

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

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February 7, 2023

Amanda Carr, Interim Deputy Director
Development Services Department
County of Orange
601 N. Ross St.
Santa Ana, CA 92701

Dear Amanda Carr:

RE: County of Orange's 6th Cycle (2021-2029) Revised Draft Housing Element

Thank you for submitting the County of Orange's (County) revised draft housing element received for review on December 9, 2022. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. In addition, HCD considered comments from David Kellogg, Lighthouse Treatment, People for Housing, and California Consortium of Addiction Programs and Professionals Organization pursuant to Government Code section 65585, subdivision (c).

The revised draft element addresses many statutory requirements described in HCD's December 27, 2021 review; however, revisions will be necessary to comply with State Housing Element Law (Article 10.6 of the Gov. Code). The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

Pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), a jurisdiction that failed to adopt a compliant housing element within one year from the statutory deadline cannot be found in compliance until rezones to make prior identified sites available or accommodate a shortfall of sites pursuant to Government Code section 65583, subdivision (c), paragraph (1), subparagraph (A) and Government Code section 65583.2, subdivision (c) are completed. As this year has passed and Strategy 1g has not been completed, the housing element is out of compliance and will remain out of compliance until the rezoning have been completed.

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the County should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate.

Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the County will meet housing element requirements for these and other funding sources.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the County to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: <https://www.opr.ca.gov/planning/general-plan/guidelines.html>.

HCD appreciates the hard work and the County's planning staff provided during the update and review. We are committed to assisting the County in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Gianna Marasovich, of our staff, at Gianna.Marasovich@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX COUNTY OF ORANGE

The following changes are necessary to bring the County's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on HCD's website at <https://www.hcd.ca.gov/planning-and-community-development/hcd-memos>. Among other resources, the housing element section contains HCD's latest technical assistance tool, *Building Blocks for Effective Housing Elements (Building Blocks)*, available at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks> and includes the Government Code addressing State Housing Element Law and other resources.

A. Housing Needs, Resources, and Constraints

1. *Affirmatively further[ing] fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2...shall include an assessment of fair housing in the jurisdiction. (Gov. Code, § 65583, subd. (c)(10)(A).)*

Enforcement and Outreach: While the element was revised to describe the County's capacity to provide enforcement and outreach, it must also address compliance with existing fair housing laws.

Integration and Segregation: While the element does include some information to address persons with disabilities, it generally was not revised to address this statutory requirement described in HCD's prior review. The analysis must provide a geographical analysis and analysis for integration and segregation needs to include complete local and regional data on integration and segregation for the unincorporated County and analyze it for both local and regional trends and patterns.

Disproportionate Housing Needs: The element was not revised to address this statutory requirement. Specifically, the element must analyze data on overcrowding, cost burden, housing conditions, and homelessness for trends and geographical patterns.

Local Data and Knowledge: The element was not revised to address this statutory requirement. Please see HCD's prior December 27, 2021 review.

Identified Sites and Affirmatively Furthering Fair Housing (AFFH): While the element includes some revisions, it must still address the income categories of identified sites with respect to location, the number of sites and units by all income groups and how that affects the existing patterns for all components of the assessment of fair housing.

2. *Include an analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected needs for all income levels, including extremely low-income households. (Gov. Code, § 65583, subd. (a)(1).)*

Extremely Low-Income (ELI) Households: The element was not revised to address this statutory requirement. Please see HCD's prior December 27, 2021 review letter.

Overpayment: While the element was revised to quantify the number of lower-income households overpaying for housing by tenure, it must also analyze that number and add or modify policies and programs as appropriate.

3. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

Sites Inventory: The sites inventory was modified to include new site listings. However, those sites must provide an estimate of potential development by income on a per parcel basis. In addition, several subtotal calculations include estimates for housing development for the low and very low-income category, but those estimates are not reflected in the capacity totals. For example, the Area Parcels state a subtotal of 185.73 units but does not indicate how it arrived at that subtotal. Another example is sites within Esperanza Hills where the site-specific calculations show no units estimated for lower-income households, but the subtotal indicates a potential for 273.70 units affordable to lower-income households. The element must reconcile all capacity calculations in the sites inventory to demonstrate site capacity potential.

Realistic Capacity: The element assumes 100 percent of maximum allowable densities at 70 units per acre without sufficient support for these assumptions. For example, while the element lists a few examples of densities, it does not relate those densities to the base densities allowed in that zone. In addition, the capacity methodology does not account for development standards or other factors that could limit the capacity. This especially important because the element indicates on page 50 that "Residential developers have generally proposed projects that do not meet the maximum allowable density due to the economics of development". For large specific plan sites, the element could also estimate the number of units expected to be constructed in the planning period. Finally, the element uses fractions when estimating the potential units. The analysis should indicate how the zoning treats fractional units (e.g., round up or round down).

Suitability of Nonvacant Sites: The element was not revised to address this statutory requirement. Specifically, the trends and analysis need to support the redevelopment potential of identified sites. The analysis must demonstrate that the existing uses do not pose and impediment to new housing development within the planning period. For example, development and market trend information should connect to the characteristics of the sites in the inventory. While the element does note letters of support for the site strategy, those letters of support are in relationship to the overlay rather than the specific sites listed. Please see HCD's prior December 27, 2021 review.

Costa Mesa Island Golf Course: While element includes information on some of the characteristics of the site, it generally did not address this finding. Specifically, the element states that the County expects that 805 units of housing affordable to lower-income

households is likely to develop on this site but provides little support for this assumption. As stated in the prior review, the element should describe if the use of the parking lot is discontinuing within the planning period, interest in development of this site, any required rezones or specific plans required prior to development, and any programs to facilitate the development of the Costa Mesa Island Golf Course at the amount of affordability assumed.

Large Sites: The element did not address this finding. In addition to the Costa Mesa Island Golf Course, the element was amended to identify additional sites (e.g., Esperanza Hills, Aera Parcels). As stated in the prior review, sites larger than ten acres in size are deemed inadequate to accommodate housing for lower-income housing unless it is demonstrated that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower-income housing units as projected for the site or unless the housing element describes other evidence to HCD that the site is adequate to accommodate lower income housing. (Gov. Code, § 65583.2, subd. (c)(2)(A).) While element generally talks about the specific plan process, it does not provide information on sites of equivalent size and affordability were successfully developed during the prior planning period. HCD understands acreage within the specific plans has yet to be parceled or subdivided and likely future parceling will be aligned with sub areas by uses and intensity that are much smaller than the identified acreage in the inventory. As a result, the element should provide additional description of specific plans and acreage of sub-areas and add or modify programs to facilitate development on parcel sizes that are deemed appropriate to accommodate housing for lower-income households.

Small Sites: While the element has some examples of sites smaller than a half-acre in size that have been developed with some housing affordable to lower-income households, it does not relate these examples to the sites in the inventory. In addition, the element did not describe circumstances leading to consolidation, such as common ownership, the County's role or track record in facilitating small-lot consolidation, circumstances and characteristics that will lead to development. In addition, the element does include information on the allowance of graduate density increases to facilitate lot consolidation. The element should indicate how a developer triggers the increased density (e.g., affordability, size of lot, etc.).

Accessory Dwelling Units (ADU): The County is estimating an average of 66 ADUs per year for a total of 528 ADUs to accommodate its Regional Housing Need Allocation (RHNA). However, this methodology is not supported by past trends (42 per year when considering 2022 permits). As a result, the element should be revised to reduce the number of ADUs to accommodate the County's RHNA. In addition, the element includes Strategy 6b to monitor ADU production. However, the element only commits to establish a monitoring program within two years of adoption and does not indicate how often ADU production will be monitored. Given the County is over a year into the planning period, the strategy should commit to establishing the program sooner in the planning period with more frequent monitoring.

Electronic Sites Inventory: For your information, pursuant to Government Code section 65583.3, the County must submit an electronic sites inventory with its adopted housing element. The County must utilize standards, forms, and definitions adopted by HCD.

Zoning for a Variety of Housing Types (Emergency Shelters): While the County allows emergency shelters by-right in commercial and industrial zones, subsequent draft submissions must comply with the requirements of Chapter 654, Statutes of 2022 (AB 2339). Please note, these requirements became effective on January 1, 2023 and apply to any housing element submitted after January 1, 2023 if a jurisdiction failed to submit the initial draft before the due date of the housing element. As the County's initial draft was submitted on October 28, 2021, after October 14, 2021 due date, these provisions will apply. Among other changes, these amendments to Government Code section 65583, subdivision (a)(4) expands the definition of "emergency shelters", specifies the type of zoning designations that must be identified to allow emergency shelters as a permitted use without a conditional use or other discretionary permit, and demonstrate the appropriateness of sites to accommodate emergency shelters. For more information and applicable timing, see HCD's AB 2993 memorandum at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/ab2339-notice.pdf>.

4. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures... (Gov. Code, § 65583, subd. (a)(5).)*

Housing Opportunities Overlay: The element was not revised to address this statutory requirement. Please see HCD's prior December 27, 2021 review.

Local Processing and Permit Procedures: While the element was revised to include some information typical time frames it must still describe the typical process and approval procedures for typical single- and multi-family developments, including type of permit, level of review, approval findings and any discretionary approval procedures. As stated in the previous review, the element must evaluate the requirements for a use permit for multifamily in zones designated for multifamily uses (R3 and R4) and include programs to remove or mitigate constraints as necessary.

In addition, the element should address public comments on this revised draft submittal and discuss compliance with the Permit Streamlining Act and intersections with CEQA and timing requirements, including streamlining determinations and add or modify programs as appropriate.

Constraints on Housing for Persons with Disabilities: While the element included some additional information related to group homes of less than six persons, it did not address how non-licensed group home facilities that serve seven or more residences is permitted. Zoning and standards should simply implement a barrier-free definition of family instead of subjecting, potentially persons with disabilities, to special regulations. Zoning code regulations that isolate and regulate various types of housing for persons with disabilities based on the number of people and other factors may pose a constraint on housing choice for persons with disabilities.

The element should include specific analysis of these and any other constraints for impacts on housing for persons with disabilities and add or modify programs as appropriate. For further information see HCD's Group Home Technical Advisory https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf

5. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including... requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Government Code section 65583.2... (Gov. Code, § 65583, subd. (a)(6).)*

While the element was revised to include additional information and analysis of requests to develop housing at density below those identified, it must also include a description of length of time between receiving approval for a housing development and submittal of an application for building permits and include programs as appropriate.

6. *Analyze any special housing needs such as elderly; persons with disabilities, including a developmental disability; large families; farmworkers; families with female heads of households; and families and persons in need of emergency shelter. (Gov. Code, § 65583, subd. (a)(7).)*

The element was not revised to address this statutory requirement. Please see HCD's prior December 27, 2021 review.

B. Housing Programs

1. *Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the Housing Element... (Gov. Code, § 65583, subd. (c).)*

The element did not address this requirement. As stated in the previous review, the element must provide discrete timing for all programs (e.g., month, year) to account for how often the action will occur as well as to ensure a beneficial impact throughout the planning period and quantify objectives where feasible. Additionally, all programs should be evaluated to ensure meaningful and specific actions and objectives. Many of the programs reference timing within a certain number of years from adoption. Given the County is already over a year within the planning period, program time frames should be revised to be specific and early enough in the planning period to have a meaningful impact. In addition, several programs commit to "review annually" various strategies and policies. However, those programs do not commit to specific outcomes as a result of that review.

2. *Identify actions that will be taken to make sites available during the planning period 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, and to comply with the requirements of Government Code section 65584.09. 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, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. (Gov. Code, § 65583, subd. (c)(1).)

As noted in Finding A3, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis; the County may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element should be revised as follows:

Sites Identified in Prior Planning Periods: The element was not revised to address this statutory requirement. Please see HCD's prior December 27, 2021 review.

3. *Address and, where appropriate and legally possible, remove governmental and nongovernmental 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, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (Gov. Code, § 65583, subd. (c)(3).)*

As noted in Findings A4 and A5, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the County may need to revise or add programs and address and remove or mitigate any identified constraints.

4. *Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics... (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding A1, the element requires a complete AFFH analysis. Depending upon the results of that analysis, the County may need to revise or add programs. Goals and actions must specifically respond to the analysis and to the identified and prioritized contributing factors to fair housing issues and must be significant and meaningful enough to overcome identified patterns and trends. In addition, all programs to address affirmatively furthering fair housing must be reviewed to include specific commitments, metrics and milestones, and geographic targeting as appropriate.