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February 4, 2005

Mr. Emmanuel Ursu
Planning Director
Planning Department
City of Orinda
14 Altarinda Road
Orinda, CA 94563

Dear Mr. Ursu:

RE: Review of the City of Orinda's Adopted Housing Element

Thank you for submitting Orinda's housing element adopted on October 19, 2004 and received for review on November 8, 2004. As you know, the Department is required to review adopted housing elements and report the findings to the locality pursuant to Government Code Section 65585(h). Thank you for assisting the Department's review through conversations in January and February 2005 and a meeting on January 24, 2005.

The Department appreciates Orinda's hard work to develop a housing element that addresses its share of the regional housing needs, including efforts and resources dedicated to facilitate higher density small lot development and multifamily housing affordable for lower-income seniors. The current draft element represents substantial progress and addresses many of the statutory requirements of State housing element law (Article 10.6 of the Government Code) as described in the Department's October 29, 2002 review. However, the following revisions are still needed to bring the element into compliance with the law:

1. *Include an inventory of land suitable for residential development, including vacant sites and sites having the potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites (Section 65583(a)(3)).*

   Suitability and Realistic Capacity – The adopted element does not contain revisions to address this requirement. Based on the review, the element predicates capacity on maximum allowable densities and does not account for land-use controls, site improvements or topographical conditions. The element should either base development capacity on typically built densities by zone, approved maps or policies and programs that ensure the assumed capacity, such as minimum densities to meet this requirement.

Further, to address requirements described in the Department's October 2002 (enclosed) review, the element must analyze the feasibility and ripeness of development on redevelopable sites in the downtown area within the planning period. This analysis should consider existing uses, the extent to which existing uses may constitute an impediment to additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites.

Emergency Shelters and Transitional Housing – The element must include sites with zoning that facilitates a variety of housing types including emergency shelters and transitional housing. The adopted element was not revised to address this requirement. The element should either demonstrate where these uses are allowed by permitted or conditional use or include a program to amend zoning standards. The element should also describe how zoning and development standards will encourage and facilitate the development of transitional housing and emergency shelters.

2. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels and for persons with disabilities including land use controls, and local processing and permit procedures (Section 65583(a)(4)).*

   Land-Use Controls – The adopted element was not revised to address this requirement (see October 2002 review).

   Local Processing and Permit Procedures – While the adopted element briefly discusses design review, the element should also describe the types of permits, any discretionary approval procedures (i.e., site plan review), and decision-making standards required for all types of residential development, including single-family and multifamily. For example, the element should discuss the various permits and procedures, whether ministerial or discretionary, for a multifamily development to be permitted in a multifamily and mixed-use or downtown commercial zone.

   Constraints on Housing for Persons with Disabilities - The adopted element does not contain revisions to address this requirement (see October 2002 review, Department memo and technical assistance provided earlier).

3. *Include a program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, provision of regulatory concessions and incentives, and the utilization of appropriate federal, state financing and local financial resources (Government Code Section 65583(c)).*

While the element now includes more definite timeframes and specific actions for some programs, the element must also add numerical objectives to demonstrate the City's commitment and to facilitate review of the effectiveness of programs in future housing element updates. The element should also strengthen Program 2-4 to publicize financial rehabilitation resources for all lower-income households and include more specific actions to assist the development of housing for all lower- and moderate-income households. More specific actions to assist development include commitment to annually meet with developers of multifamily housing for lower-income households, identify potential sites, defer or waive fees, assist with design and the entitlement process, support applications for funding, aid with building community support, modify development standards if needed and, contribute financial resources where available.

4. *Identify actions that will be taken to make sites available during the planning period of the general plan with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city'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. 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, emergency shelters, and transitional housing.*

   As noted under finding number 1, the element does not include a complete land inventory analysis and the adequacy of sites cannot be established. Based on the results of a complete land inventory analysis, the City may need to add programs. In addition, as discussed with the City, a maximum density of 10 units per acre is not adequate to encourage and facilitate the development of housing affordable to lower-income households. While the element increases the allowable density to 30 units per acre on the 1.45 acre former library site for senior housing and includes a general commitment to increase densities, the specific programs do not commit to a specific density. As a result, it is not possible to evaluate the adequacy of these programs. For example, the element should strengthen the following programs:

   Program 3-6 (Downtown Commercial district) – This program studies the feasibility of amending zoning to allow greater than 10 units per acre. However, it must include should have firm commitment to allow a specific density appropriate to promote the development of housing affordable to lower-income households. Given the City's goals to promote a compact mix of uses in the downtown and preserve open space and rural character, the element should commit to allow at least 20 units per acre in the downtown commercial district.

   Program 3-14 (Identify downtown sites) – The program should commit to acreage for the sites and should ensure the sites are suitable and realistic for development in the planning period.

Program 3-15 (Residential Component Requirements) – The element could include specific performance standards for a residential component in commercial development. This standard could be consistent with assumed development capacity and future housing needs.

Program 1-7 (Review the Second-Unit Ordinance) – The City could strengthen this program by including more specific action to encourage the creation of second units. A strong commitment to second units can be a valuable part of a City's housing strategy to identify sites, encourage a variety of housing types and address the wide range of housing needs. The Department will be pleased to work with the City on developing second-unit strategies (see technical assistance memo provided for your assistance).

5. *The housing element shall contain programs which "address, and where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing" (Section 65583(c)(3)).*

   As noted in finding number 2 above, the element requires more analysis of potential governmental constraints. Depending upon the results of that analysis, the City may need to add programs to address and remove or mitigate any identified constraints. Further, the element should strengthen actions as follows:

   Parking - The element now includes to develop a master plan for parking in the downtown and shared parking regulations for mixed-use development (Programs 3-7 and 3-8). However, the element should complement these actions with commitment to relax and reduce parking requirements and facilitate higher density multifamily development, where appropriate such as in the downtown or near transit.

   Persons with Disabilities - While the element now contains a program to comply with multifamily American Disability Act requirements (Program 4-3), as a result of Chapter 671, the element should also contain a program that removes any identified constraints in the analysis and provides reasonable accommodations for housing intended for persons with disabilities.

For your information, recently enacted legislation (Chapter 724, Statutes of 2004) amended housing element law (enclosed for your use).

The Department appreciates your diligent efforts throughout the review process. Further, we acknowledge Orinda's challenges in addressing critical housing needs and stand ready to work in full partnership and provide any necessary assistance. If you have any questions or would like to set up a meeting in Orinda or Sacramento, please contact Paul McDougall, of our staff, at (916) 322-7995

In accordance with their requests pursuant to the Public Records Act, we are forwarding a copy of this letter to the individuals listed below.

Sincerely,

Cathy E. Creswell
Deputy Director

Enclosures

cc: Mark Stivers, Senate Committee on Transportation & Housing
Suzanne Ambrose, Supervising Deputy Attorney General, AG's Office
Terry Roberts, Governor's Office of Planning and Research
Nick Cammarota, California Building Industry Association
Marcia Salkin, California Association of Realtors
Marc Brown, California Rural Legal Assistance Foundation
Rob Weiner, California Coalition for Rural Housing
John Douglas, AICP, Civic Solutions
Deanna Kitamura, Western Center on Law and Poverty
S. Lynn Martinez, Western Center on Law and Poverty
Alexander Abbe, Law Firm of Richards, Watson & Gershon
Michael G. Colantuono, Colantuono, Levin & Rozell, APC
Ilene J. Jacobs, California Rural Legal Assistance, Inc.
Richard Marcantonio, Public Advocates
David Booher, California Housing Council
Sue Hestor, Attorney at Law
Paul Campos, Home Builders Assoc. of Northern California
Shannon Dodge, Non-Profit Housing Association of Northern California
Eve Bach, Arc Ecology
Allison Brooks, Livable Communities Initiative
Charlie Carson, Home Builders Association – Northern Division
Martin R. Engelmann, P.E., Contra Costa Transportation Authority