

Notice of Exemption

Fee Exempt per CA Govt Code 6631

Appendix E

To: Office of Planning and Research
 P.O. Box 3044, Room 113
 Sacramento, CA 95812-3044
 County Clerk
 County of: Orange
601 N. Ross Street
Santa Ana, CA 92701

From: (Public Agency): City of Fullerton
303 W. Commonwealth Avenue
Fullerton, CA 92832
 (Address)

Project Title: 2021-2029 Housing Element

Project Applicant: City of Fullerton

Project Location - Specific:

The 2021-2029 Housing Element applies to all properties in the City of Fullerton.

Project Location - City: Fullerton Project Location - County: Orange

Description of Nature, Purpose and Beneficiaries of Project:

The Project is an update to the Housing Element of the Fullerton Plan that was previously adopted in May 2012. State Housing Law (Government Code Section 65580 [et. seq.]) mandates that local governments must adequately plan to meet the existing and projected housing needs of all economic segments of the community, including accommodating its assigned Regional Housing Needs Allocation (RHNA) as determined by the Southern California Association of Governments and approved by the State Department of Housing and Community Development. The purpose of the Project is to comply with the State-mandated requirements for the Housing Element of the General Plan

Name of Public Agency Approving Project: City of Fullerton

Name of Person or Agency Carrying Out Project: Chris Schaefer, AICP, Planning Manager

Exempt Status: (check one):

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: _____
- Statutory Exemptions. State code number: 15061(b)(3)

Reasons why project is exempt:

See attached document.

Lead Agency
 Contact Person: Chris Schaefer Area Code/Telephone/Extension: 714-738-6884

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ■ Yes No

Signature: Chris Schaefer Date: 2/27/25 Title: Planning Manager

■ Signed by Lead Agency Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
 Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____





Rincon Consultants, Inc.

180 North Ashwood Avenue
Ventura, California 93003
805-644-4455

July 31, 2024
Project No: 22-13430

Sunayana Thomas
City of Fullerton
Community and Economic Development Department
303 West Commonwealth Avenue
Fullerton, California 92832
Via email: Sunayana.Thomas@cityoffullerton.com

**Subject: CEQA Exemption Memorandum for Fullerton 6th Cycle Housing Element Update
City of Fullerton, Orange County, California**

Dear Ms. Thomas:

This memorandum provides an analysis to support the determination by the City of Fullerton (the lead agency) that the proposed Fullerton Housing Element Update is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) (“general rule” or “common sense”). This memorandum discusses the background of the proposed Housing Element Update, the requirements to apply the common sense exemption under CEQA, and the applicability of the common sense exemption to the proposed Housing Element Update.

Housing Element Update Background

As part of the 6th cycle Housing Element update, all local governments (cities and counties) are required to adequately plan to meet the housing needs of everyone in the community. This includes identifying housing sites that provide the development capacity to accommodate build out of the City’s Regional Housing Needs Allocation (RHNA) at all income levels. To address the City’s housing needs, future development would occur through a variety of methods, including development on vacant parcels, infill development in existing residential and commercial areas, the disposal of City-owned land for mixed-use development, and the projected development of accessory dwelling units (ADUs). Additionally, the future creation of a Housing Incentive Overlay Zone (HIOZ) would aid in accommodating housing needs, which is analyzed under a separate EIR including Zoning Code and General Plan amendments. In addition to the sites proposed to be rezoned, one City-owned site has been identified to accommodate the RHNA and is currently zoned to accommodate multi-family residential development as proposed in the Housing Element site inventory.

Housing elements are also required to consider ways to promote access to housing that is attainable for residents at all income levels, beyond focusing solely on opportunities for production of new units. The Fullerton Housing Element Update (HEU) would amend the Fullerton General Plan and replace the 5th Cycle Housing Element with the proposed 6th Cycle Housing Element. The proposed HEU is a policy document and would establish programs, policies, and actions to further the goal of meeting the existing and projected housing needs of all income levels of households in the Fullerton community and provides evidence of the City’s ability to accommodate the RHNA allocation through the year 2029, as established by the Southern California Association Governments (SCAG).



The Common Sense Exemption

The proposed HEU is being initiated by the City of Fullerton and would require discretionary approval from the City. Therefore, pursuant to CEQA Guidelines Section 15060(c), this activity is potentially considered a project under CEQA. Pursuant to CEQA Guidelines Section 15061(a), the lead agency (in this case, the City of Fullerton) shall determine whether the project is exempt from CEQA.

Pursuant to CEQA Guidelines Section 15061(b), a project is exempt from CEQA if:

- (1) The project is exempt by statute (see, e.g. Article 18, commencing with Section 15260).
- (2) The project is exempt pursuant to a categorical exemption (see Article 19, commencing with Section 15300 [of the CEQA Guidelines]) and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2.
- (3) The activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.
- (4) The project will be rejected or disapproved by a public agency. (See Section 15270(b)).
- (5) The project is exempt pursuant to the provisions of Article 12.5 of this Chapter.

As stated in CEQA Guidelines 15061(b)(3), where it can be seen with certainty that there is no possibility that the activity would result in a significant effect on the environment, the activity is not subject to CEQA. "A project that qualifies for neither a statutory nor a categorical exemption may nonetheless be found exempt under what is sometimes called the 'common sense' exemption, which applies '[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment'." (*Muzzy Ranch* at 380, citing CEQA Guidelines, §-15061(b)(3), and *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 113–118). Whether a particular activity qualifies for the commonsense exemption presents an issue of fact. Substantial evidence supporting the exemption may be found in the information submitted in connection with the project to support that the agency considered reasonably foreseeable physical changes in the environment and the resulting possible environmental impacts in reaching its decision. (*Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal.App.4th 273, 291; *CREED-21 v. City of San Diego* (2015) 234 Cal.App.4th 488, 510-512).

The following analysis demonstrates the HEU, as a policy document, would not have the potential to cause a significant effect on the environment and the common sense exemption applies.

Exemption Analysis and Applicability

As stated under *Housing Element Update Background* above, the HEU is a policy document that would replace the City's current Housing Element with the programs, policies, and actions proposed therein. The HEU does not include specific development projects; rather, it establishes policies and a housing plan to meet its existing and projected housing needs, including its share of the 6th cycle RHNA, and to remove constraints that hinder the City from meeting its housing needs. Additionally, the HEU does not effectuate rezones and does not add sites beyond what would be analyzed in the HIOZ project as analyzed in a separate EIR. Therefore, the HEU would not facilitate increased development beyond what is allowed in the proposed General Plan. Future housing development facilitated by the HEU would be subject to separate environmental review under CEQA and to compliance with the established regulatory framework, including federal, state, regional, and local regulations (e.g.,



Fullerton General Plan policies and Fullerton Municipal Code standards). Future housing development would also be subject to development review by the City.

Therefore, because the activity in question would involve adoption of a policy document that does not, in and of itself, include any proposed development or rezoning that would facilitate increased development, there is no possibility that the HEU would have a significant effect on the environment, and it is not subject to CEQA.

Below is a brief analysis that demonstrates adoption of the HEU would not result in a direct or reasonably foreseeable indirect physical change in the environment. Environmental resources discussed are those on the *CEQA Guidelines* Appendix G Checklist. Since the HEU would not in and of itself include any proposed development or changes to the physical environment, the following analysis is provided for informational purposes only.

- **Aesthetics.** The proposed project involves adoption of a General Plan amendment for compliance with State housing law and does not in and of itself include any proposed development or rezoning that would facilitate increased development. Further, future development requiring discretionary approval would undergo project-specific development review, including design review pursuant to Fullerton Municipal Code (FMC) Chapter 15.47, which governs site plan review and includes standards such as building height which would minimize impacts to scenic vistas, scenic resources, light or glare, and visual character. In addition, projects that require approval for a lot line adjustment, consolidation of lots, or subdivision in conjunction with approval pursuant to this chapter would be subject to requirements pursuant to Title 16 (Subdivisions). As such, its implementation would not cause a substantial adverse effect on a scenic vista, damage scenic resources within a state scenic highway, create a new source of substantial light or glare, or otherwise alter the existing visual character of the city. Therefore, there is no possibility that the HEU would have a significant effect on the environment, and no significant effect to aesthetics would occur.
- **Agriculture and Forestry Resources, Biological Resources, Cultural Resources, Geology and Soils, Mineral Resources, and Tribal Cultural Resources.** The proposed project involves adoption of a policy document and does not in and of itself include any proposed development. In addition, future development requiring discretionary approval accommodated under the proposed project would undergo project-specific developmental review to address potential impacts. Because it is a policy document that does not involve or approve physical development, the proposed project would not convert agricultural land to non-agricultural use; result in the loss or conversion of forest land; result in a substantial adverse effect to special status species, habitat, or wildlife movement; cause a substantial adverse change in the significance of a historic or archaeological resource, or human remains; cause substantial adverse effects related to seismicity, ground failure, erosion, or geologic stability; result in the loss of availability of a mineral resource; or cause a substantial adverse change in the significance of a paleontological or tribal cultural resource. Therefore, there is no possibility that the HEU would have a significant effect on the environment. Furthermore, future development would be required to comply with federal, State, and local regulations and policies to ensure a less than significant effect on the environment, including the preservation of resources and compliance with geologic safety measures. No significant effect to agriculture and forestry resources, biological resources, cultural resources, geology and soils, mineral resources, or tribal cultural resources would occur.
- **Air Quality, Energy, Greenhouse Gas Emissions, Noise, and Transportation.** The proposed project involves adoption of a policy document and does not in and of itself include any proposed development. Because it is a policy document that does not involve or approve physical development, the proposed project would not involve construction or operational activities that



would generate pollutant emissions, greenhouse gas emissions or noise, and would not directly or indirectly involve activities that increase energy demand, demand for transportation facilities, or vehicle trips. There is no possibility that the HEU would have a significant effect on the environment, and no significant effect to air quality, energy, greenhouse gas emissions, noise, or transportation would occur.

- **Hazards and Hazardous Materials, Hydrology and Water Quality.** The proposed project involves adoption of a policy document and does not in and of itself include any proposed development. Because it is a policy document that does not involve or approve physical development, the proposed project would not involve the transport, use, or disposal of hazardous materials, nor create a significant hazard to the public or environment. Similarly, because it is a policy document that does not involve or approve physical development, the proposed project would not involve changes in land use or ground disturbance that would violate water quality standards, substantially decrease groundwater supplies, substantially alter existing drainage patterns, or release pollutants in a flood hazard, tsunami, or seiche zone. There is no possibility that the HEU would result in a significant effect on the environment. Furthermore, future development would be required to comply with federal, State, and local regulations and policies to ensure a less than significant effect on the environment, including regulations and policies related to hazards and hazardous materials or hydrology and water quality. No significant effect to hazards and hazardous materials or hydrology and water quality would occur.
- **Land Use and Planning.** The proposed project involves adoption of a policy document and does not in and of itself include any proposed development. The HEU would not involve changes to the physical environment that would physically divide an established community or result in conflicts with adopted policies and regulations that intend to avoid or mitigate an environmental effect. Therefore, there is no possibility that the HEU would have a significant effect on the environment, and no significant effect to land use and planning would occur.
- **Population and Housing, Public Services, Recreation, and Utilities and Service Systems.** The proposed project involves adoption of a policy document and does not in and of itself include any proposed development. The HEU would not induce substantial unplanned population growth or displace substantial numbers of existing people or housing, as any population growth that would result from future development associated with the HEU would be considered planned, as it is part of the City's RHNA housing allocation. Additionally, the HEU would not result in substantial adverse physical impacts associated with the provision of new or physically altered government facilities; or result in physical deterioration of existing parks or recreation facilities. Similarly, the HEU would not require or result in the relocation or construction of new or expanded water, wastewater treatment or stormwater drainage, electric power, natural gas, or telecommunication facilities; nor generate demand for water supply or solid waste service. As such, there is no possibility that the HEU would have a significant effect on the environment and no significant effect to these environmental resource areas would occur.
- **Wildfire.** The proposed project involves adoption of a policy document and does not in and of itself include any proposed development. The HEU would not impair an adopted emergency response plan or emergency evacuation plan; exacerbate wildfire risks; require the installation or maintenance of infrastructure that may exacerbate fire risks; or expose people or structures to significant risks because of post fire slope instability or drainage changes. As such, there is no possibility that the HEU would have a significant effect on the environment, and no significant effect to wildfire would occur.

As discussed above, the adoption of the HEU would not facilitate specific development projects and would not authorize increased development that could result in physical changes to the environment.



Future development proposals would be required to undergo project-specific developmental review. Therefore, the HEU would not facilitate increased development beyond what is analyzed by the HIOZ project EIR. As demonstrated above, the HEU would not result in a direct or reasonably foreseeable indirect physical change in the environment and it is not subject to CEQA, pursuant to CEQA Guidelines Section 15060(c)(2). Additionally, as demonstrated above, it can be seen with certainty that there is no possibility that the HEU would have a significant effect on the environment and therefore the HEU is not subject to CEQA, pursuant to CEQA Guidelines Section 15061(b)(3). As such, the proposed HEU meets the criteria for the common sense exemption as identified above.

Determination

Based on this analysis documented in this memorandum, the proposed Housing Element Update meets the criteria for a common sense exemption pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Sincerely,
Rincon Consultants, Inc.

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