

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

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September 18, 2019

Joel Rojas, Director
Community Development Department
San Juan Capistrano
32400 Paseo Adelanto
San Juan Capistrano, CA 92675

Dear Joel Rojas:

RE: No Net Loss Law and Pending Projects

The purpose of this letter is to assist the City of San Juan Capistrano in implementing Government Code section 65863, "No Net Loss Law," which was amended by Senate Bill 166, Statutes of 2017.

Recognizing the statewide importance of addressing the housing needs of Californians, the Legislature passed Housing Element law "[t]o assure that counties and cities recognize their responsibilities in contributing to the state housing goal" (Government Code section 65581(a)). As part of meeting that goal and various requirements, each jurisdiction identifies adequate sites to accommodate a regional housing need allocation (RHNA) by income group.

The purpose of No Net Loss Law is to ensure development opportunities remain available at all times throughout the planning period to accommodate the RHNA by income group. Specifically, the law prohibits any "city, county, or city and county . . . [to] reduce, or require or permit the reduction of, the residential density for any parcel" unless it makes written findings that such an action is consistent with the city's General Plan, including its Housing Element, and that sites are adequate to meet the city's RHNA exist in the sites inventory (Gov. Code. § 65863(b)). The law allows a jurisdiction to approve lesser density or different income than identified in the housing element on a particular parcel "if it identifies sufficient additional, adequate, and available sites with an equal or greater residential density in the jurisdiction so that there is no net loss of residential unit capacity" and "within 180 days identify and make available additional adequate sites to accommodate the jurisdiction's share of the regional housing need by income level (Gov. Code. § 65863(c)). The statute specifically precludes use of the law as a means "to disapprove a housing development project on the basis that approval of the housing project would require [the identification of adequate sites]" (Gov. Code. § 65863(c)(2)).

The California Department of Housing and Community Development (HCD) is aware that the Watts Communities is seeking to develop a 132-unit project on the city's Ventanas site. In the Housing Element approved on November 13, 2017, the Ventanas site is zoned mixed-use and very high density (CDP 78-01) and designated it to accommodate 230 units for lower-income households. Therefore, if Watts Communities' project is approved as proposed, the city must make written findings or identify additional site capacity to accommodate the remaining RHNA by income category. HCD understands the Watts Communities is assisting with identification of a site to fulfill the city's RHNA obligation and comply with No Net Loss Law. To help with understanding the city's obligation under No Net Loss Law, HCD offers the following guidance for your consideration.

Housing Element Status: On November 13, 2017, HCD found San Juan Capistrano's Housing Element in compliance with state Housing Element law (Government Code Article 10.6). This finding was based, among other things, on the identification of adequate sites to accommodate the RHNA obligation and programs to monitor and maintain adequate sites to accommodate the regional housing need for lower-income households (Programs 1 and 1A). Please be aware, given the project is not a city-initiated action (e.g., downzoning key sites in the inventory), approving the project as proposed by the Watts Communities will not, by itself, impact the city's compliance status or trigger a Housing Element/General Plan amendment subject to HCD review pursuant to Gov. Code Section 65585. However, a jurisdiction must report in the jurisdiction's Annual Progress Report (APR) any sites that have been identified or rezoned to accommodate the resulting shortfall due to the approval of a development at a lower density or different income than proposed in the element. APRs are required to be sent to HCD by all jurisdictions by April 1, pursuant to Gov. Code section 65400. In addition, the element does include Programs 1 and 1a (Adequate Sites and Sites Inventory Monitoring). Pursuant to Gov. Code Section 65588(i) through (l), inaction or action inconsistent with the housing element, including program implementation, may trigger an HCD review and subsequent action.

City and Developer Role: Pursuant to Gov. Code section 65863(e), a locality is solely responsible for compliance with No Net Loss Law unless a project applicant proposal results in a lack of sites to accommodate the regional housing need by income group. In this case, a locality may require an applicant to comply with this No Net Loss Law which may include facilitating the identification of alternative sites. However, requirements on project applicants should be balanced with the potential impact on the overall feasibility of the project. Overly burdensome requirements may make a development project financially infeasible and could have an effect similar to disapproving a project.

Site Replacement Requirements: If the approval of a development at a lower residential density or different income than proposed in the element results in the remaining sites capacity becoming inadequate to accommodate the RHNA by income category, a jurisdiction has up to 180 days from the approval to identify, or rezone,

“sufficient additional, adequate, and available sites” to accommodate the remaining RHNA for each income category. Sites identified or rezoned must be considered an adequate site pursuant to the requirements of Gov. Code section 65583.2.

CEQA Requirement of No Net Loss Law: The act of identifying or making available additional adequate sites, in and of itself, to comply with the statutory requirements to accommodate the remaining unmet RHNA, does not trigger a CEQA review (Government Code section 65863(h).) Therefore, it does not require that a proposed project’s CEQA compliance documents discuss the additional adequate sites triggered by the proposed project’s approval.

Other Provisions: The identification of sites or alternative sites does not impose a mandate or covenant such as affordability restrictions on those sites to develop in a manner consistent to what was assumed in the housing element. One of the purposes of No Net Loss Law is to allow the city to continuously account for what ultimately gets built on sites identified in the housing element sites inventory and then reconcile what is still needed to accommodate the remaining RHNA throughout the planning period. There is no requirement in Housing Element Law or No Net Loss Law that requires the city to obtain the consent of a property owner in order to identify and make available a housing site in the sites inventory.

HCD appreciates the city’s consideration of this advice and welcomes any further opportunities to provide assistance. Please feel free to contact Paul McDougall, of our staff, at (916) 263-7420.

Sincerely,

A handwritten signature in black ink, appearing to read "Zachary Olmstead". The signature is fluid and cursive, with a large initial "Z".

Zachary Olmstead
Deputy Director