

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

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June 20, 2008

Mr. Tim Neely, Planning Director
Orange County
300 N. Flower Street
Santa Ana, CA 92702

Dear Mr. Neely:

RE: Review of the Orange County's Draft Housing Element

Thank you for submitting Orange County's draft housing element received for review on April 21, 2008, and submittal of the parcel-specific land inventory on June 16, 2008. 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 April 16, 2008 with Ms. Ruby Maldonado, of your staff and Mr. John Douglas, your Consultant, facilitated the review. In addition, the Department considered comments from Mr. Cesar Covarrubias, from the Kennedy Commission, pursuant to Government Code Section 65585(c).

The draft element addresses many statutory requirements; however, revisions will be necessary to comply with State housing element law (Article 10.6 of the Government Code). In particular, the element must demonstrate the adequacy of the sites and the housing opportunities overlay zone to accommodate the regional housing need for lower-income households. The enclosed Appendix describes these and other revisions needed to comply with State housing element law.

The Department would be pleased to provide any additional assistance necessary, including a meeting in Santa Ana, to facilitate the County's efforts to comply with housing element law. If you have any questions, or wish to schedule a visit, please contact Melinda Coy, of our staff, at (916) 445-5307.

Sincerely,

Cathy E. Creswell
Deputy Director

Enclosure

cc: Cesar Covarrubias, Kennedy Commission

APPENDIX ORANGE COUNTY

The following changes would bring Orange County's draft 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 http://www.hcd.ca.gov/hpd/housing_element/index.html, the Department's publication, *Housing Element Questions and Answers (Qs & As)*, and the Government Code addressing State housing element law and other resources.

A. Review and Revision

Review the previous element to evaluate the appropriateness, effectiveness, and progress in implementation, and reflect the results of this review in the revised element (Section 65588 (a) and (b)).

The review requirement is one of the most important features of the element update. The analysis will enable the County to evaluate its success in remedying substandard housing conditions, conserving affordable housing, and providing housing opportunities, and it may also indicate areas of housing need requiring more effort on the part of the County.

The element indicates the goals and policies of the previous planning were "instrumental in determining the County's 2008 Housing Implementation Program" (page 117). However, the element does not include a complete analysis of actual results of programs in the previous planning period nor a description of how the goals, objectives and programs of the updated element incorporate what has been learned from the results of the prior element. For example:

Quantified Objectives: The element indicates 3,709 units affordable to lower-income households were constructed in the previous planning period (page 127), but does not describe how those units were determined to be affordable.

Strategy 1a: Indicate the number of projects that have used the "Affordable Housing/Senior Citizen Incentive Use Permit".

Strategy 1b: Describe any developments approved under the Ranch Plan, Tonner Hills, Newport Coast, and Rolling Hills planned communities.

Strategy 1f: Quantify any units developed as a result of the County's Rental Housing NOFA and describe any developments that requested and were granted modified development standards to support the development of housing affordable to lower-income households.

Housing Opportunities Overlay: The element must include a thorough evaluation of the Housing Opportunities Overlay Zone in accommodating the County's share of the regional housing needs allocation (RHNA) for lower-income households during the previous planning period. The analysis should include a description of pending and approved projects, an evaluation of the effectiveness in providing opportunities for housing affordable to lower-income households, and indicate whether the Overlay requires revision to continue its use as a strategy during the next planning period. Should the analysis demonstrate the overlay development strategy was ineffective in providing development opportunities; the element must include programs to revise the overlay or increase the inventory of appropriately zoned sites to address the County's share of the regional housing need for lower-income households.

B. Housing Needs, Resources, and Constraints

1. *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 (Section 65583(a)(1)).*

Extremely Low-Income: In accordance with Chapter 891, Statutes of 2006, the element must identify and analyze extremely low-income households existing and projected needs. While the element includes information for the existing housing needs of extremely low-income households, it must still quantify and describe their projected housing needs. The element may either use available census data to calculate the number of extremely low-income households, or presume 50 percent of the very low-income households qualify as extremely low-income 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).*

Orange County has a RHNA of 7,743 housing units, of which 3,222 units are for lower-income households. To address this need, the element relies on vacant sites in the Ranch Plan Planned Community and non-vacant sites within the Housing Opportunities Overlay Zone. However, to demonstrate the adequacy of these sites to accommodate the County's share of the regional housing need, the element must include detailed analyses, as follows:

Progress toward the Regional Housing Need-Approved Units: The element (Appendix B) lists 48 approved units affordable to lower-income households. To credit these units toward the County's share of the regional housing need, the element must demonstrate the affordability of the units based on actual rents and sales prices or other mechanisms ensuring affordability in the planning period.

Suitability of Vacant and Non-Vacant Sites:

Ranch Plan Planned Community: The element indicates the Ranch Plan could accommodate 14,000 residential units of which 1,800 units will be dedicated for housing affordable to lower-income households over a 20-year period. The element must indicate the potential residential capacity of the Ranch Plan during the 2008-2014 planning period. The element should also provide a parcel-specific inventory of the sites to accommodate the County's share of the regional housing need by income category available for development within the current planning period, including the general plan and zoning designations of those sites, corresponding densities, and any constraints that could impact development potential.

Housing Opportunities Overlay: The element indicates sites within the Housing Opportunities Overlay, and within the proposed extension of the overlay, could accommodate 3,082 housing units affordable to lower-income households. The element should evaluate the suitability of this strategy to accommodate a significant portion of the County's regional housing need for lower-income households. The evaluation should consider that most of the identified sites contain existing residential and commercial uses, the past success of the program, and the requirement that housing must be 100 percent affordable to lower-income households to utilize the overlay. The element should describe the methodology for determining the realistic residential development potential on the identified commercial/industrial sites with the housing opportunity overlay (e.g., of the total acres designated as commercial/industrial within the overlay, approximately what percentage of those sites would realistically convert to residential uses within the planning period). For example, as it is likely many of the sites would develop to their underlying commercial or industrial designation, the element should describe a reasonable methodology for estimating the residential capacity. In addition, the element must include a detailed analysis addressing the extent to which existing uses may impede new or additional residential development and a description, relative to identified sites, of development trends, market conditions, regulatory incentives and standards, and any financial incentives to facilitate redevelopment or reuse. Please refer to the *Building Blocks'* website at http://www.hcd.ca.gov/hpd/housing_element/screen18_non_vac.pdf.

Furthermore, the element identifies three overlay sites within the Newport Beach area that are constrained by access or steep slopes. The element should analyze the impact of the constraints on the feasibility of residential development or potential residential capacity for housing affordable to lower-income households within the planning period.

Please note, should the County identify a shortfall of sites to accommodate the housing need for lower-income households within currently zoned land and must rely on sites within the proposed extension of the Housing Opportunities Overlay to accommodate this shortfall, the element must identify sites pursuant to Government Code 65583.2(h). For example, any sites identified to accommodate the shortfall must permit at least 16 units per site.

Realistic Capacity: The element must describe the methodology for determining the capacity estimates of sites in the inventory. The analysis must adjust the calculation to account for land-use controls and site improvements, including height limits, and floor area ratios. Capacity calculations for the overlay should be in part based on actual development experience and account for development that may occur at base densities in residential zones. For commercial sites, the element should also account for potential non-residential uses and contain programs to assure realistic capacity will be maintained throughout the planning period. To demonstrate the unit capacity of underutilized sites with existing residential housing, the analysis should describe and explain the factors that make developing additional residential units feasible (within the planning period). Please refer to the *Building Blocks'* website at http://www.hcd.ca.gov/hpd/housing_element/screen17_capacity.pdf.

For example, the element assumes capacity within the Ranch Plan based upon a density of 30 dwelling units per acre; however, the element does not describe the zoning or densities allowed within the Plan. The inventory should be expanded to describe the zoning and allowed densities and describe the methodology used to establish the potential residential capacity and density.

Small Sites: Given most of the Housing Opportunities Overlay sites are less than a half acre in size and require lot consolidation, the element must include an analysis of smaller sites, demonstrating the development potential including their capacity to facilitate the development of housing for lower-income households. The element could use development trends to facilitate this analysis and include program actions facilitating development such as lot consolidation and/or parcel assemblage. This is particularly important given the dependence on small sites to accommodate the County's share of the regional housing need for lower-income households and the necessary economies of scale to facilitate the development of housing affordable to lower-income households. For example, most assisted housing developments utilizing State or federal financial resources typically include at least 50 to 80 units.

Zoning for Lower-Income Households: Pursuant to Section 65583.2(c)(3)(A) and (B), the element must identify sites with zoning and densities appropriate to encourage and facilitate the development of housing for lower-income households based on factors such as market demand, financial feasibility and development experience within zones. For communities with densities that meet specific standards (at least 30 units per acre for Orange County) this analysis is not required (Section 65583.2(c)(3)(B)). According to page 46, the average density of housing developments affordable to lower-income households in the County is 35 units per acre. Given the County's reliance of the overlay (which only provides a maximum of 25 units per acre) to address the regional housing needs for lower-income households, the element should include an analysis to demonstrate the adequacy of this density to encourage and facilitate the development of units affordable for lower-income households. This analysis should specifically address how the density for the identified sites accommodates development and financial feasibility (i.e. see discussion above on small sites).

Sites with Zoning for a Variety of Housing Types: The housing element must demonstrate the availability of sites, with appropriate zoning, that will *encourage and facilitate* a variety of housing types, including multifamily rental housing, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. An adequate analysis should, at a minimum, identify whether and how zoning districts explicitly allow the uses, 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: While the element indicates that existing emergency facilities within the unincorporated County can accommodate the identified homeless need, additional analysis is required (see finding B5). The element must still identify how emergency shelters are explicitly allowed within the zoning code and indicate how the zoning encourages and facilitates the development of shelters. Should the revised element demonstrate the need for additional emergency shelters, the County must identify a zone(s) where emergency shelters are permitted without a conditional use permit (CUP) or other discretionary action. To assist in addressing this statutory requirement, please refer to the Department's Chapter 633, Statutes of 2007 (SB 2) memo at http://www.hcd.ca.gov/hpd/sb2_memo050708.pdf.

Transitional Housing and Supportive Housing: The element must identify if transitional and supportive housing are explicitly allowed within the County's zoning code and how zoning, development standards and permit procedures encourage and facilitate these housing types. Pursuant to SB 2 the element must demonstrate transitional and supportive housing is treated as a residential use subject only to those restrictions that apply to other residential uses of the same type in the same zone. For example, if the transitional housing is a multifamily use proposed in a multifamily zone, then zoning should treat the transitional unit the same as other multifamily uses proposed in the zone.

Single Room Occupancy (SRO) Units: While the element indicates SRO's are allowed in any zone where hotels are permitted with a CUP (page 61), it must describe typical conditions of approval and analyze how development standards encourage and facilitate this housing type.

3. *Analyze potential and actual governmental constraints upon the maintenance, improvement, and development of housing for all income levels, including land-use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. 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: The element should describe and analyze the program requirements for the Housing Opportunities Overlay including performance standards and permitted uses. The overlay requires projects to adhere to the development standards of the base zoning. As the majority of these sites are on commercial or

industrial zoned land, the element should provide a description of development standards for these zones and analyze how those standards encourage and facilitate the development of multifamily housing.

Furthermore, while the element describes residential uses permitted by-right and setback standards for each zone (page 52-54), the element should also describe other typical development standards such as minimum lot size and height limitations that influence the maximum allowable densities in each zone.

Fees and Exaction: While the element concludes development fees do not present an unreasonable constraint to development (page 66), it must include an actual description and analysis of fees including capital facilities fees. Per our discussion, the County will be providing a full analysis based upon the updated fee schedule in a subsequent draft. This analysis should describe total fees for typical multi- and single-family developments and could address the total effect or proportion of these fees and exactions on development costs.

Constraints on Persons with Disabilities: While the element indicates that any residential units constructed directly by the County as well as public accommodations are subject to the provisions of the Americans with Disabilities Act (page 59), pursuant to Chapter 671, Statutes of 2001 (SB 520), the element must include a detailed analysis of zoning, development standards and approval procedures for the development of housing for persons with disabilities. For example, among other things, the element should identify and analyze: (1) any definitions of family in the zoning code; (2) whether the locality has an established reasonable accommodation procedure; (3) maximum concentration requirements for residential care facilities; (4) any site planning requirements that may constrain housing for persons with disabilities; and (5) any parking requirements for housing for persons with disabilities. The element should include programs to address any identified constraints. To assist in addressing this statutory requirement, please refer to the *Building Blocks'* section on Constraints for Persons with Disabilities at http://www.hcd.ca.gov/hpd/housing_element/screen27_sb520.pdf.

4. *Analyze any special housing needs, such as those of the handicapped, elderly, large families, farmworkers, families with female heads of households, and families and person in need of emergency shelter (Section 65583(a)(7)).*

The element estimates the total homeless needs within the unincorporated County at 139 persons based upon a proportion of the total homeless count within the County from a 2007 Point-in-Time survey. However, to assess the degree of unmet homeless needs, including the extent of need for emergency shelters, the estimate must consider both seasonal and year round need and should consider a variety of data sources, such as the homeless consolidated plan and the OC Partnership, and include proactive outreach with service providers, such as 2-1-1 Orange County, to examine the degree and characteristics of homeless needs in the community and surrounding communities.

To demonstrate existing shelters can accommodate the homeless need, the element must identify the total number of beds available within the unincorporated County. The analysis should support and document the estimate of vacant beds and must consider seasonal fluctuations in the need for emergency shelters.

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

The element states the County addresses energy conservation goals through Title 24 compliance and provides general information regarding other methods to reduce residential energy use. Given the importance of promoting strategies to address climate change and energy conservation, a more detailed analysis could facilitate adoption of housing and land-use policies and programs in the housing element that would meet energy conservation and housing objectives. For example, the element could include incentives to promote higher density housing along transit, close to jobs, services, and amenities; promote infill and compact development; and encourage green building techniques and materials in new and resale homes. Additional information on potential policies and programs to address energy conservation are available in the *Building Blocks*' technical assistance tool at http://www.hcd.ca.gov/hpd/housing_element/screen12_conservation.pdf.

6. *Analyze existing assisted housing developments that are eligible to change to non-low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of use restrictions (Sections 65583(a)(8) through 65583(a)(9)(D)).*

The element contains conflicting information regarding the number of units at-risk for the current planning period and subsequent 5 years. The element should clarify the developments currently at-risk, estimate the total cost of replacing and preserving these units and include a list of entities with the capacity to acquire multifamily developments at-risk. This analysis will facilitate a program to address the critical nature of preserving at-risk units. To assist in addressing this statutory requirement, please refer to the *Building Blocks*' section on Assisted Housing Developments "At Risk" of Conversion at http://www.hcd.ca.gov/hpd/housing_element/screen13_atrisk.pdf.

D. 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 County's proposed housing development and assistance strategies to be effective during the planning period, programs and corresponding actions should include: (1) a description of the County's specific role in implementation; (2) definitive implementation timelines; and (3) identification of responsible agencies and officials. Programs to be revised and strengthened include, but are not limited to the following:

Strategy 1a: Describe the County's specific role in increasing public awareness of the importance of affordable housing to the County's long-term viability.

Strategy 1c: Describe specific timeframes for the development of the revitalization and annexation plans for priority areas.

Strategy 1d: Describe how the County will support the activities of the DPRC. For example, the program could describe the process for implementing committee recommendations.

Strategy 1e: Provide specific timeframes for pursuing tax-exempt bonds and tax credit allocations.

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 B2, the element does not include a complete sites analysis and 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 strengthen programs to address a shortfall of sites or zoning available to encourage a variety of housing types.

For your information, where the inventory does not identify adequate sites pursuant to Government Code Sections 65583(a)(3) and 65583.2, the element must provide a program to identify sites in accordance with subdivision (h) of 65583.2 for 100 percent of the remaining lower-income housing need with sites zoned to permit owner-occupied and rental multifamily uses by-right during the planning period. These sites shall be zoned with minimum density and development standards that permit at least 16 units per site at a density of at least 20 units per acre. Also, at least 50 percent of the remaining need must be planned on sites that exclusively allow residential uses.

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)).*

While the element includes some programs to assist the development of very low-, low-, and moderate-income households, programs should be expanded or added pursuant to Chapter 891, Statutes of 2006 (AB 2634), to specifically assist in the development of a variety of housing types to meet the housing needs of extremely low-income households.

The element identifies a high proportion of renters in overcrowded housing situations (Page 22). Strategy 1f could be revised to describe specific actions the County will take to encourage developers to include family rental housing and the inclusion of large family units in new residential construction.

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 B3, the element requires a more detailed analysis of potential governmental constraints. Depending upon the results of that analysis, the County may need to strengthen or add programs to address and remove or mitigate any identified constraints.

5. *The housing program shall preserve for low-income household the assisted housing developments identified pursuant to paragraph (8) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (8) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance (Section 65583(c)(6)).*

The element identifies several projects at-risk of converting to market-rate uses in the planning period and includes Strategy 2b to address those at-risk units. While the program includes actions to monitor units, it should be strengthened to include proactive efforts to assist in preserving the units. Specifically, the County could describe how it will work with non-profit developers to preserve existing housing, and develop a strategy for quickly moving forward in the case notices of intent to convert to market-rate uses are filed in the planning period. The program could also include a proactive tenant noticing and education strategy, support of non-profit funding applications for acquisition and rehabilitation, allocation of local funds including gap funding for non-profit housing developers and any local incentives that may be available to preserve the units. Additional information and resources are available at the California Housing Partnership Corporation (<http://www.chpc.net/>). Sample programs are included in the *Building Blocks*' section on Preserve Units At-risk of Conversion to Market Rate Uses at http://www.hcd.ca.gov/hpd/housing_element/screen34_atriskprogram.pdf.

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 general summary covering the public participation process (page 2), more information is needed to demonstrate how the County has or will make a diligent effort to achieve the involvement all economic segments of the community through the adoption process. The element should be revised to specifically describe the County's efforts to circulate the housing element among low- and moderate-income households and organizations that represent them and individuals and to involve such groups and persons in the development of the element. For example, the element could describe in greater detail the County's efforts with the County Housing Element Resource Team, and list the housing and service providers noticed about the

workshops on the housing element. Finally, the element could include a description of general comments received and how those comments were incorporated into the housing element. The County should continue to engage the community through the adoption of the housing element, by, prior to submitting to the Department, making revisions available with sufficient notice and considering and incorporating, where appropriate, comments, including strengthening policies and programs.

E. Coastal Zone Localities

In housing element updates, coastal localities shall document the number of low- and moderate-income units converted or demolished, and the number of replacement units provided (Section 65588(d)).

To determine whether the City's affordable housing stock in the coastal zone is being protected and provided as required by Government Code Section 65588, the element must be revised to include updated information regarding the number of units converted or demolished between 2001 and 2007.