

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

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March 24, 2009

Ms Genia Garcia, AICP
Director of Planning Services
City of Aliso Viejo
12 Journey, Suite 100
Aliso Viejo, CA 92656-5335

Dear Ms. Garcia:

RE: Review of the City of Aliso Viejo's Draft Housing Element

Thank you for submitting Aliso Viejo's draft housing element received for review on January 20, 2009. The Department is required to review draft housing elements and report the findings to the locality pursuant to Government Code Section 65585(b). A telephone conversation on March 18, 2009 with Ms. Erica Roess and Mr. Alberto Armijo of your staff, and Messrs. John Douglas and Wayne Loftis, the City's consultants, facilitated the review.

While the draft element addresses many statutory requirements, revisions will be necessary to comply with State housing element law (Article 10.6 of the Government Code). In particular, the element must include analyses of the adequacy of identified sites to accommodate the regional housing need for lower-income households and analyze potential governmental constraints to the development of housing. The enclosed Appendix describes these and other revisions needed to comply with State housing element law.

The Department would be happy to provide any assistance needed to facilitate your efforts to bring the element into compliance. If you have any questions or would like assistance, please contact Janet Myles, of our staff, at (916) 445-7412.

Sincerely,

Cathy E. Creswell
Deputy Director

Enclosure

cc: Erica Roess, Senior Planner
John Douglas, Consultant, Conexus

APPENDIX CITY OF ALISO VIEJO

The following changes would bring Aliso Viejo'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 the Department's website at www.hcd.ca.gov/hpd. Refer to the Division of Housing Policy Development and the section pertaining to State Housing Planning. Among other resources, the Housing Element section contains the Department's latest technical assistance tool *Building Blocks for Effective Housing Elements (Building Blocks)* available at www.hcd.ca.gov/hpd/housing_element2/index.php, the Government Code addressing State housing element law and other resources.

A. Housing Needs, Resources, and Constraints

1. *Include an analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition (Section 65583(a)(2)).*

Overpayment: The element should include an estimate of the number of lower-income households, by tenure, paying more than 30 percent of their income on housing. For your information, US Census data indicates 1,326 of 1,539 (86 percent) of lower-income renter households and 1,104 of 1,237 (89 percent) of lower-income owner households paid more than 30 percent of their income on housing. This information should be incorporated into the element and the City could consider programmatic actions to encourage the development of additional housing affordable to low-income workers and households.

2. *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)). The inventory of land suitable for residential development shall be used to identify sites that can be developed for housing within the planning period (Section 65583.2).*

The City has a regional housing need allocation (RHNA) of 919 housing units, of which 373 are for lower-income households. To address this need, the element identifies vacant and underutilized sites designated and zoned for non-residential uses, in addition to sites under executed residential development agreements within Community Benefit Overlay areas. However, to demonstrate the adequacy of the sites and strategies to accommodate the City's share of the RHNA, the element must include a complete analysis, as follows:

Progress in Meeting the RHNA: The element states affordability covenants for four residential sites with Community Benefit Overlay have to-date produced seven units for low-income households on the Glenwood site (CP-29) and entitlement approvals for an additional 293 lower-income units since the beginning of the planning period. The element and subsequent conversations between the City and Department staff has confirmed that development agreements on these sites ensure the developer has *the option* of setting aside a stated percentage of units as affordable to lower-income via an

affordability covenant OR pay an in-lieu fee at time of permitting. For example, page H-13 appears to imply that the Commons, Glenwood and Vantis projects will use the in-lieu fee option. As a result, it is premature to credit the entitled units toward the City's RHNA for lower-income households until the City can confirm which option the developer has selected.

For those units where there is some indication units will be built rather than opting for payment of in-lieu fees, the element should indicate the status of proposed projects detailed in Table C-22, including what project approvals are still needed, and providing information regarding the projected affordability of the units approved for development. If no project is currently proposed for an entitled site, the element should describe the nature of the entitlement and any requirements for unit types, affordability, phasing, or timing that impact the availability of these sites for development of housing affordable to lower-income households.

Affordability of units on sites with approved projects should be credited based on the anticipated rent and sales prices or information on financing or other mechanisms establishing affordability and not, as the element proposes, on allowed density. Government Code Section 65583.2(c)(3)(A)&(B) requires the analysis of the land inventory to demonstrate the appropriateness of zoning to encourage and facilitate the development of housing affordable to low-income households. This requirement is relevant to analyzing sites in the inventory available for development and not a substitute for describing the anticipated or proposed rents or sales prices of actual projects when approved or entitled.

Capacity and Suitability of Sites: It appears the City is proposing to accommodate a portion of its remaining regional housing need within existing business park zones (Table CP-23). However, the current zoning does not permit residential uses nor does the element include a program to rezone specific sites, suitable and available during the planning period, to allow and encourage residential development (pg H-11) within Business Park zones. The element indicates all sites would require an amendment to the General Plan land-use designation and a change of zoning to allow residential development under current policy statements and development standards (page CP-28). For example, while the element indicates the City's Mixed Use or Community Benefit Overlay could be applied to create additional residential opportunities within the Business Parks, these sites carry deed restrictions prohibiting residential uses during the planning period. Of these sites, at least one appears to have an application pending for a medical office building, the element also indicates sites may require infrastructure upgrades to accommodate residential development.

In addition, to demonstrate the suitability of sites with the Business Park designation (Table CP-23), the element should include:

- For underutilized parcels, the element must describe the existing use and analyze the extent to which current uses may impede additional residential development and include a description of development trends, market conditions and regulatory incentives and standards to facilitate non-vacant redevelopment or reuse.

- To demonstrate the potential for residential development in the planning period, the element could include information on current property owner interest in residential development on identified sites and identify any pending or existing proposals for sites included in Table CP-23.
- The element should describe the methodology for determining the residential development capacity of sites in Table CP-23. The capacities appear to have been calculated assuming buildout at a maximum of 30 units/acre. The element must, however, support this conclusion. The estimate of potential unit capacity must consider land-use controls and site improvements, including height limits, floor area ratio, sliding scale maximum density requirements based on lot sizes and could reflect recently built densities. As all sites are currently zoned for non-residential uses, the capacity estimate must account for potential for new non-residential development.

Sites with Zoning for a Variety of Housing Types: The housing element must demonstrate the availability of sites, with appropriate zoning, to encourage and facilitate a variety of housing types. An adequate analysis should identify whether zoning districts explicitly allow the uses and analyze whether zoning, development standards and permit procedures encourage and facilitate these housing types. If the analysis does not demonstrate adequate zoning for these housing types, the element must include implementation actions to provide appropriate zoning:

- **Emergency Shelters:** The element indicates emergency shelters are allowed with a conditional use permit (CUP) in higher density residential zones and “by right” in the Business Park district (page 42). However, pursuant to Chapter 633, Statutes of 2007 (SB 2), the element must demonstrate the appropriateness of the zone and sufficient capacity to accommodate at least one emergency shelter in the planning period (see the Department’s SB 2 technical assistance memo at http://www.hcd.ca.gov/hpd/sb2_memo050708.pdf).
 - **Single Room Occupancy (SRO) and Mobilehome Units:** The element should specify if and where these housing types are allowed in the zoning code and describe how development standards and permit procedures encourage and facilitate the use.
3. *Analyze potential and actual governmental constraints upon the maintenance, improvement, and development of housing for all income levels. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 (Section 65583(a)(5)).*

Land-Use Controls: While the element lists zoning and development standards (Table CP-25), it should also analyze these standards for their cumulative impact on the supply and affordability of housing, especially multifamily housing. In addition, the element should analyze the impact of parking standards. For example, the element should analyze the requirement for 1.5 spaces for 0-1 bedroom units as a potential constraint to development of smaller units.

For additional information, refer to the sample analysis in the *Building Blocks’* section on land-use controls at http://www.hcd.ca.gov/hpd/housing_element2/CON_landuse.php.

Local Processing and Permit Procedures: While the element includes a few sentences indicating the final decision for all discretionary applications are made by the City Council, which can take 2-4 months, it must specifically describe and analyze the City's permit processing and approval procedures by zone and housing type. To address this requirement, the element should discuss processing procedures and time for typical single- and multi-family projects, including type of permit, level of review, and any discretionary approval procedures or design review requirements. In addition, the City should clarify the footnote on page CP-42, which indicates single-family attached units include apartments, as well as other multifamily clusters. Additional information, including sample analyses, is available in the *Building Blocks'* website at http://www.hcd.ca.gov/hpd/housing_element2/CON_permits.php.

Fees and Exactions: The element lists some planning fees (Table CP-28) and indicates fees can increase the cost of housing and may pose a constraint to the development of affordable housing projects. However, the element must also describe impact fees and assess total fees for typical single- and multi-family development, and analyze the total effect or proportion of these fees and exactions on development costs for housing.

Constraints on Persons with Disabilities: While the element includes a program to develop a Reasonable Accommodation procedure, it must also describe and analyze potential constraints to the development, improvement and maintenance of housing for persons with disabilities, demonstrate local efforts to remove any such constraints and provide for reasonable accommodations for persons with disabilities through programs that remove constraints. For example, among other things, the element should identify and analyze any definitions of family in the zoning code, maximum concentration or siting requirements for residential care facilities, any site planning requirements that may constrain housing for persons with disabilities; and describe parking requirements or reductions for housing for persons with disabilities.

To assist in addressing this statutory requirement, refer to the *Building Blocks'* website for additional information, and the Department's SB 520 memo at http://www.hcd.ca.gov/hpd/hrc/plan/he/sb520_hpd.pdf.

4. *Analyze the opportunities for energy conservation with respect to residential development (Section 65583(a)(8)).*

The element indicates the City will coordinate with the Orange County Transportation Authority to encourage alternative transportation, but includes no specific information on the City's efforts to address energy conservation goals. Given the importance of promoting strategies to address climate change and energy conservation, the City's analysis could facilitate adoption of housing and land-use policies and programs in the housing element that meet housing and conservation objectives. Planning to maximize energy efficiency and the incorporation of energy conservation and green building features can contribute to reduced housing costs for homeowners and renters. For example, the element could include incentives to encourage green building techniques and materials in new and resale homes, promote energy audits and participation in utility programs, and facilitate energy conserving retrofits upon resale of homes. Additional information on potential policies and programs to address energy conservation are available in the *Building Blocks'* website at http://www.hcd.ca.gov/hpd/housing_element2/SIA_conservation.php.

B. Housing Programs

1. *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 and State financing and subsidy programs when available. The program shall include an identification of the agencies and officials responsible for the implementation of the various actions (Section 65583(c)).*

To fully address the program requirements of Government Code Section 65583(c)(1-6), and in order for the City's proposed housing development and assistance strategies to be effective during the planning period, all programs must be revised to include: (1) a description of the City's specific role in implementation; (2) definitive implementation timelines; and, (3) identification of responsible agencies and officials. For example, while many programs indicate the City "will investigate the feasibility" of an action; all programs should include a specific timeline commitments, wherever appropriate.

2. *Identify adequate sites which will be made available through appropriate zoning and development standards and with public services and facilities needed to facilitate and encourage the development of a variety of types of housing for all income levels, including rental housing, factory-built housing, mobilehomes, and emergency shelters and transitional housing. Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right, including density and development standards that could accommodate and facilitate the feasibility of housing for very low- and low-income households (Section 65583(c)(1)).*

As noted in finding A2, The element does not include a complete sites analysis and therefore, the adequacy of sites and zoning were not established.

While the element includes Program 1 to "evaluate the suitability of residential development and amend the general plan designation and zoning for one or more of the sites until development densities accommodate housing for very low income housing," no specific action is included to initiate or complete necessary general plan and zoning amendments. Pursuant to Government Code Section 65583.2(h), the program must include a specific commitment to complete the necessary designation and zoning amendments for a specific number of sites or acreage, by a date certain, to sufficiently address the remaining housing need. Please also note Program 1 indicates zoning amendments will be completed by June 30, 2014; however, action must be taken earlier in the current planning period to allow for residential development to occur.

This adequate sites program must provide sites that permit owner-occupied and rental multifamily uses by-right sufficient to accommodate the remaining need for lower-income households. By-right, pursuant to Section 65583.2(i), means local government review must not require a CUP, planned unit development or other discretionary review or approval and must:

- permit a minimum of 16 units per site;
- require a minimum of density of 20 units per acre; and
- demonstrate at least 50 percent of the lower-income needs to be accommodated on sites designated for residential use only.

In addition, at a minimum, the element should also be revised as follows:

Program 2 must include specific program actions to comply with SB 2 to revise zoning to designate at least one zone permitting emergency shelters without a CUP or other discretionary action.

In addition, while Program 2 references supportive housing, the program should include a specific commitment to amend the zoning to address supportive housing as a residential use pursuant to SB 2.

3. *The housing element shall contain programs which "assist in the development of adequate housing to meet the needs of extremely low-, low- and moderate-income households (Section 65583(c)(2)).*

The element must include specific actions to assist in the development of a mix of housing types, including rental multifamily, for extremely low-, very low-, low- and moderate-income households, and special housing need households. For example, Program 3 could be modified or new programs added to specifically assist in the development of a variety of housing types to meet the needs of extremely low-income (ELI) households. In addition, to address this requirement, the element could revise programs to prioritize funding for the development of housing affordable to ELI households, and/or offer financial incentives or regulatory concessions to encourage the development of housing types, such as SROs, which address the needs of this income group.

Furthermore, while the element documents high overcrowding among renters and a need for rental housing, no programs are included to address the needs of renter households. The City should consider strengthening or adding programs to specifically encourage and facilitate all types of multifamily rental housing. For example, the City could commit a specific portion of the in-lieu funds under Program 3 to partner with non-profit housing development organizations to build high-density residential and mixed-use housing within appropriately designated and zoned Overlay planning areas. Information on potential incentives, sample programs and strategies are available on the *Building Blocks'* website at http://www.hcd.ca.gov/hpd/housing_element2/PRO_assist.php#Sample_Programs.

4. *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 A4, the element requires a more detailed analysis of potential governmental constraints. Depending upon the results of that analysis, the City may need to strengthen or add programs and address and remove or mitigate any identified constraints. At a minimum, the following programs should be revised:

- Program 2 commits to amending the zoning ordinance to provide a Reasonable Accommodation procedure within one year of adoption of the housing element. This program should acknowledge policies and procedures should be ministerial and include timeframes for decision-making, and provision for relief from the various land-use, zoning, or building regulations that may constrain the housing for persons of disabilities. In addition, the City should detail what specific steps it will take in its outreach efforts with disabled populations and advocates. To assist the City, a model ordinance and examples from several cities is available on the Department's *Building Blocks*' website at http://www.hcd.ca.gov/hpd/housing_element2/PRO_mitigate.php.
- While the element states Program 2 will include the elimination of the CUP requirement for density bonus projects in the amendment to the zoning ordinance, the program does commit the City to this action (page CP-46).

D. Public Participation

Local governments shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the element shall describe this effort (Section 65583(c)(7)).

While the element includes a brief description of how public participation opportunities were advertised and the content of the workshops (H-3), it should describe the outcome of the City's outreach efforts, including how comments received were incorporated into the element. For example, the element indicates questionnaires were prepared to solicit input at workshops but does not describe or summarize the results of any surveys.