



City of Encinitas

Development Services Department

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

January 31, 2019

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 Submitted To HCD by Public Interest Law Project on the Draft 2019 Encinitas Housing Element Update

Dear Ms. Huntley:

The following is the response of the City of Encinitas to the supplemental comments submitted to the City and HCD on January 24, 2019 (received by the City on January 29, 2019) by the Public Interest Law Project (PILP) regarding the Draft 2019 Encinitas Housing Element Update (Housing Element).

Comments from the January 17, 2019 PILP letter were addressed in the response submitted to HCD on January 28, 2019, which response is incorporated by reference. PILP's supplemental comments are responded to below in the order discussed in the January 24, 2019 PILP letter.

As PILP notes, HCD initially approved the City's proposed development standards, but HCD's December 12, 2018 letter to the City directed the City to provide additional information regarding the changes in the development standards adopted by the City Council on June 20, 2018. As indicated in its letter dated July 5, 2018, HCD expressed concern about loss of development capacity caused by the required 30-foot third story setback when a site upzoned to R-30 is adjacent to single-family homes and duplexes.

The City provided this requested analysis to HCD and published its findings on its website on January 10, 2019, and the City further addressed the adequacy of sites in its letter to HCD submitted on January 28. Contrary to PILP's claim, the City has provided adequate information to respond to HCD's concerns and to demonstrate that the currently proposed development standards do not constrain the development of housing.

One Acre Development Standards Example - Sites

The comment letter argues that it is not sufficient to provide analysis solely on the Candidate Sites or sites that share similar characteristics with the Candidate Sites, because PILP speculates that the "No Net Loss" provisions of Government Code Section 65863 will require the City to

rezone additional properties adjacent to single-family homes or duplexes or that have different characteristics than the Candidate Sites currently included in the Housing Element.

The One Acre Development Standards Example provides an analysis of how the proposed R-30 Development Standards would be generally applied to a parcel that is 1 gross acre in size and adjacent to single-family homes or duplexes on at least two sides (as discussed in the next section, the analysis would not change if three sides of the lot were directly adjacent to single-family homes or duplexes). As explained in the One Acre Development Standards Example, the analysis's methodology is not specific to the Candidate Sites, but rather it includes development standard characteristics such as setbacks, parking, and amenity space that would apply to *any* site under consideration for development at the required density.

Moreover, the Candidate Sites listed in the Housing Element provide capacity for 1,504 dwelling units, assuming a density of 25 dwelling units per net acre (which equals the minimum permitted density), but all Candidate Sites will be permitted to develop up to 30 dwelling units per net acre. This is well in excess of the required 1,141 required to meet the remaining low/very low RHNA need for the current planning period, so it is not certain that the City will be required to upzone additional properties during this housing element cycle. Even if upzoning is required at some point in the future, the City would have the obligation to identify a site or sites that are adequate to support development at 30 dwelling units per acre at that time. The One Acre Development Standards Example illustrates how the third-story setback requirement would not constrain development generally, and supports the conclusion that it would be possible for the City to identify sites in the future if necessary to comply with Government Code Section 65863.

Additional discussion of how the City will comply with Government Code Section 65863 is included in Housing Element Program 3D and the City's January 28, 2019 letter to HCD.

One Acre Development Standards Example - Application of Setbacks

PILP misstates the assumptions from the One Acre Development Standards Example, erroneously claiming that the methodology assumed only one side of the lot, or a partial side, would be adjacent to single-family homes or duplexes. This is an incorrect interpretation of the methodology. The One Acre Development Standards Example illustrates a scenario where at least two, and up to three, sides of the parcel would be adjacent to single-family homes or duplexes.

The One Acre Development Standards Example methodology defines a site as being “fully impacted” when 50% of the third story is removed due to the additional setback requirement. The effect of this condition on total building area is shown in Development Scenarios 1A and 2A in Table 1 (page 3) and would occur at a 50% deduction no matter how many sides of the property are adjacent to single-family development. As illustrated on page 6 of the One Acre Development Standards Example, the north, east, and west sides of the parcel could all be adjacent to single family units or duplexes, and the building form (and corresponding building area) would look identical to what is shown.

As has been discussed in previous responses, site planning approaches that place the required parking or open space adjacent to existing single-family residential development would lessen or eliminate the impact from the 30 foot third story setback on the building area, helping to ensure that the third-floor setback requirement is not a constraint to development.

As also described in our December 21, 2018 and January 28, 2019 letters to HCD, the changes in the development standards made by the City Council on June 20, 2018 *did not decrease building volume even on sides adjacent to single-family homes*, and increased building volume where projects are not adjacent to single-family homes.

One Acre Development Standards Example – Parking

PILP claims that the City's assumption that a market rate project may incorporate structured or podium-style parking triggers the need to show how a project would be economically feasible when combined with the City's 15% inclusionary housing requirement.

Projects with primarily market rate units often are designed with tuck-under or fully below-grade parking stalls, and the prevalence of this product type in the general housing market supports the conclusion that it is a feasible development style. Further, the City has analyzed the impact of its inclusionary housing requirement, and it has authorized significant additional economic feasibility studies to ensure that any increases in required inclusionary housing in market-rate development do not constrain housing production. It is also important to note that a project with 15% of its units reserved for lower income households would be eligible for incentives, concessions, waivers, and parking reductions under State Density Bonus Law and the Encinitas Municipal Code, which would permit individual developers to modify the City's generally-applicable development standards, further reducing the potential for development standards to constrain development.

Proposed R-30 Rezoning Amendments: Grade for Height Measurement

PILP states that changes were made in the proposed method for measuring building height at the City Council's meeting of June 20, 2018. That is incorrect; the City Council made no changes in the method for measuring height that had been approved by HCD in its letter of June 12, 2018.

PILP observes that the City's proposed development standards would allow for “modifications to the determination of natural grade for purposes of measuring building height in the R-30 Overlay zone” when specific findings are made. The development community indicated that more flexibility in measuring height was required for the Candidate Sites to achieve 30 units per net acre; therefore, the City added this provision to allow for flexibility in the determination of height and to ensure that height measurement procedures would not preclude a project from achieving 30 dwelling units per net acre.

As PILP notes, one of the reasons the City can diverge from its standard height measurement determination is if grading is required to achieve site drainage, soil remediation, provide fire access, conform with accessibility requirements, or complete remediation of hazardous waste. PILP claims that the City is required to disclose if any of the Candidate Site require grading for

such purposes, but this would require, first, that the City have access to surveys, soil reports, and hazmat reports of each site that are only available when a planning application is made, and, second, that the City actually complete a grading plan for each site. This is not required by housing element law.

The comment ignores the substantial site-specific analysis already included in Appendix C of the Housing Element. Appendix C addresses site specific constraints for each of the candidate sites. Known environmental constraints were removed from the gross acreage for each site to determine the net acreage. The City also prepared an Environmental Assessment to analyze the potential environmental effects associated with developing the Candidate Sites at the densities permitted by the Housing Element.

As discussed in the City's January 28, 2019 letter to HCD, 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 1,504 units.

PILP also claims that to the extent grading is required, the City must identify the cost of such grading and demonstrate why the cost of such grading would not impede development. As explained above, it is impossible for the City to predict how an individual developer will propose to grade each Candidate Site in the Housing Element, however the proposed development standard allowing "modifications to the determination of natural grade for purposes of measuring building height in the R-30 Overlay zone" would give the City additional flexibility to accommodate individual proposals within the R-30 Overlay zone, thereby reducing a potential constraint on development.

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

Sincerely,



Brenda Wisneski
Development Services Director