

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

2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



December 17, 2021

Belinda Deines, Principal Planner  
Community Development Department  
City of Dana Point  
33282 Golden Lantern  
Dana Point, CA 92629

Dear Belinda Deines:

**RE: City of Dana Point's 6<sup>th</sup> Cycle (2021-2029) Revised Draft Housing Element**

Thank you for submitting the City of Dana Point's (City) revised draft housing element update received for review on October 19, 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 telephone conversation on December 13, 2021. In addition, HCD considered comments from Welcoming Neighbors Home Initiative – Tapestry A Unitarian Universalist Congregation, The Kennedy Commission, the Southwest Regional Council of Carpenters, and Josh Albrektson, pursuant to Government Code section 65585, subdivision (c).

The revised draft housing element addresses many statutory requirements described in HCD's August 16, 2021 letter; however, additional revisions are necessary to fully 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.

As a reminder, the City's 6th cycle housing element was due October 15, 2021. As of today, the City has not completed the housing element process for the 6th cycle. The City's 5th cycle housing element no longer satisfies statutory requirements. HCD encourages the City to revise the element as described above, adopt, and submit to HCD to regain housing element compliance.

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).

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](http://opr.ca.gov/docs/OPR_Appendix_C_final.pdf) and

[http://opr.ca.gov/docs/Final\\_6.26.15.pdf](http://opr.ca.gov/docs/Final_6.26.15.pdf).

HCD appreciates the hard work and dedication the housing element update team provided in preparation of the City's housing element. HCD is committed to assisting 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](mailto:Marisa.Prasse@hcd.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul McDougall". The signature is stylized and somewhat cursive.

Paul McDougall  
Senior Program Manager

Enclosure

## APPENDIX CITY OF DANA POINT

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. 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. (Gov. Code, § 65588 (a) and (b).)*

The element was revised to provide more detail of past programs; however, there are still a few programs that still fail to adequately assess the effectiveness of past programs and how these will be modified based on that effectiveness. These include:

#### **5.4 (Housing for Persons with Disabilities, Including Persons with Developmental Disabilities):**

While the element added information about meeting with one interested party, the revised element still fails to adequately analyze why this program failed to result in ten housing units and the suitability of the program moving forward. The element could discuss any proactive actions the city took to assist in the development or rehabilitation of 10 housing units for persons with disabilities, and whether regulatory incentives were established.

**6.3 (Section 8 Rental Assistance):** While the revised element added information regarding the number of households utilizing housing choice vouchers in the City, the element still failed to analyze the effectiveness of the program and its suitability moving forward. The element could discuss how the number of housing choice vouchers in Dana Point has changed over the planning period.

### **B. 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).)*

**Integration and Segregation:** The revised element includes some additional data on the rates of white and multi-racial groups over time, but still fails to include a full analysis of integration and segregation by race and ethnicity as it fails to include data on the rates

of Black, Native American, Asian, or Hispanic residents in city and in comparison to the region. While the revised element includes information regarding the history of practices such as redlining at the national level, the element should be revised to include a discussion of historical land use and investment practices at the local level. It is not an innate feature that inland areas have higher density and therefore more affordability as characterized in the discussion on page 60 of the revised element—this is a policy and zoning choice, and one that local governments can and have impacted. Lastly, the element’s summary of integration and segregation fair housing issues should be revised to reflect the data and analyses.

Access to Opportunity: While the revised element includes information regarding spatial analyses of access to opportunity, the element should discuss the lack of transit choices in higher resource areas as a barrier to housing choice.

Disproportionate Housing Needs, Including Displacement: While this element was revised to include additional information countywide data, it largely fails to address HCD’s prior review. In particular, the element fails to analyze spatial patterns and trends of overcrowding, substandard housing, and homelessness within the city (ex: by census tract). Furthermore, the element still must provide data on overpayment by income as detailed in Finding B2.

Sites Inventory: The revised element largely fails to address HCD’s prior review. The element should analyze sites by each fair housing issue area of the Assessment of Fair Housing, not just the composite opportunity maps, and should address how sites are identified to improve conditions (or if sites exacerbate conditions, how a program can mitigate the impact). Under the current analysis, the site inventory further entrenches existing fair housing issues based on the composite access to opportunity maps without providing for programs to mitigate these impacts, and therefore still must meet this requirement.

Contributing Factors to Fair Housing Issues: The element should reassess and prioritize contributing factors upon completion of analysis and make revisions as appropriate. In addition, the element now lists seven prioritized contributing factors. However, these factors do not appear to reflect the full analysis. For example, none of the contributing factors relate to patterns of integration and segregation, despite a significant portion of the analysis showing a predominantly whiter community with an isolation of sites identified for lower-income households.

Goals, Actions, Metrics, and Milestones: As noted in the prior review, the element must be revised to add or modify goals and actions based on the outcomes of a complete analysis. Goals and actions must specifically respond to the analysis and to the identified and prioritized contributing factors to fair housing issues and must be significant and meaningful enough to overcome identified patterns and trends and foster inclusive communities. Actions must have specific commitment, metrics, and milestones, including specific dates, as appropriate and must address housing mobility enhancement, new housing choices and affordability in high opportunity areas, place-based strategies for community preservation and revitalization and displacement

protection. These actions should go well beyond status quo programs, coordination activities, studies, and data exercises.

2. *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).)*

Overpayment: While the revised element identifies the total number of overpaying households by tenure, it still should quantify and analyze the number of lower-income households paying more than 30 percent of their income on housing. For additional information and sample analysis, see the *Building Blocks* at <http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>.

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).)*

Aggregated Sites–Multiple Parcels Comprising Sites: The revised element fails to analyze whether prior projects that have been developed on sites comprised of multiple parcels are similar to the parcels for consolidation in the site inventory and if prior projects were developed at similar affordability levels to those proposed in the site inventory.

Realistic Capacity: While the element added information in regard to sites V1 and V2, the revised element still fails to adequately provide support for its assumptions of buildout for sites included in the inventory. The element should provide a description of the methodology it utilized for calculating the realistic capacity, and how that was tailored to each site. This analysis should consider the likelihood of nonresidential development, performance standards, and local development trends supporting residential development at the proposed densities and affordability.

Suitability of Nonvacant Sites: While the revised element provides information on national trends in retail and online shopping, additional information and analysis is needed to demonstrate potential for additional residential development on these sites. For instance, the element cites general housing trends in the for the current market demand related to commercial uses but does not relate how those trends relate to the sites and existing uses listed in the inventory. As stated in HCD's prior letter, the element must 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 of similar shopping centers in Dana Point and the surrounding areas, describe whether the use is operating, ownership interest, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites. (Gov. Code, § 65583.2, subd. (g).). Please be aware if the City relies on nonvacant sites to accommodate 50 percent or more of the housing needs for lower-income households, it triggers

requirements to make findings based on substantial evidence that the existing use is not an impediment and will likely discontinue in the planning period.

#### Zoning for a Variety of Housing Types:

- *Emergency Shelters:* While the element added information regarding capacity for beds citywide, the revised element still does not analyze the 20-bed limit as a constraint to development of an emergency shelter. Furthermore, the City's emergency shelter parking requirements described in Table H-27 on page 112 are not compliant with AB 139, and as a result the element should include a program to update its emergency shelter parking requirements to comply with AB 139.
- *Accessory Dwelling Units (ADUs):* In October 2021 the City submitted its adopted ADU ordinance for review by HCD. After a cursory review of the City's ordinance, HCD discovered several areas inconsistent with State ADU Law. For example, the ordinance applies underlying development standards to ADUs, requires correction of nonconforming uses, includes nonministerial permits, includes size restrictions, requires homeowner's association approval, and unduly limits ADUs in newly constructed multi-family buildings. As a result, the element should add a program to update the City's ADU ordinance to comply with state law. HCD will provide a complete listing of ADU noncompliance issues under a separate cover.

Electronic Sites Inventory: As a reminder, pursuant to Government Code section 65583.3, the City must submit an electronic sites inventory with its adopted housing element. The City must utilize standards, forms, and definitions adopted by HCD. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml#element> for a copy of the form and instructions. The City can reach out to HCD at [sitesinventory@hcd.ca.gov](mailto:sitesinventory@hcd.ca.gov) for technical assistance.

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).)*

*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).)*

Land Use Controls: The element was not revised to address this finding. Please see the prior HCD review.

Fees and Exactions: While the revised element includes some information about an update to fees in 2016, the element still does not analyze fees as a potential constraint on housing supply and affordability. For example, the analysis could identify the total amount of fees and their proportion to the development costs for both single family and multifamily housing.

Local Processing and Permit Procedures: While the element was revised to include information about the city's preliminary application review process and concurrent reviews of plans, the element still largely does not address the findings in HCD's prior letter. In particular, the element fails to analyze the city permit processing approval procedures by zone and housing type (e.g., multifamily rental housing, mobile homes, housing for agricultural employees, supportive housing) as a potential constraint. For example, the analysis should provide information on processing and approval procedures and time for recent and typical single- and multifamily developments, including type of permit, level of review, approval findings and any discretionary approval procedures.

In addition, the element now includes information on the city's site development permit process. The city should describe any specific standards for building design and analyze these as potential constraints.

Housing for Persons with Disabilities: The prior review noted the element should specifically analyze the impacts Dana Point's Municipal Code—6.14.002: Public Nuisances Designated has or has had on housing supply and residents affected by the amendment particularly when meeting the housing needs of persons with disabilities. The revised element fails to fully analyze its amended municipal code as a potential constraint to group homes. The revised element implies there is some confusion in its ordinance, and as a result, the element should include a program to revise the ordinance to clarify any ambiguities and ensure conditional use permits (CUPs) are not required for group homes for six or fewer persons.

Lastly, the prior review noted that the element should analyze the CUP process for residential care facilities serving seven or more persons as a constraint. The City's zoning code appears to isolate and regulate various types of housing for persons with disabilities based on the number of people and other factors. Zoning and standards should simply implement a barrier-free definition of family instead of subjecting, potentially persons with disabilities, to special regulations. These housing types in many cases are subject to a CUP potentially subjecting housing for persons with disabilities to higher discretionary standards where an applicant must demonstrate compatibility with the neighborhood, unlike other residential uses. The element should include specific analysis of these and any other constraints, including their enforcement, for impacts on housing for persons with disabilities and add or modify programs as appropriate.

5. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, the cost of construction, the 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. The analysis shall also demonstrate local efforts to remove nongovernmental constraints that create a gap between the locality's planning for the development of housing for all income levels and the construction of that housing. (Gov. Code, § 65583, subd. (a)(6).)*

Permit Times: The element was not revised to address this requirement relative to approval times. Please see the prior HCD review.

### **C. 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... (Gov. Code, § 65583, subd. (c).)*

As noted in the prior review, the element must revise programs with specific commitment and definitive implementation timelines. Several programs were revised with timelines. However, programs must still be revised, as follows:

- *Program 1.1 (Adequate Sites)* should be revised to describe the months the general plan update to expand opportunities will be initiated and completed.
  - *Program 2.1 (Rental Assistance)* revisions fail to describe how and when the city will coordinate with the United Way on the WelcomeHomeOC program to promote vouchers. Should be revised to include this information, with greater specificity regarding actions and dates.
  - *Program 2.2 (Mortgage Assistance)* based on the review and revise analysis this program should be revised to describe how the city will coordinate with the county to increase awareness of programs.
  - *Program 3.1 (Parking Implementation Plan)* based on the revise and revise analysis this program should be revised to describe how and in what ways the parking implementation plan will be updated in 2024.
  - *Program 3.2 (Development Fees)* should be revised to include a commitment to implement and adopt recommendations.
  - *Program 4.2 (Rental Rehabilitation)* should be revised to provide greater detail and a firmer commitment to actions following exploration.
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 B3, 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 to accommodate the regional housing needs allocation (RHNA) or zoning available to encourage a variety of housing types. In addition:

- *Program 1.3 (Accessory Dwelling Units)* should be revised to provide greater specificity regarding what additional actions will be implemented if ADUs are not permitted as expected.

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

The prior review found the element should include specific actions to assist in the development of housing for extremely low income (ELI) and special needs households. While program 1.4 (Alternative Sites for RHNA credit) was revised to prioritize extremely low-income households, the element must establish programs that have specific outcomes for the development of extremely low-income households. See prior HCD letter.

4. *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 B4 and B5, 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 and remove or mitigate any identified constraints.

5. *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... (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding B1, the element must include a complete assessment of fair housing. Based on the outcomes of that analysis, the element must add or modify programs. As noted in HCD's prior letter, the program to affirmatively furthering fair housing (AFFH) should go beyond status quo actions, include quantifiable outcomes and concrete actions, and should generally address housing mobility, encourage new

housing development in high resource areas, improve place-based strategies, and protect existing residents from displacement.

#### **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).)*

Moving forward, the City should continue to employ a variety of methods for public outreach efforts, particularly including lower-income and special needs households and neighborhoods with higher concentrations of lower-income and special needs households. The City must continue to proactively make future revisions available to the public prior to submitting any revisions to HCD and diligently consider and address comments, including revising the document where appropriate. The City's consideration of public comments must not be limited by HCD's findings in this review letter.