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**SENT VIA EMAIL ONLY**

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

**RE: Supplemental Comments to City of Encinitas December 2018  
Draft Housing Element Submission**

Dear Mayor Blakespear 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.

On January 17, 2019, we submitted comments on behalf of our clients to address the draft housing element submitted by the City on December 21, 2018.

The below comments address the further revisions, analysis, and One Acre Development Standards Example submitted by the City to HCD on January 10, 2019. Please consider these comments as a supplement to the comments we submitted on January 17, 2019.

**Development Standards**

In its December 12, 2018, Letter of Noncompliance, HCD referenced the actions taken by the City in June when the City elected to change the development standards that HCD had already reviewed and indicated would be appropriate. HCD directed the City to provide additional information and analysis to demonstrate that the development standard changes made in June 2018 comply with state law. (HCD Letter of Noncompliance, Dec. 12, 2018, p. 2.)

The City has submitted information to demonstrate that the changed development standards comply with state law and do not impose a constraint on development: One Acre Development Standards Example and Proposed R-30 Rezoning Amendments. For the reasons specified below, neither document provides information or analysis to demonstrate that the changed development standards do

not constrain the development of housing.

a. One Acre Development Standards Example

i. Sites

The City addresses HCD’s development standard concerns in the “One Acre Development Standards Example.” The Standards Example aims to demonstrate that the changed development standards associated with the R-30 zone do not inhibit development at 30 units per acre. (Standards Example, p. 1.) However, the analysis is limited to development on parcels “that share the same characteristics as many of the sites proposed to be zoned R-30” in the draft housing element. (Standards Example, p. 1.) This is insufficient to demonstrate compliance with state law.

As stated in our comment letters of June 30, 2018, and January 17, 2019, to demonstrate that the changed development standards comply with state law, the City must provide information and analysis to show whether the development standard will create housing opportunities at the maximum permitted density, and impact the economic feasibility of producing affordable housing at the lowest possible cost during this planning period. Gov. Code § 65913.1. Simply stating that the development standard will not significantly constrain development on “*parcels that share the same characteristics as many of the sites*” in the draft housing element is not sufficient. (Standards Example, p. 1.)

As we discussed in our previous comment letters, the City will likely have to rezone additional sites during this planning period to comply with the No Net Loss Law, and given its limited undeveloped land, sites rezoned will likely be adjacent to single-family homes or duplexes. Gov. Code § 65863. The development standards will inevitably apply to sites with different characteristics than the sites identified in the housing element.

To demonstrate compliance, the City must analyze how these development standards impact and constrain housing opportunities outside of the limited application of these standards to sites with “the same characteristics” as the sites proposed in the housing element. (Standards Example, p.1.) The City must analyze how the development standards constrain housing opportunities for sites beyond those that are either in the draft housing element inventory or share the same characteristics as those in the inventory.

ii. Application of Setbacks

The analysis presented in the Standards Example presumes that a proposed development is adjacent to single family residential development on only one side, or on one side and a partial side. (Standards Example, p. 1, p. 6, Exhibit 2.) The City defines a site as being “fully impacted” by the 30’ third-floor setback when only one side, or one side and a partial side, of the development is adjacent to a single family residential development. (Standards Example, p. 6.) Under this assumption, the analysis results in a finding that the buildable area would be reduced by a certain amount. (*Id.*)

The Standards Example identifies the outcomes in its analysis as presenting the “worse-case scenarios.” (Standards Example, p. 7.) However, the analysis fails to analyze situations in which a proposed development is adjacent on two, or even three, sides to single family homes. (Standards Example, pp. 2-3, Table 1, pp. 6, Exhibit 2.) These scenarios would constitute “worse-case scenarios” for purposes of reducing available buildable land, and should have been analyzed in the Standards Example.

Justifying such a limited application of the development standards on grounds that the analysis only needs to pertain to the characteristics of sites identified in the housing element inventory is inappropriate, as discussed extensively in our comment letter of January 17, 2019, and briefly above. It avoids considering the impact the development standards will have on sites that are adjacent on multiple sides to single family homes or duplexes.

The City must analyze the development standards, and resulting buildable areas, in the context of sites that will be adjacent to single family residences on two or three sides. This analysis is necessary for the City to demonstrate that the standards will not constrain housing opportunities on sites outside of those identified in the housing element.

iii. One Acre Development Standards Example – Parking

The parking space analysis in the Standards Example is based on the assumption that “primarily market-rate products may incorporate the use of a parking structure or podium style parking, with parking underneath the housing units.” (Example Standards, pp. 4-5, Table 2.) As noted this parking configuration adds considerable cost and there is no information about whether that additional costs would constrain development pursuant to the City’s inclusionary zoning ordinance.

To demonstrate that the development standards will not constrain housing opportunities, the City must provide information and analysis to show how subterranean parking costs will not constrain the development of the 85% market-rate and 15% affordable housing combination.

b. Proposed R-30 Rezoning Amendments: Grade for Height Measurements

The City’s revised development standards exempt projects on sites with the R-30 Overlay land use designation from the general height measurement standard. As stated above, HCD directed the City to provide additional information and analysis to demonstrate that the development standard changes made in June 2018 comply with state law. (HCD Letter of Noncompliance, Dec. 12, 2018, p. 2.)

The City’s Municipal Code states that “Height shall be measured from the lower of the natural or finished grade adjacent to the structure, to the highest portion of the roof immediately above.” (Proposed R-30 Zoning Amendments (Attachment 4), p. 5.) However, the revised development standards measure projects on sites with the R-30 overlay land use designation under a *different* standard. (Proposed R-30 Zoning

Amendment, pp. 5, 29, 34-35.) This different standard allows “modifications to the determination of natural grade for purposes of measuring building height in the R-30 Overlay zone” if grading to alter the natural grade is required to achieve site drainage, soil remediation, provide fire access, conform with accessibility requirements, complete remediation of hazardous waste, or if “strict interpretation of the code results in physical constraint that precludes construction” at 25 or 30 units per acre. (*Id.* at 34-35.)

If sites identified in the housing element with an R-30 overlay require grading to remove hazardous waste, mitigate environmental hazards, address health and safety concerns, or remove physical constraints for multi-family developments, such information should have been included in the draft housing element as required by Government Code § 65583.2(g)(1).

As we stated in previous comment letters, including the letter we submitted on January 17, 2018, there are multiple sites in the draft housing element that lack the site-specific analysis, including an analysis of environmental constraints, required by Government Code § 65583.2(g)(1). Sites that are not suitable for the development of lower income housing and sites that are not available for development during this housing element cycle should not be included in the housing element.

In addition, if grading must be completed before specific sites identified in the housing element with an R-30 overlay can be developed, the cost of such grading must be provided and the City must demonstrate that the additional cost will not impede development.

The City provides no information or analysis pertaining to why these revised development standards are necessary or how they impact development. The City must provide information and analysis to demonstrate that these standard do not inhibit development at 30 units per acre.

## **Conclusion**

For the reasons stated above, additional information and analysis is necessary for the housing element to comply with the requirements of housing element law. We thank you for considering our concerns. 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,**

A handwritten signature in blue ink, appearing to read "Parisa Ijadi-Maghsoodi".

Parisa Ijadi-Maghsoodi  
Pro Bono Attorney

A handwritten signature in blue ink, appearing to read "Val Feldman".

Valerie Feldman  
Staff Attorney

cc: Robin Huntley, HCD