

## Linda Theriault

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**From:** Huntley, Robin@HCD <Robin.Huntley@hcd.ca.gov>  
**Sent:** Wednesday, January 30, 2019 4:50 PM  
**To:** Brenda Wisneski; Diane Langager; Barbara Kautz (bkautz@goldfarbblipman.com); Eric Phillips; dave.barquist@kimley-horn.com  
**Subject:** FW: Encinitas Housing Element Update

I am forwarding comments received by HCD regarding Encinitas' draft housing element. HCD offers the city the opportunity to respond.



**Robin Huntley**  
Housing Policy Manager, Housing Policy Division  
Housing & Community Development  
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**From:** Damien Mavis <[dmavis@covelop.net](mailto:dmavis@covelop.net)>  
**Sent:** Wednesday, January 30, 2019 4:42 PM  
**To:** Huntley, Robin@HCD <[Robin.Huntley@hcd.ca.gov](mailto:Robin.Huntley@hcd.ca.gov)>  
**Subject:** Encinitas Housing Element Update

Robin Huntley,

I am writing to voice my concern over some of the proposed wording in the proposed Encinitas Housing Element Update, specifically the provision to modify the way maximum building height is measured as it relates to natural grade. I was at nearly every meeting regarding the housing element update, and I am a builder/developer with multifamily experience. So I'd like to offer some practical insight that could reduce the risk and therefore hurdles of developing these sites into housing.

Knowing that the subject of maximum height was extremely contentious I think the ability to build 3 stories needs to be as straight forward as possible and only subject to minimal interpretation or constraints by governing bodies. The proposed way of measuring height from native grade is essentially the most restrictive way to measure it. Many municipalities use the average natural grade method while Encinitas measures it from the

lowest point. This issue is further exacerbated by the fact that the maximum building height is relatively low to get 3 stories. This leaves little wiggle room to be able to practically build 3 stories unless the site is nearly perfectly flat. Even a modest 5% grade could force the developer to ask for a Modification. This is where I think the language is too vague.

The modification procedure which I attached below, if strictly interpreted could make modifications nearly impossible to grant because of the term "...is required" . I highlighted "is required" in the two main ways to grant a modification to establishing natural grade. If you look at the term "required" as being an absolute, as in there is no other way to achieve the project but for a modification then I would suggest that nearly all projects could not qualify for a modification to the very restrictive height limit. Many projects are not feasible if they are forced to use subterranean parking instead of surface parking, or utilize massive and unsightly retaining walls because they can only cut a pad vs. traditional cut/fill pads. Even a modest grade would cause the uphill side of buildings to appear buried in the slope. This is very expensive, not livable, not attractive and goes against common planning and building goals, but are technically feasible so might be viewed as not reaching the threshold of granting a modification. I see this as being a way to stifle development projects.

I would recommend that another potential finding be made available: *Modifications to the determination of natural grade for purposes of measuring building height shall be allowed to: minimize site grading, or minimize retaining wall heights, or maximize solar access for residents, or accommodate at grade parking.*

This promotes widely accepted community development best practices. It also recognizes that there is a balance between site design and building height. I believe that this ultimately gets better projects built and online more quickly.

Sincerely,

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~~Building height is measured, may be approved subject to a use or design permit.~~ In addition to the provisions stated above, modifications to the determination of natural grade for purposes of measuring building height for development in the 30 Overlay zone shall be allowed if one or more of the following findings are made, as part of a discretionary approval by the Planning Commission:

- i. Grading to alter the natural grade is required to achieve adequate site drainage to comply with flood or water quality regulations, to comply with recommendations from a licensed soils or geotechnical engineer or geologist related to soil or geotechnical conditions including soil remediation or to provide fire access to the site acceptable to the Fire Department and such grading precludes construction of the housing development at the minimum required density of twenty-five (25) dwelling units per net acre or the maximum allowed density of thirty (30) units per net acre without modifications to the determination of natural grade; or
- ii. Grading to alter the natural grade is required to conform with Title 24, including accessibility requirements, or with other accessibility requirements imposed by state or federal law and such grading precludes construction of the housing development at the minimum required density of twenty-five (25) dwelling units per net acre or the maximum allowed density of thirty (30) units per net acre without modifications to the determination of natural grade; or
- iii. Grading is required for remediation of hazardous wastes based on the findings of a licensed professional engineer or geologist.