

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

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November 19, 2021

Joel Rojas, Director
Development Services Department
City of San Juan Capistrano
32400 Paseo Adelanto
San Juan Capistrano, CA 92675

Dear Joel Rojas:

RE: City of San Juan Capistrano's 6th Cycle (2021-2029) Draft Housing Element

Thank you for submitting the City of San Juan Capistrano's (City) draft housing element received for review on September 22, 2021. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by a conversation on November 18, 2021 with Laura Stokes (Housing Supervisor/Associate Planner) and your consultants from Michael Baker International. In addition, HCD considered comments from the Kennedy Commission; People for Housing Orange County; Endangered Habitats League; Measure M2 Environmental Coalition; Friends of Harbors, Beaches, and Parks; and Amanda Johnson, pursuant to Government Code section 65585, subdivision (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 Gov. Code). The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

The City's statutory deadline to adopt a housing element was October 15, 2021. For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government fails to adopt a compliant housing element within 120 days of this statutory deadline, then any rezoning to accommodate the regional housing needs allocation (RHNA), including for lower-income households, shall be completed no later than one year from the statutory deadline. Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i).

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element

process, the City must continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available while considering and incorporating comments where appropriate.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City will meet housing element requirements for these and other funding sources.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the City to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at:

http://opr.ca.gov/docs/OPR_Appendix_C_final.pdf and

http://opr.ca.gov/docs/Final_6.26.15.pdf.

HCD appreciates the hard work and dedication of Laura Stokes (Housing Supervisor/Associate Planner) and your consultants during the housing element update. We are committed to assist the City in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Marisa Prasse, of our staff, at Marisa.Prasse@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul McDougall", with a stylized flourish at the end.

Paul McDougall
Senior Program Manager

Enclosure

APPENDIX CITY OF SAN JUAN CAPISTRANO

The following changes are necessary to bring the City'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 HCD's website at <http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>. Among other resources, the housing element section contains HCD's latest technical assistance tool, Building Blocks for Effective Housing Elements (Building Blocks), available at <http://www.hcd.ca.gov/community-development/building-blocks/index.shtml> and includes the Government Code addressing State Housing Element Law and other resources.

A. Housing Needs, Resources, and Constraints

1. *Affirmatively further[ing] fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2...shall include an assessment of fair housing in the jurisdiction. (Gov. Code, § 65583, subd. (c)(10)(A).)*

Racial/Ethnic Concentrated Areas of Poverty (R/ECAP) and Affluence (RCAA): While the element identifies one census tract (320.61) as a Racially Concentrated Area of Affluence (RCAA), based on data provided regarding race/ethnicity and income, additional census tracts that are disproportionately white and high-income should also be analyzed as RCAAs. Adequate analyses of RCAAs will help guide goals and actions to address fair housing issues.

Disparities in Access to Opportunity: The element provides good information and analyses regarding access to opportunity for education, economic, and transportation; however, the disparities in access to environmental opportunity sections need additional information and analysis, particularly regarding the prevalence of flood risk in certain parts of the city. The element should analyze differences in environmental hazard exposure between census tracts and how these overlap with protected class groups.

Disproportionate Housing Needs, Including Displacement: The element does include some information on overcrowded households, substandard housing conditions, homelessness, and cost-burdened households, but it should also analyze local spatial trends of homelessness in the city, as well as any patterns and trends in coincidence of homelessness with protected class groups in the city. Furthermore, the displacement analysis should consider displacement risk from environmental hazards such as flood zones.

Other Relevant Factors: The element must include other relevant factors that contribute to fair housing issues in the jurisdiction. The element should analyze historical land use and investment practices or other information and demographic trends. While the element includes local knowledge and context throughout much of the assessment of fair housing analyses, the element is missing an analysis of other relevant factors such

as historical land use and investment practices, historical patterns of segregation, or other information and demographic trends that may have impeded housing choices and mobility.

Site Inventory: The element evaluates regional housing needs allocation (RHNA) sites by proportion of the RHNA and acreage for some assessment of fair housing components; however; this analysis should also address the number of units by income, magnitude of the impact on existing population, any isolation of the RHNA by income group and analyze whether sites improve or exacerbate segregation and integration. This analysis should also address concentrated areas of affluence or areas of higher income and disproportionate housing needs, including displacement risks. Finally, the analysis should account for pending and entitled projects. Based on the outcomes of the analysis, the element should include programs to promote more inclusive communities and equitable quality of life.

Contributing Factors: Based on the outcomes of a complete analysis, the element should re-evaluate and prioritize contributing factors to fair housing issues as appropriate.

Goals, Priorities, Metrics, and Milestones: The element must add or revise programs based on a complete analysis, listing, and prioritization of contributing factors to fair housing issues. Goals and actions must significantly seek to overcome contributing factors to fair housing issues and include metrics and milestones to target meaningful fair housing results. Actions should address housing mobility enhancement, new housing choices and affordability in high opportunity areas, place-based strategies for community preservation and revitalization and displacement protection.

2. *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. (Gov. Code, § 65583, subd. (a)(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. (Gov. Code, § 65583, subd. (a)(2).)

Extremely Low-Income (ELI) Households: While the element identifies the projected and existing number of ELI households, it must still analyze their existing housing needs. This is particularly important given the unique and disproportionate needs of ELI households. For example, the element could analyze tenure, cost burden, overcrowding and other household characteristics then examine trends and the availability of resources to determine the magnitude of gaps in housing needs.

Overpayment by Tenure: While the element identifies the total number of overpaying households, it must quantify and analyze the number of overpaying households by tenure (i.e., renter and owner), including lower-income households.

3. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

Nonvacant Sites Analysis: While the element identifies nonvacant sites to accommodate the regional housing need for lower-income households, the element must further describe the methodology used to determine the additional development potential within the planning period. The methodology must consider factors including the extent to which existing uses may impede additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites. (Gov. Code, § 65583.2, subd. (g).) For nonresidential sites such as Capistrano Center, Price Club, and the Industrial Overlay, the inventory could also describe whether the use is operating, marginal or discontinued, any presences of existing leases or other contracts that would perpetuate the existing use or prevent redevelopment and the condition of the structure or could describe any expressed interest in redevelopment by property owners. The element should describe past examples and trends of redevelopment of commercial and industrial uses into residential in the city. For additional information and sample analysis, see the Building Blocks at: <http://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/analysis-of-sites-and-zoning.shtml#analysis>.

In addition, the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households. For your information, the housing element must demonstrate existing uses are not an impediment to additional residential development and will likely discontinue in the planning period. (Gov. Code, § 65583.2, subd. (g)(2).) Absent findings (e.g., adoption resolution) based on substantial evidence, the existing uses will be presumed to impede additional residential development and will not be utilized toward demonstrating adequate sites to accommodate the RHNA.

Environmental Constraints: The element must describe environmental conditions within the city, relate those conditions to identified sites, and describe any other known environmental or other constraints, that could impact housing development on identified sites in the planning period. This is particularly significant as it appears that many of the areas in the city where a large share of development is planned is subject to significant flood risk.

Map of Sites: While the element includes a map of sites, the map should include all sites to meet the RHNA (including pending or entitled projects). For additional information, see the sites inventory analysis section of the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/inventory-of-land-suitable.shtml>.

Water and Sewer Priority: For your information, water and sewer service providers must establish specific procedures to grant priority water and sewer service to developments with units affordable to lower-income households. (Gov. Code, § 65589.7.) Local governments are required to immediately deliver the housing element to water and sewer service providers. The element must demonstrate compliance with these requirements and include programs if appropriate. For additional information and sample cover memo, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/other-requirements/priority-for-water-sewer.shtml>.

Electronic Sites Inventory Form: Pursuant to Government Code section 65583.3, subdivision (b), the City must utilize standards, forms, and definitions adopted by HCD when preparing the sites inventory. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml> for a copy of the form and instructions. The City can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance. Please note, upon adoption of the housing element, the City must submit an electronic version of the sites inventory with its adopted housing element to sitesinventory@hcd.ca.gov.

Zoning for a Variety of Housing Types:

- *Emergency Shelters:* The element should clarify if there are any spacing requirements and provide greater detail regarding development standards and whether they pose a constraint to the development of emergency shelters.
 - *Accessory Dwelling Units (ADUs):* The City submitted its ADU ordinance to HCD for review on November 17, 2021. Based on the information provided in Table 49 on p. 124, the City may need to include a program to update its ADU ordinance to comply with state laws and allow ADUs in all residential zones, and to ensure ADUs are not limited to certain size parcels. HCD will review the ordinance for compliance issues and send findings under separate cover. Based on the outcomes of this review, the element may need to include a program to update the City's ADU ordinance and comply with state law.
 - *Single-Room Occupancy (SROs):* The element must identify zoning and development standards that will encourage and facilitate the development of SROs and include programs as appropriate.
4. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures... (Gov. Code, § 65583, subd. (a)(5).)*

On-/Off Site Improvements: The element must identify actual standards for subdivision level improvement requirements, such as minimum street widths (e.g., 40-foot minimum street width) and analyze their impact as potential constraints on housing supply and

affordability. While the element broadly describes on- and off-site improvements, it must still identify and analyze the actual standards.

For additional information and a sample analysis, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/constraints/codes-and-enforcement-on-offsite-improvement-standards.shtml>.

Design Review: The element must describe and analyze the design review guidelines and process, including approval procedures and decision-making criteria, for their impact as potential constraints on housing supply, cost, timing, and approval certainty. This is especially important given the architectural control review process only applies to projects with a zoning designation of eight units per acre or higher and/or the construction of three or more units on a lot. The element should describe the required findings of the architectural control review procedure, how long the process usually takes, and discuss whether objective standards, guidelines or other processes improve development certainty and mitigate timing and cost impacts.

Processing and Permit Procedures: While the element describes processing times for a few recent projects, the element must analyze why some of these projects had long processing times at certain points in the approval process. The analysis should address impacts as potential constraints on housing supply, cost, timing, feasibility, and approval certainty. For example, the analysis should consider processing and approval procedures and time for typical single- and multi-family developments, including type of permit, level of review, number of hearings, approval findings and any discretionary approval procedures.

Constraints on Housing for Persons with Disabilities:

- ***Community Care Facilities with Six or Fewer Persons:*** The element describes that community care facilities for six or fewer persons are permitted in all residential zones in Table 49 on p.124. However, these provisions appear to be limited to community care facilities licensed by the state. Yet, the state does not license all community care facilities or group homes serving six or fewer persons. The element should either clarify that community care facilities without licenses are also allowed in all residential zones or include a program to address this constraint on housing for persons with disabilities.
- ***Community Care Facilities for Seven or More Persons:*** The element limits community care facilities for seven or more persons to the P&I zone, unlike other similar uses, and is unclear whether these uses are subject to a conditional use permit. The element should specifically analyze these constraints for impacts on housing supply and choices, approval certainty and objectivity for housing for persons with disabilities and modify Program 12 as appropriate, such as committing to allow these uses in all zones that allow residential uses.
- ***Reasonable Accommodations:*** The element should describe and evaluate the approval process, including approval findings, for a reasonable accommodation request.

5. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including... requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Government Code section 65583.2, and the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a locality's share of the regional housing need in accordance with Government Code section 65584... (Gov. Code, § 65583, subd. (a)(6).)*

Requests for Lesser Densities and Permit Times: While the element identified requests to develop housing at densities below those anticipated and the time between approval and building permit, it should analyze these circumstances, including addressing any hinderances, and add or modify programs as appropriate.

6. *Analyze any special housing needs such as elderly; persons with disabilities, including a developmental disability; large families; farmworkers; families with female heads of households; and families and persons in need of emergency shelter. (Gov. Code, § 65583, subd. (a)(7).)*

The element includes some general quantification; however, the element should include analysis of households with special housing needs. The analysis should include, but is not limited to, factors such as trends, household income, tenure, housing types, zoning, and available resources. In addition, the element includes information on agricultural employment in the City and County from the American Community Survey (ACS). However, ACS data likely undercounts farmworkers, does not address seasonal and permanent farmworkers and farmworkers from the broader area and those employed seasonally may have housing needs. The element should acknowledge the housing needs of permanent and seasonal farmworkers at a county-level (e.g., using USDA county-level farmworker data) and include programs as appropriate.

B. Housing Programs

1. *Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that 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, the 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. (Gov. Code, § 65583, subd. (c).)*

To have a beneficial impact in the planning period and address the goals of the housing element, programs must be revised with discrete timelines, objectives, and specific and clear commitment to outcomes, as follows:

- *Program 8 (Owner Occupied Rehabilitation Program)*: The Program should include specific commitment with discrete timelines such as annual marketing at community events, including information in utility mailers or canvassing specific neighborhoods.
- *Program 16 (Residential Rehabilitation)*: The Program includes several potential actions such as investigating opportunities, assisting property owners and considering volunteer programs, but it should include specific and clear commitment to deliverables, including discrete timelines (e.g., once a year).
- *Program 21 (Place-based Improvements)*: The program should be revised to include specific and clear commitment to deliverables, including discrete timelines concerning the Capital Improvement Plan (CIP) planning and implementation timeline. For example, the Program could be revised to detail how and to what degree capital improvement projects will be prioritized in underserved areas, and what degree of investment will be funded.
- *Rent Control*: As noted on page 97, the element should include a program to address displacement risk and stabilize tenancy in older rental housing.

2. *Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county'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, and to comply with the requirements of Government Code section 65584.09. 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, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. (Gov. Code, § 65583, subd. (c)(1).)*

As noted in Finding A3, the element does not include a complete site analysis, therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element should be revised as follows:

- *Program 2 (Sites Inventory Monitoring)*: While the element includes very conservative assumptions related to nonresidential overlay zoning (e.g., industrial), it should specifically annually monitor this new zoning and commit to alternatives (e.g., incentives, rezoning) within a specific time if found to be ineffective in facilitating residential development.
- *Program 3 (Facilitate ADU Production)*: The Program commits to monitor ADU production and affordability and if goals are not met, remove constraints, and evaluate the RHNA. However, the Program should clearly commit to alternative actions such as additional incentives and rezoning by a date certain upon monitoring (e.g., within 6 months).

- *Program 12 (Emergency, Transitional and Supportive Housing):* The Program intends to address various zoning provisions, but it must include specific commitment to amend zoning. For example, the Program commits to “review” or “if necessary, amend”; however, based on the information in the element, a review has been completed and amendments are necessary and as a result the Program should be revised with clear and specific commitment to amend zoning.

Furthermore, the Program conflates transitional and supportive housing with group homes and community care facilities, including limits on the number of persons. By-right permanent supportive housing is in addition and unique from group homes, care facilities and general transitional and supportive housing pursuant to Government Code section 65651. The Program should include clear and specific commitment to amend zoning pursuant to Government Code section 65651 and to permit transitional and supportive housing as residential uses in all zones allowing residential uses and only subject to those restrictions that apply to other residential dwellings of the same type in the same zone. This should be separate from group homes and care facilities, including limits on the number of persons.

3. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (Gov. Code, § 65583, subd. (c)(3).)*

As noted in Findings A4 and A5, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address, remove, or mitigate any identified constraints. In addition, the element should be revised as follows:

- *Program 13 (Objective Review and Ministerial Approval):* The Program commits to “where necessary, the city will establish objective review criteria in guidelines”. Pending a full analysis of the Architectural Control review procedure, the element may need to revise this commitment to remove the “where necessary” language to ensure objective review criteria is established.
- *Program 15 (Zoning Code Review and Cleanup):* The Program commits to “review and amend as necessary”, “review and revise as necessary” or merely “review” various constraints. However, the element has already reviewed these standards and identified constraints to be addressed. The Program should revise these commitments to ensure zoning is amended to address and remove or mitigate constraints. In addition, the element notes other constraints such as setbacks and growth control allocations and the Program should be revised to include all identified constraints.

4. *Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion,*

sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics protected by the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2), Section 65008, and any other state and federal fair housing and planning law. (Gov. Code, § 65583, subd. (c)(5).)

As noted in Finding A1, the element must include a complete analysis of AFFH. Based on the outcomes of that analysis, the element must add or modify programs to have specific commitment, milestones, and metrics to overcome fair housing issues and to enhance housing mobility strategies, encourage development of new affordable housing in high resource areas, improve place-based strategies, and protect residents from displacement.

C. Quantified Objectives

Establish the number of housing units, by income level, that can be constructed, rehabilitated, and conserved over a five-year time frame. (Gov. Code, § 65583, subd. (b)(1 & 2).)

While the element includes quantified objectives for construction and rehabilitation, it includes an objective of conserving one unit throughout the eight-year planning period. This unit is the only unit at-risk of converting to market rate uses in the next ten year. However, conservation objectives are not limited to at-risk preservation and given various comments and analysis such as those related to displacement risk, objectives could be increased to reflect the crucial need for conserving the existing affordable housing stock. The element includes many programs that could be utilized such as Program 5 (Housing Choice Voucher), 9 (Little Hollywood), 10 (Mobile Home Park Rent Control), 17 (Displacement Prevention), 18 (Fair Housing and Equal Housing Opportunity) and 19 (Education, Training and Resources).

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. (Gov. Code, § 65583, subd.(c)(8).)

While the element summarizes public input from workshops and the survey, the element should address all public comments received, including those that raise concerns regarding Oso Ranch and the suitability or feasibility of some sites included in the site inventory.

In addition, based on comments during our review call with City staff, HCD understands the City made the element available to the public at the same time as submittal to HCD. By not providing adequate time for the public to review and comment on a draft of the element in advance of submission, the City has not yet complied with statutory mandates to make a diligent effort to encourage the public participation in the development of the element and it reduces HCD's ability to consider public comments in its review. The availability of the document to the public and opportunity for public comment at least three to four weeks prior to submittal to HCD is essential to the public process and HCD's review. The City

must proactively make future revisions available to the public, including any commenters, prior to submitting any revisions to HCD and diligently consider and address comments, including revising the document where appropriate. HCD's future review will consider the extent to which the revised element documents how the City solicited, considered, and addressed public comments in the element. The City's consideration of public comments must not be limited by HCD's findings in this review letter.

E. Consistency with General Plan

The housing element shall describe the means by which consistency will be achieved with other general plan elements and community goals. (Gov. Code, § 65583, subd. (c)(7).)

The element (p. 1) states the housing element is consistent with the direction of the other general plan elements, but it should also describe the means by which consistency will be maintained throughout the planning period. To maintain consistency, the City could consider an internal consistency review as part of its annual general plan implementation report required under Government Code section 65400.