



March 3, 2020

Office of Assemblymember Cottie Petrie-Norris  
Claire Conlon, Chief of Staff  
19712 MacArthur Boulevard #150  
Irvine, CA 92612

**Re: Newport Beach Comments on HCD Draft Guidelines and Examples of Alternative Adequate Sites Projects**

Dear Ms. Conlon:

As requested at our February 28, 2020, meeting, the following information represents City staff's thoughts on the Department of Housing and Community Development (HCD) Draft Housing Element Sites Inventory Guidebook. As drafted, we believe Newport Beach and other coastal and urban cities will face tremendous difficulty in attempting to identify adequate sites to meet the significant increases in RHNA allocations.

- **Non-Vacant Sites:** The Draft Guidebook definition of “vacant sites” excludes sites with any improvements (e.g., abandoned buildings, parking lots, etc.) or income-producing improvements (e.g., crops, high voltage power lines, oil wells, etc.). For Newport Beach, the 400-acre Banning Ranch development denied by Coastal Commission was identified as “vacant” in prior Housing Elements; however, because it is used for oil wells, it would no longer be considered vacant. Therefore, Newport Beach, and most jurisdictions in the region, will have to rely on non-vacant sites for their Housing Element Sites Inventory. When a jurisdiction relies on non-vacant sites for more than 50 percent of its lower-income RHNA needs, a higher standard of review (substantial evidence) of sites becomes required.
- **New Requirement – Reuse of Sites:** Non-vacant sites used in the prior housing element planning period (5<sup>th</sup> cycle) and vacant sites used in the last two consecutive planning periods (4<sup>th</sup> and 5<sup>th</sup> cycles), can no longer be used in the upcoming planning period, unless a rezone program is added to the housing element. This would require a rezoning of previously identified sites within three years to allow by-right development of housing projects in which at least 20 percent of the units are affordable to lower-income households.
  - “By-right” means no discretionary permit requiring a public hearing and no review of the project under the California Environmental Quality Act (CEQA). The problem

is that rezoning itself is not exempt from CEQA. Therefore, to authorize and complete the by-right rezoning, we will need to conduct a thorough and lengthy CEQA review upfront of the potential impacts of this by-right development as part of the Housing Element update process. Furthermore, it is anticipated the City may receive significant opposition and challenge to the required CEQA analysis.

- Although Newport Beach's current 5<sup>th</sup> cycle RHNA is a total of five units, the City maintained a sites inventory that accommodates over 4,600 units (including potential redevelopment of Banning Ranch). Originally, it was thought that maintaining the sites inventory was a benefit to the development community searching for sites; however, it is now evident that the City is punished for maintaining a robust list during its 5<sup>th</sup> cycle. This now results in a challenging rezone requirement for the upcoming 6<sup>th</sup> cycle.
- **New Requirement- Substantial Evidence**: When a jurisdiction relies on non-vacant sites for more than 50 percent of its RHNA lower-income households, the non-vacant site's existing uses are automatically presumed to be an impediment to housing development. In this case, the housing element analysis must demonstrate with substantial evidence that the existing use(s) will likely be discontinued during the planning period.
  - This is problematic because most jurisdictions, including Newport Beach, will now need to rely on non-vacant sites to meet their entire RHNA, including the lower-income requirements. "Substantial evidence" is described as including facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. Illustrative examples of substantial evidence include proof that any existing tenants' leases will expire early in the planning period. Other examples include less likely scenarios of a building permit issued for removal of existing use(s) or development agreement terms.
  - It will take a substantial time and effort to reach out to individual property owners to help educate them on the City's efforts and to eventually obtain leasing information. For many different reasons, property owners would undoubtedly be hesitant and under no obligation to provide this proprietary information to jurisdictions.
- **Alternative Means to Sites Inventory**- In very limited circumstances, alternate means of meeting RHNA requirements are allowed, including use of Accessory Dwelling Units (ADUs) and Alternative Adequate Sites:
  - **Accessory Dwelling Units (ADUs)**- Although State law clearly allows ADUs to count towards RHNA, the difficulty is showing how a Housing Element may satisfy its RHNA requirements through the anticipated construction of ADUs. The current Draft Guidebook provides HCD substantial discretion in determining the amount of credit a jurisdiction can receive and continues to rely heavily upon past performance.

- This is problematic because most jurisdictions prohibited ADUs until State law recently changed in 2017. Even then, City's maintained some discretion in where and how they could be developed, limiting their use and frequency. However, State law significantly changed in 2019, to remove the barriers to development of ADUs. In fact, they are now permitted by right on most residentially zoned lots and local jurisdictions have limited discretion. Homeowners are only now becoming aware of the possibility of ADUs and, with the elimination of owner-occupancy requirements, developers and investors are starting to become interested in this product type as well. The development of ADUs is anticipated to exponentially grow in the next several years at a rate that cannot be predicted based on past performance. Anecdotally, the City of Newport Beach is seeing a significant uptick in customer interest in developing ADUs through everyday interactions at its Building Permit Center counter. These types of interactions are not tracked and would likely not be considered by HCD in the current draft.
- HCD also states that other analyses may be used and reviewed on a case-by-case basis. This is not helpful as it provides no direction to jurisdictions and remains completely subjective. The Guidebook should give jurisdictions increased ability to count actual ADU capacity towards their RHNA requirements with very clear objective standards. The recommended legislative amendments attempt to provide those objective standards.
- **Alternative Adequate Sites-** Generally, RHNA credit is obtained for potential new construction units, except Government Code 65583.1(c) currently allows local governments to meet up to 25 percent of sites requirements for RHNA by providing affordable units through the following alternatives:
  - *Rehabilitation;*
  - *Conversion;* and/or
  - *Preservation*

The HCD Guidance is very brief on the use of these Alternative Adequate Sites allowances and emphasizes that only under limited circumstances is this credit allowed. The recommended legislative amendments would eliminate barriers to utilizing the Alternative Adequate Sites provisions towards RHNA site requirements, providing jurisdictions a useful tool in obtaining Housing Element compliance.

### **Examples of Alternative Adequate Sites Projects**

As requested, the following two City approved affordable housing conversion projects resulted in a net increase of affordable housing; however, due to restrictive program requirements, they were not credited towards the City's RHNA:

- **The Bays Apartments (1 Baywood Drive)** – In conjunction with the development of a 524-unit luxury rental housing project in the City, and to satisfy the City's affordable housing requirements, the developer agreed to convert 105 market-rate rental units

located in another rental housing project (The Bays Apartments) located in the City to affordable housing for moderate-income households for a term of 30 years.

This affordable housing conversion project was not eligible for credit under the Alternatives Adequate Sites program because the City itself did not commit any financial assistance to the conversion project. In order for the project to have been eligible, the law requires that a jurisdiction provide committed assistance to the project within the first two years of the planning period. Therefore, the proposed legislative amendment would clarify that a prerequisite for program compliance include committed assistance from a city or county, *or from a private entity satisfying a city or county's housing requirement.*

- **The Cove (6001 Coast Boulevard)** – The City granted approximately \$2 million of Affordable Housing Funds to a permanent supportive housing project. The project consisted of the acquisition, rehabilitation, and conversion of an existing 12-unit apartment complex for affordable housing for homeless veterans and low-income seniors.

Although the City did provide committed assistance to project financing, the assistance was not provided until the after the first two years of the planning period and could not obtain RHNA credit. Therefore, the proposed legislative amendment would have helped qualify this project by removing the requirement that committed assistance be provided within the first two years of the planning period.

If you have any questions or would like to meet to discuss in more detail, please let me know. Your assistance is greatly appreciated.

Sincerely,



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Jaime Murillo  
Principal Planner

Cc: Grace Leung, City Manager  
Seimone Jurjis, Community Development Director