of the EA related to future development projects.

- **Chapter 4.0 Environmental Analysis** contains an evaluation of the environmental issues identified in the EA scope (see Section 1.2.2, *Environmental Assessment Scope*) and listed below. Each issue evaluation includes a description of the existing environmental setting, existing regulatory setting, potential Project impacts, mitigation measures proposed to avoid or lessen significant effects, significant unavoidable impacts (if any), and a listing of the cited reference materials.
  - Aesthetics
  - Air Quality
  - Biological Resources
  - Cultural Resources
  - Geology and Soils
  - Greenhouse Gas Emissions
  - Hazards and Hazardous Materials
  - Hydrology and Water Quality
  - Land Use
  - Noise
  - Population and Housing
  - Public Services and Recreation
  - Transportation and Traffic
  - Utilities and Service Systems
- **Chapter 5.0 Other Considerations** discusses the long-term implications of the proposed action. The significant environmental effects which cannot be avoided if the proposed Project is implemented and the significant irreversible environmental changes, which would be involved in the proposed Project, should it be implemented, are discussed. A discussion related to energy, pursuant to State CEQA Guidelines Appendix F is also included.
- **Chapter 6.0 Growth Inducement** evaluates the Project’s potential to induce economic or population growth, either directly or indirectly, within the Project area and region.
- **Chapter 7.0 Cumulative Analysis** describes the cumulative analysis’ proposed approach and methodology, and identifies the Project’s impacts in combination with other planned and future development in the region.
- **Chapter 8.0 Effects Found Not to be Significant** addresses the environmental issues determined through the scoping process as clearly insignificant and unlikely to occur (i.e., Agricultural and Forestry Resources, and Mineral Resources). Brief statements indicating the reasons that the Project’s various possible significant effects concerning these issues were determined not to be significant are provided.
- **Chapter 9.0 Alternatives** describes a range of reasonable alternatives to the Project, and to the Project’s location, which would feasibly attain most of the basic Project objectives, but would avoid or substantially lessen any of the Project’s significant effects, and evaluates the alternatives’ comparative merits. The environmentally superior alternative from among the alternatives considered is identified. Additionally, a summary and tabular comparison of the Project and the alternatives is also provided.
- **Chapter 10.0 Organizations and Persons Consulted** identifies all Federal, State, or local agencies, other organizations, and private individuals consulted in preparing the EA.
- **Chapter 11.0 Document Preparers and Certification Page** identifies the persons, firm, or agency preparing the EA and technical studies.



### **1.2.3.2 TECHNICAL APPENDICES**

The technical appendices used as a basis for much of the environmental analysis in this EA have been summarized in the respective sections, and are printed separately as part of the EA Appendices and 2016 PEIR Appendices. The technical appendices are available for review at the City of Encinitas Planning and Building Department at 505 South Vulcan Avenue, Encinitas, California 92024.

### **1.2.3.3 INCORPORATION BY REFERENCE**

Pursuant to State CEQA Guidelines § 15150, an EIR may incorporate by reference all or portions of another document, which is a matter of public record or is generally available to the public. Where all or part of another document is incorporated by reference, the incorporated language is considered set forth in full as part of an EIR's text. Since this EA substantially conforms to the required content for an EIR, this EA incorporates by reference the 2016 PEIR and has referenced various technical studies and reports prepared in support of the 2016 PEIR, as well as those prepared in support of this EA. Information from these documents was summarized/briefly described in the 2016 PEIR/this EA. The relationship between the incorporated information and the 2016 PEIR/this EA was also described. These documents are included in Chapter 4.0's respective *References Cited* Sections, and are hereby incorporated by reference. They are also available for review at the City of Encinitas Planning and Building Department at 505 South Vulcan Avenue, Encinitas, California 92024.

## **1.3 ENVIRONMENTAL ASSESSMENT INTENDED USE AND PROCESS**

### **1.3.1 ENVIRONMENTAL ASSESSMENT INTENDED USE**

This EA is intended to be used by the City, as Lead Agency, in evaluating the HEU and related amendments. Additionally, as an EA that substantially conforms to the required content for a DEIR, this document, along with the certified 2016 PEIR, is intended to be used by the City when acting on subsequent applications for development on the housing sites consistent with the HEU, to ensure compliance with the EGP, EMC, and mitigation framework; see Section 1.3.3, *Subsequent Environmental Review*, below.

### **1.3.2 ENVIRONMENTAL ASSESSMENT PROCESS**

Although CEQA does not apply to the proposed actions, preparation of an "environmental assessment" that substantially conforms to the required content for a DEIR is required, if any of the proposed actions would have a significant effect on the environment (GOV § 65759(a)). This document constitutes the required "environmental assessment."

A Notice of Availability of the EA will be published in a newspaper of general circulation in the area and distributed to public agencies as part of GOV § 65352 and Public Utilities Code § 21676 noticing requirements.

The EA and Appendices are available for review at the following locations:

City of Encinitas Planning and Building Department  
505 South Vulcan Avenue  
Encinitas, California 92024

Encinitas Branch Library  
540 Cornish Drive  
Encinitas, California 92024

City of Encinitas Website at: <http://www.athomeinencinitas.info/documents/>

Following EA release, the City will consider all comments during their deliberations on the Project. A MMRP will be incorporated into this document and become part of the EGP. The City will consider all information included in the EA when acting on the EHE. Once adopted by the City, the EA will be incorporated into the EGP.

### **1.3.3 SUBSEQUENT ENVIRONMENTAL REVIEW**

As allowed by State CEQA Guidelines § 15168, *Program EIR*, § 15183, *Projects Consistent with a Community Plan or Zoning*, and § 15182, *Residential Projects Pursuant to a Specific Plan*, the City will review future development under the proposed Project considering the 2016 PEIR and this EA. State CEQA Guidelines § 15168, allows a program EIR to serve as the basis for environmental review of subsequent projects. State CEQA Guidelines §§ 15182 and 15183 provide additional exemptions for projects proposed in accordance with an adopted specific plan, or consistent with an adopted community plan, general plan, or zoning.

If any future HEU projects requiring discretionary approval are not eligible for “by right” approval, as described in Chapter 3.0, and have potentially significant adverse environmental effects that were not examined in this EA or in the 2016 PEIR, an Initial Study would be prepared for that project, leading to the preparation of either a Negative Declaration, Mitigated Negative Declaration, focused EIR, or supplement to this EA or in the 2016 PEIR. When additional environmental documentation for a future project is necessary, this EA or in the 2016 PEIR may be incorporated by reference to address regional context, secondary effects, cumulative impacts, alternatives, and other factors applicable to the program overall. Section 3.7 provides additional information concerning future project approvals and procedures.