



SPECIAL TOWN COUNCIL MEETING STAFF REPORT

TO: Mayor and Town Council

FROM: Jeffrey Beiswenger, AICP, Building & Planning Director

SUBJECT: Conduct a public hearing and consider certifying an Environmental Impact Report and adopting the 2023-2031 Housing Element.

CEQA: An Environmental Impact Report (EIR) has been prepared to analyze the 2023 to 2031 Housing Element.

RECOMMENDATION

Conduct a public hearing and consider adopting:

1. Resolution 23-59. A Resolution of the Town Council of the Town of Fairfax Certifying an Environmental Impact Report and Making Certain Findings as Required by the California Environmental Quality Act ("CEQA") in Connection with the Approval of a General Plan Amendment Adopting an Update of the Housing Element for the Period of 2023-31.
2. Resolution 23-60. A Resolution of the Town Council of the Town of Fairfax Adopting a General Plan Amendment to Update the Housing Element for the Period of 2023-31 and Affirmatively Furthering Fair Housing and Comply with State Housing Element Law.

BACKGROUND

The Town of Fairfax General Plan, 2023-31 Housing Element has been updated in compliance with State law, to account for changing demographics, market conditions, and projected housing need over an eight-year planning period that runs from 2023 through 2031. This Housing Element touches many aspects of community life. It builds upon the goals, policies and implementing programs contained in the Town's 2015-2023 Housing Element and other Town policies and practices to address housing needs in the community. The overall focus of the Housing Element is to address local housing needs in compliance with State law, while also seeking to retain Fairfax's village-like quality, with distinct neighborhoods, and large areas of surrounding visible open space.

The Housing Element is one of the seven mandated elements of the General Plan, and the only element that must be updated on a set schedule, consistent with the establishment of Regional Housing Needs Allocations (RHNA), which are published at eight-year intervals.

In the last few years, the Legislature has passed multiple housing bills that prescribe new requirements for Housing Elements and new "by-right" requirements for housing projects. By-right requirements obligate cities to approve certain housing development projects without an ability to apply many local codes and standards or require public hearings. Some of these bills reduce land use control for cities without a certified Housing Element. Staff's goal for this Housing Element update is to meet the requirements established by the California Department of Housing and Community Development (HCD), preserve the Town's discretionary land use control to the maximum

extent possible and bring forward meaningful local goals, policies and programs that support housing at all levels.

ANALYSIS

The following are some of the specific purposes of the Housing Element update:

1. Increase and diversify the range of housing options available in Fairfax;
2. Address housing affordability by addressing regulatory, process, and market factors that limit housing production and preservation in Fairfax;
3. Promote suitable and affordable housing for special needs populations, including housing for lower income households, large families, single parent households, the disabled, older adults, and people experiencing homelessness;
4. Foster equal housing opportunity for all residents of Fairfax, regardless of race, religion, sex, sexual orientation or identification, marital status, ancestry, national origin, color, or ability;
5. Monitor the effectiveness of housing programs to ensure that they respond to housing needs; and
6. Ensure compliance with State housing law(s).

Amid the ongoing housing crisis in California, Fairfax is required to plan for at least 490 new housing units between 2023 and 2031, including 149 Very Low-Income units, 86 Low Income units, 71 Moderate Income units, and 184 Above Moderate Income units. As required by State law, the Housing Element includes a map of sites available for housing and an inventory of realistic capacity. The inventory demonstrates a total capacity of up to 598 new housing units, which is sufficient to meet the Town's RHNA obligations at all income levels with a buffer. This amount of development would result in approximately 1,171 new residents. The buffer is required to ensure that there is sufficient capacity to meet RHNA obligations at all times during the planning period, in the event that some sites on the inventory develop at lower densities than envisioned. Implementation of the Housing Element would primarily involve facilitation of infill development on underutilized commercial sites and ADUs, with the remainder of sites comprised of low impact clustered residential development and single-family housing.

On March 31, 2023, the Town released the Public Review Draft for the legally required 30-day local review period. The draft was amended based on comments received from the public during this period and the Town Council and sent to the California Department of Housing and Community Development (HCD) on Friday, May 12, 2023. This initiated the legally required 90-day HCD review period.

PREPARING HOUSING ELEMENT FOR TOWN COUNCIL ADOPTION

At the completion of HCD review of the May 12 draft of the Housing Element, the Town received a review letter on August 11, 2023. This letter included a list of questions and concerns about the adequacy of the draft Housing Element. Based upon that letter, additional consultations with HCD staff, public comments, and input from decision-makers, Town staff has been working to revise the draft Housing Element in preparation of public hearing and possible Town Council adoption. A public

hearing draft of the Housing Element was prepared and presented to the Planning Commission at a November 29 public hearing.

Attachment 1 to this staff report provide a description of how the August 11 letter was responded to with edits to the Housing Element document or by providing additional information and analysis to HCD staff.

The following bullet points summarized the key changes included in the public hearing [draft Housing Element](#) to respond to HCD and public comments:

- Chapter 1 (Introduction) has been revised to include a section on General Plan Consistency (p.1-7), The Housing Element is part of the General Plan and is required to be consistent with the remainder of the plan.
- Chapter 3 (Housing Resources) was updated to more thoroughly explain resources that are available to help produce housing and changes that are to be made to help produce more housing, including:
 - A description of the proposed low impact hillside development standards has been added (p.3-7).
 - More information on environmental constraints to vacant properties has been added (p.3-12 to 3-13).
 - A description of the adequacy of sites to accommodate new housing and how the development potential can be improved, including with the proposed Workforce Housing Overlay (p. 3-15 to 3-19).
 - Table 3-7 (Sites Inventory) has been amended to reflect a more detailed analysis of vacant sites and development capacity (p.3-20).
- Chapter 4 (Action Plan) was updated to revise and add more programs to help increase (or protect) the supply of new affordable housing, such as:
 - New Policy 3-5 on anti-displacement to reflect on-going coordination with Marin County (p.4-16).
 - New Program 3-6 to require replacement units for any affordable units lost (p.4-16).
 - New Program 3-H to provide housing for special needs populations (p.4-17).
 - New Program 3-I to give sewer and water hook-up priority to low-income housing developments (p.4-17).
 - New Program 4-G to include language so that any racially restrictive covenants that may still exist in deeds, covenants and other legal documents, are disavowed (p.4-21).
 - Updates to Table 4-1 Town of Fairfax Quantified Objectives (page 4-24) to reflect tenant protection measures and how those relate to preservation of existing affordable units (p.4-24).
- Appendix A. HCD Sites Inventory Form was updated to remove certain non-viable sites based on potential open space preservation.
- Appendix C. Housing Constraints was updated to explain how the Housing Action Plan will be implemented, including the addition of the following:
 - An explanation of the connection between the General Plan Land Use Element and development standards (p.C-1).

- An explanation of how the zoning ordinance was updated (or will be updated) to implement the Housing Action Plan (p.C-3).
- An explanation of how the zoning ordinance has constrained housing production in the past, continues to constrain housing production and what steps are to be taken to eliminate obstacles to implementing the Housing Action Plan (p.C-7).
- An analysis related to how Emergency Shelters can be provided under the current zoning ordinance, in compliance with State law (p.C-11).
- A new section describing how Low Barrier Navigation Centers can be built in accordance with State law due to November 2023 changes to the zoning ordinance (p.C-13).
- New text to explain how employee housing is allowed by the November 2023 updates to the zoning ordinance (p.C-14).
- A description of new housing built during the last Housing Element cycle, including new ADUs and JADUs, and Victory Village (a 54 unit, low income senior housing complex) (p.C-19).
- New information regarding other ordinances that the Town has adopted related to housing including the inclusionary housing requirement, affordable housing linkage fee, the rent stabilization ordinance and the short-term rental program (p.C-23).
- A more comprehensive discussion of fees and exactions (p.C-25).
- Amendments to Table C-7 to include comparison of Fairfax fee to other comparable jurisdictions (p.C-27).
- A comprehensive list of all Town fees related to housing development (p.C-28).
- New information on the full cost of construction (p.C-31).
- New information on the cost of financing and strategies to reduce the cost as much as possible for affordable housing projects (p.C-32 to 37).
- A description of infrastructure constraints related to the production of new housing (p. C-40 to 41).
- Appendix D. Review of Past Accomplishments was updated to more accurately capture the accomplishments of the Town during the last Housing Element cycle.
- Appendix E. Assessment of Fair Housing was updated to more clearly explain how the Housing Element will affirmatively further fair housing (AFFH) a key requirement of State housing laws, including:
 - Section E.6 (Site Inventory) to describe how available housing sites will create opportunities for new housing (p.E-57).
 - Updated Table E-13 to add columns for “Meaningful Action”, “Geographic Targeting”, and “2023-31 Metrics and Timeline”, all to demonstrate how proposed actions will further fair housing objectives.
- Appendix G. Reference Multi-family Project in Marin County expanded to include other projects in Marin County for comparison purposes to Fairfax and to help demonstrate that development is viable as proposed in the Housing Element.

ENVIRONMENTAL IMPACT REPORT

The Town of Fairfax (Town), as the Lead Agency, has prepared an Environmental Impact Report (EIR) in compliance with the California Environmental Quality Act for the Town of Fairfax, 2023-31 Housing Element Update. The Element is a component of the Town’s General Plan that primarily addresses housing matters for the Town.

Consistent with the State California Environmental Quality Act (CEQA) a Notice of Preparation (NOP) for the EIR was publicized and circulated to State and local agencies on August 26, 2022, as well as to members of the public. The purpose of an NOP is to provide sufficient information about the proposed project and its potential environmental effects to provide the opportunity to provide a meaningful response related to the scope and content of the EIR.

Subsequent to this first NOP, the inventory of sites available for housing and the projections for their realistic capacity to accommodate housing was revised. Therefore, the Town recirculated a second NOP for the EIR on the Proposed Project and submitted it again to the State Clearinghouse on April 3, 2023 and circulated it among relevant State and local agencies, as well as to members of the public. The Town received a total of five comment letters from State public agencies and 22 comment letters from individuals during both of the NOP’s 30-day review periods, which ended on September 26, 2022 and May 2, 2023, respectively. The NOP and comments on the NOP received by the Town are summarized in Chapter 3 of the EIR and included as Appendix A and B of the EIR.

Consistent with legal requirements and State guidance, an EIR Scoping Meeting was held on April 19, 2023, at the Fairfax Women’s Club to receive comments and suggestions on scope and content for the EIR; solicit input on potential impacts, mitigation measures, and alternatives to consider; and consult with public agencies responsible for natural resources, other regulatory bodies, neighboring communities, Native American tribes, and members of the public. Comments on the NOP, along with input received during public workshops and meetings over the course of the Proposed Project’s process, have helped to identify the major planning and environmental issues and concerns and establish the framework of the EIR.

The Proposed Project studied in the EIR is the Housing Element Update document and potential impact that may arise from the implementation of policies and programs within the document. The actual construction of buildings has not been analyzed, and additional analysis may be required prior to project level approvals. All EIRs are required to have a “No Project” alternative in order to properly assess impacts, as discussed in 4 (Analysis of Alternatives) below. However, please note that the Housing Element is required by state law, therefore in practice, the “No Project” option is not available to the Town.

ORGANIZATION OF THE DRAFT EIR

The complete Draft EIR document and appendices can be found on the [Town’s website](#):

The Draft EIR is organized into the following chapters and appendices:

- ES. Executive Summary.** Summarizes the EIR by providing an overview of the Proposed Project, the potentially significant environmental impacts that could result from the Proposed Project,

the mitigation measures identified to reduce or avoid these impacts, alternatives to the Proposed Project, and identification of the environmentally superior Alternative.

1. **Introduction.** Introduces the purpose of the EIR, explains the EIR process and intended uses of the EIR, and describes the overall organization of the EIR.
2. **Project Description.** Describes in detail the Proposed Project, including its location and boundaries, purpose and objectives, and projected buildout.
3. **Environmental Analysis.** Analyzes the environmental impacts of the Proposed Project. Impacts are organized by major topic. Each topic area includes a description of the environmental setting, significance criteria, methodology, and potential impacts.
4. **Analysis of Alternatives.** Presents a reasonable range of alternatives to the Proposed Project, including the No Project alternative, provides discussion of environmental impacts associated with each alternative, compares the relative impacts of each alternative to those of the Proposed Project and other alternatives, discusses the relationship of each alternative to the Proposed Project's objectives, and identifies the environmentally superior alternative.
5. **CEQA Required Conclusions.** Summarizes significant environmental impacts, including growth-inducing, cumulative, and significant and unavoidable impacts; significant irreversible environmental change; and impacts found not to be significant.
6. **List of Preparers.** Identifies the persons and organizations that contributed to the preparation of the EIR.
7. **Appendices.** Includes the NOP and compilation of agency and public comments received on the NOP, as well as other technical appendices including data used for environmental analysis in the EIR.

SUMMARY OF DRAFT EIR FINDINGS

The environmental analysis indicates that the majority of impacts are less than significant. There are seven impacts related to Air Quality, Biological Resources, and Cultural and Tribal Cultural Resources that would be reduced to less than significant with mitigation. Two impacts related to GHG Emissions and Transportation were significant and unavoidable.

Even after all feasible mitigation, the Housing Element would result in significant and unavoidable impacts related to:

- **Greenhouse Gas Emissions:** The Town of Fairfax Climate Action Plan (CAP) establishes a target of net zero emissions by 2030 and an executive order by the California Governor establishes a statewide target of carbon neutrality by 2045. While buildout of the inventory would result in emissions per service population below the Statewide target for 2030, emissions resulting from buildout would exceed the targets established in the Fairfax CAP and the State. The DEIR recommends a mitigation measure pursuant to which the Town will update the CAP to identify measures necessary for compliance with State target; however, as this update has not yet been completed and the specific measures have not yet been

identified, the DEIR conservatively concludes that the associated impact would remain significant and unavoidable even after implementation of this mitigation measure.

- **Transportation:** Buildout of the inventory would result in per capita townwide Vehicle Miles Traveled (VMT) that is 10.4 percent below existing townwide VMT. While this represents a substantial improvement over existing conditions, it is not sufficient to meet the threshold of 15 percent below existing levels required for consistency with CEQA Guidelines § 15064.3, subdivision (b). As described more fully in Chapter 3.13 of the DEIR, there are no feasible mitigation measures available to address this impact, which would remain significant and unavoidable.

These impacts are not uncommon for a long-range development plan and the Town can approve the project based on overriding considerations, such as housing production and compliance with State law.

PREPARATION OF FINAL EIR

The legally mandated 45-day public comment period on the Draft EIR started on September 26, 2023 and ended on November 11, 2023 (comments were collected through Monday, November 13, since November 11 fell on a Saturday). Responses to public comments were prepared and provided as part of the Final EIR, which was posted to the Town’s website on December 1, 2023.

In order to adopt the EIR for the Housing Element project, the preparation of a document entitled, “Findings of Fact and Statement of Overriding Considerations” is required. The Statement of Overriding Considerations is a written statement explaining the specific reasons why the social, economic, legal, technical, or other beneficial aspects of the proposed project outweigh the unavoidable adverse environmental impacts and why the Lead Agency is willing to accept such impacts. This statement shall be based on the final EIR and/or other substantial evidence in the record. This document has not been completed in time for inclusion in the staff report so a supplemental staff report will be prepared and provided to the Town Council next week, prior to adoption of the EIR resolution. It will be included as Exhibit D to Resolution 23-59.

PLANNING COMMISSION DISCUSSION AND RECOMMENDATION

The Planning Commission conducted a public hearing on November 29, 2023 and adopted a Resolution 2023-32 recommending that the Town Council certify the EIR and Resolution 2023-33 recommending that the Town Council adopt the 2023-31 Housing Element. Some of the key Planning Commission concerns are summarized as follows:

- Fire Hazard Maps. The Commission had a concern that the sources of the maps related to fire risk (Map 3-2 Environmental Hazard Risk in Fairfax in the Housing Element, Figure 3.15-1 WUI Area in Marin County, and 3.15-2 Fire Hazards in the EIR) were unclear. Staff is researching the references for accuracy and will include in an errata if necessary.
- Question regarding the default density of 20 dwelling units per acre (du/ac). The required minimum default density for a site to count towards RHNA in the low income category is 20 dwelling units per acre. Staff explained that this was established by HCD, and for a “suburban” jurisdiction such as Fairfax the default density is 20 du/ac. This impacts mostly

commercial and mixed-use properties where low income housing project sites are envisioned to satisfy RHNA. In some cases the zoning may need to be amended to accommodate this minimum density.

- Some questions were asked regarding Vehicles Miles Traveled (VMT) and how VMT is calculated, and how VMT could potentially be reduced further. Based on the analysis in the EIR, while VMT will increase overall, the VMT per capita will go down in the future, but not significantly. The Commissioners mentioned that implementation of the Town of Fairfax Bicycle and Pedestrian Plan 2016 could help reduce VMT. Parking management could also help.
- Commissioner asked how the Town can be sure that property owners are interested in developing. Staff has done extensive outreach to property owners and many are interested and we have confirmation of that interest in the housing element project materials.
- The Commission asked for staff to explain the consequences for lack of compliance, such as failing to adopt a Housing Element by the deadline. Since the deadline was January, 2023, the Town is already out-of-compliance. This makes the Town subject to project applications where the Town's review authority is limited (a.k.a. builder's remedy). A secondary deadline is rapidly approaching and the Town is required to adopt the Housing Element and any required zoning amendments by the end of January 2024. Additional penalties, such as loss of local control over development review, fines, and other consequences are possible.

After public testimony, discussion and deliberation, the Commission voted unanimously to forward a recommendation to certify the EIR and approve the Housing Element with a 5-0 vote on both resolutions.

POST HOUSING ELEMENT ADOPTION ACTIVITIES

Assuming the Town Council adopts the Housing Element, it may still require minor revisions based on HCD input. While HCD is expecting the submittal of the Town's revised Housing Element and is expecting to review expeditiously, HCD has 60 days to review the completed Housing Element, per State statute, and the review may not be completed until after Council adoption. Staff recommends that the following statement is included in the adopting resolution, to allow for changes without requiring a return to the Town Council for re-adoption:

"Section 4. The Town Manager shall transmit the adopted Housing Element to the California Department of Housing and Community Development for review pursuant to Government Code Section 655585(g). The Town Manager in consultation with the Town Attorney is further directed and authorized to make all non-substantive changes to the Housing Element to make it internally consistent or to address any non-substantive changes or amendment requested by the Department to achieve certification."

Following the adoption of the Housing Element, implementation of the programs will begin in earnest. Two programs that need to be immediately implemented are zoning ordinance amendments, as follows:

- **Program 2A.** Workforce Housing Overlay. California Assembly Bill (AB 2011) of 2022 provides a streamlined ministerial approval pathway for multifamily projects on commercially zoned land that pay prevailing wages for construction work and meet specified affordable housing targets. The Town will adopt Zoning Code amendments in the form of a Workforce Housing Overlay District, to implement these provisions and provide an alternative to AB2011 as a means of promoting the construction of housing for teachers, restaurant and service workers, firefighters, police officers, and others employed in Fairfax and Marin County. The overlay will apply to select properties in the CL, CH, and CC zones, providing property owners with the option to redevelop their land with housing or mixed use projects should they elect to do so.
- **Program 2D.** Standards for Clustered Hillside Development on Large Sites. There are a number of large hillside sites with adequate access, utility services, and topography that might accommodate a clustered housing development, including both attached and detached single-family dwellings and accessory dwelling units. This program will review standards for clustered hillside development in peer jurisdictions and determine whether they might be adapted to the Town's needs to expand opportunities for market rate housing. Zoning Code amendments then will be prepared as appropriate to allow for this type of housing and to establish development standards and design review criteria.

The intent is to conduct public hearings on both of these code amendments prior to the end of January, as required.

ATTACHMENTS

- A. Responses to HCD Comments (from August 11, 2023, Letter)
- B. Proposed Resolution 23-59
 - a. Exhibit A – [Draft Environmental Impact Report](#) (September 26, 2023)
 - b. Exhibit B – [Final Environmental Impact Report](#) (November 30, 2023)
 - c. Exhibit C – [Mitigation Monitoring and Reporting](#) Program (November 30, 2023)
 - d. Exhibit D – Findings of Fact and Statement of Overriding Considerations (to be distributed and posted prior to the meeting)
- C. Proposed Resolution 2023-60
 - a. Exhibit A – [2023-31 Housing Element, Public Hearing Draft](#) (November 28, 2023)

Attachment A
Responses to HCD Comments (from August 11, 2023 Letter)

Number	Comment	Response
A. Review and Revision		
A.1	<p>The review requirement is one of the most important features of the element update. The review of past programs should describe progress in implementation of previous actions, including results compared to objectives and evaluate the effectiveness of actions to make appropriate adjustments in the current planning period. In several cases, Appendix D includes minimal detail and general statements that do not describe and evaluate actions from the prior planning period. To address this requirement, the element must fully describe past commitments, progress in implementation, evaluate effectiveness, and then discuss appropriate adjustments in the current planning period.</p>	<p>Appendix D has been comprehensively revised to address this comment. The table evaluating 5th cycle program progress has been augmented with evaluation and dispositions for each program and a new section analyzing the cumulative effectiveness of programs for special housing needs groups has been added.</p>
A.2	<p>In addition, as part of the review of programs in the past cycle, the element must provide an evaluation of the effectiveness of goals, policies, and related actions in meeting the housing needs of special needs populations (e.g., elderly, persons with disabilities, large households, female-headed households, farmworkers, and persons experiencing homelessness) and revise programs as appropriate.</p>	
B. Housing Needs, Resources, and Constraints		
B.1.a	<p><u>Sites Inventory</u>: The element must include an analysis demonstrating whether sites identified to meet the Regional Housing Needs Allocation (RHNA) are distributed throughout the community in a manner that affirmatively furthering fair housing (AFFH). A fully analysis should address the income categories of identified sites with respect to location, the number of sites and units by all income groups and how that affects the existing patterns for all components of the assessment of fair housing (e.g., segregation and integration, access to opportunity, etc.). The element should also discuss whether the distribution of sites improves or exacerbates conditions. If sites exacerbate conditions, the element should identify further program actions that will be taken to mitigate this (e.g., anti-displacement strategies).</p>	<p>A new section (E.6) has been added to Appendix E to address this comment. The analysis considers the effects of concentrating mixed income, multifamily development with ¼ mile of Sir Francis Drake Boulevard in the Town Center area of efforts to expand ADU/JADU production and increase housing mobility, concluding that buildout of the inventory would also increase access to opportunity for lower and moderate income households in Marin County.</p>
B.1.b	<p><u>Goals, Priorities, Metrics, and Milestones</u>: Goals and actions must significantly seek to overcome contributing factors to fair housing issues. Currently, the element identifies programs to encourage and promote affordable housing; however, most of these programs do not appear to facilitate any meaningful change nor address</p>	<p>Table E-13 has been augmented, expanded and revised to address this comment. It summarizes the fair housing issues identified in the preceding analysis, describes contributing factors, and identifies meaningful actions to address them along with geographic targeting (as relevant) and metrics for</p>

Number	Comment	Response
	<p>AFFH requirements. Furthermore, the element must include geographic targeting as appropriate, metrics and milestones for evaluating progress on programs, actions, and fair housing results 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.</p> <p>Given that most of the Town is considered a highest-resource community, the element should focus on programs that enhance housing mobility and encourage development of more housing choices and affordable housing in an inclusive manner. Programs also need to be based on identified contributing factors, be significant and meaningful. The element must add and revise programs based on a complete analysis and listing and prioritization of contributing factors to fair housing issues. Furthermore, the element must include metrics and milestones for evaluating progress on programs, actions, and fair housing results.</p>	<p>monitoring progress. The meaningful actions, metrics and targeting have also been incorporated into Chapter 4, Housing Action Plan.</p> <p>Table E-13 was clarified to illustrate programs from the May 2023 Draft which expand housing opportunities for disadvantaged groups in Fairfax and the following new programs were added to Table E-13 and Chapter 4 to further support Housing Mobility:</p> <ul style="list-style-type: none"> • Program 3-G Development and Replacement Unit Requirements. • Program 3-H Housing for Special Needs Populations and Extremely Low Income Households. • Program 3-I Water and Sewer Priority. • Program 4-G Disavowal of Racially Restrictive Covenants.
B.2.a	<p><u>Overcrowding:</u> While the element identifies the total number of overcrowded households (pg. B-30), it must also quantify and analyze these households by tenure (i.e. renter and owner).</p>	<p>Please see Charts B-24 and B-24 and accompanying analysis in Appendix B which shows that while rates of overcrowding in Fairfax are low, renters and Hispanic residents tend to experience higher rates than other groups.</p>
B.2.b	<p><u>Housing Conditions:</u> The element identifies the age of the Town's housing stock and utilities ACS data (pg. B-34), but it must also include analysis of the condition of the existing housing stock and estimate the number of units in need of rehabilitation and replacement. For example, the analysis could include estimates from a recent windshield survey or sampling, estimates from the code enforcement agency, or information from knowledgeable builders/developers, including nonprofit housing developers or organizations.</p>	<p>Please see Appendix B, page B-38. The Town's Building Official report that larger apartment complexes (4 or more units) are in good or better condition. The rest of the housing stock varies in condition, but the majority range from fair to excellent condition. The number of units needing major rehabilitation is 5-7 percent of the total housing units and the trend over the past 18 years has been that fewer homes are falling into disrepair. On average, approximately 3-5 units per year are rehabilitated each year as a result of Code enforcement.</p>
B.2.c	<p><u>Special Needs:</u> While the element quantifies the Town's special needs populations in Appendix B, it must also analyze their special housing needs. For a complete analysis of each population group, the element should discuss challenges faced by the population, the existing resources to meet those needs (available senior housing units, etc.), an assessment of any gaps in resources, and proposed policies, programs, and funding to help address those gaps.</p>	<p>Please see Appendix B, pp. B-12 through B-27. Additional details incorporated to address this comment are shown in track changes.</p>

Number	Comment	Response
B.3.a	<p><u>Parcel Listing</u>: The element lists parcels by various factors such as size, zoning, general plan designation, and existing use. However, the description of existing uses is generic and must include sufficient detail to facilitate an analysis of the potential for additional development on nonvacant sites. For example, some sites describe existing uses as Retail/General Commercial and most nonvacant sites in the Workforce Housing Overlay have no description of existing uses in Appendix A. Instead, the inventory could describe the use as retail or commercial older than 50 years in poor condition, vacancies present, and an existing floor area 0.1 versus allowable floor area. Alternatively, the inventory could utilize various data layers with similar information. For more information, see the HCD's Housing Element Sites Inventory Guidebook at: https://www.hcd.ca.gov/community-development/housing-element/docs/sites_inventory_memo_final06102020.pdf.</p>	<p>Appendix A, the electronic sites inventory form has been updated to include more detailed descriptions of existing use. Additionally, site-by-site descriptions of existing conditions and uses on the underutilized commercial sites included in the inventory have been added to Appendix G. Information added includes aerials, photos, narrative descriptions and data on pertinent site characteristics. Please see Appendix G pdf pp.G-26 through G-41)</p>
B.3.b	<p><u>Electronic Sites Inventory</u>: For your information, pursuant to Government Code section 65583.3, the Town must submit an electronic sites inventory with its adopted housing element. The Town must utilize standards, forms, and definitions adopted by HCD. Please see HCD's housing element webpage at https://www.hcd.ca.gov/planning-and-community-development/housing-elements for a copy of the form and instructions. The Town can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance.</p>	<p>The electronic sites inventory has been included as Appendix A</p>
B.3.c	<p><u>Realistic Capacity</u>: The element provides assumptions of buildout for sites included in the inventory, but it must also provide support for these assumptions. The element references projects in Appendix G to determine an average density of 29 units per acre multiplied by gross site acreage. However, the estimate of the number of units for each site should be adjusted, based on land use controls, site improvements, and on the current or planned availability and accessibility of sufficient water, sewer, and dry utilities. In particular, the element identifies sites impacted by environmental and topographical conditions that can constraint development. HCD also received public comments indicating some sites are unlikely to develop during the planning period due to sloped terrain and lack of egress. The element should address consider these factors and address public comments,</p>	<p>Chapter 3 and Appendix G were revised with additional details to address this comment. The information incorporated demonstrates that the characteristics of the representative sites surveyed are comparable to those on the inventory; that the zoning and development standards proposed for the Fairfax Workforce Housing Overlay is comparable to those applicable to the reference multifamily sites; and that the representative sites have similar environmental conditions which add cost and complexity to development but have not posed an excessive constraint. Analysis and discussion was added to Chapter 3 in redline and new tables comparing site characteristics, zoning, and environmental conditions of the representative multifamily projects to Fairfax sites were added to Appendix G.</p>

Number	Comment	Response
	include additional supporting information for the assumptions, and make adjustments as necessary.	Additionally, the discussion of vacant land on p.3-7 of Chapter 3 was revised to incorporate a discussion of the feasibility of development on large sites with steep topography. Through Program 2-D in the Action Plan, the Town will amend zoning regulations to permit low impact clustered residential development on large residentially zoned sites. These amendments would not increase the density permitted in the base zoning, rather they would allow for clustering of the housing on relatively flatter portions of the sites while preserving the majority of the site area as open space. Clustered development would focus roadway and utility infrastructure within smaller areas of the sites, minimizing potential environmental impacts, reducing development costs, and facilitating production of market rate housing as needed to meet the Town's RHNA obligations. These amendments are proceeding in parallel with the Housing Element and are scheduled for adoption hearings in January 2024.
B.3.d	In addition, the element appears to assume residential development on sites with zoning that allow 100 percent nonresidential uses (Table 3-6). While the element mentions the identified sites represent a substantial opportunity for workforce housing, it must still account for the likelihood of nonresidential uses. The element should include analysis based on factors such as development trends, performance standards or other relevant factors. For example, the element could analyze all development activity in these nonresidential zones, how often residential development occurs and adjust residential capacity calculations, policies, and programs accordingly.	Given that there has been relatively little development - residential or non-residential - in the Town Center area since 2015, a survey of representative non-vacant sites that have developed with multifamily housing in other Marin County jurisdictions was conducted to serve as the basis for realistic capacity projections. The analysis included in Chapter 3 and Appendix G has been augmented with additional details demonstrating the viability of non-vacant sites included on the Fairfax inventory and owner interest in redevelopment with housing has been confirmed through outreach. Additionally, programs have been incorporated into Chapter 4 to facilitate development of the inventory, including programs that provide incentives for multifamily development (2-A Workforce Housing Overlay; 2-B By Right Rezoning of Sites from Prior Inventories; 2-C SB35 Objective Design and Development Standards; 2-E Affordable Housing Density Bonus; 3-H Housing for Special Needs Populations and Extremely Low Income Households) and programs that address development constraints (2-G Revised Processing and Permit Procedures; 2-J Focused Geologic Study in the Town Center Area).

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		<p>The adoption of the Workforce Housing Overlay and related objective standards, scheduled for January 2024, will establish a by right approval procedure for qualifying multifamily projects, permit 100% affordable project on properties with base commercial zoning, and require that at least 50 percent of the floor area in a mixed use development be for residential uses. All of these provisions provide a clear path for residential development on non-vacant sites in the Town Center area. While 100% non-residential on some sites is a possibility, recent development trends in Fairfax and regional market factors do not indicate that as a strong possibility. Further, the inventory includes a buffer of more than 18% for lower income RHNA and more than 40% for moderate income RHNA, which will help ensure the inventory has adequate capacity if any of the sites do not develop as projected.</p>
B.3.e	<p><u>Small Sites:</u> The sites inventory identifies small sites to accommodate the Town's lower-income RHNA. These sites are not eligible absent a demonstration that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower-income housing units as projected for the site or unless other evidence is provided. If the inventory indicates some sites can be consolidated it should also provide analysis demonstrating the potential for consolidation. For example, the analysis could describe the Town's role or track record in facilitating small-lot consolidation, policies or incentives offered or proposed to encourage and facilitate lot consolidation, conditions rendering parcels suitable and ready for lot consolidation, or information from the owners of each aggregated site.</p>	<p>Very few sites in Fairfax meet the suitability criteria established in State law for lower income RHNA capacity. As such, the inventory relies on some non-vacant sites of less than 0.5 acres in areas of liquefaction or flood risk. The smallest sites on the inventory, which range from 0.05 to 0.25 acres, are identified to accommodate Moderate income RHNA. These are generally commercial properties located at the eastern end of Sir Francis Drake Boulevard where owners have expressed interest in redeveloping with housing. These are Workforce Housing Overlay B sites, where minimum density is 20 du/ac and maximum base density is 40 du/ac prior to application of any local or State density bonus. Programs 1-D (Shopkeeper Housing) and 1-E (Live-Work Units) have been included in Chapter 4 to further facilitate development of housing on these sites.</p> <p>Sites identified to accommodate lower income RHNA range in size from 0.33 to 1.92 acres in size, with most above 0.5 acres in size. However, four sites (APNs 001-226-53; 001-183-10; 001-183-14/5; and 002-113-08) are between 0.33 and 0.41 acres in size. These are Workforce Housing Overlay A sites, where minimum density is 20 du/ac and maximum base density is 60 du/ac, with additional bonus density available on a sliding scale for projects that</p>

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		<p>commit to greater levels of affordability. The survey of representative projects in Marin County included in Appendix G demonstrates that similar sites with comparable zoning have been redeveloped with multifamily housing, including sites of less than 0.3 acres in Sausalito and San Anselmo. Further, Map 3-3 Recent Development Projects and Environmental Hazard Areas in Chapter 3 shows that comparable small sites with similar constraints have been developed in Fairfax too, and under Program 2-J the Town will undertake a focused geologic study in the Town Center area to identify a range of measures that developers could incorporate to reduce project costs and codify specific standards to address environmental constraints. On this basis, the Town has determined that the smaller sites included on the inventory are feasible and appropriate for redevelopment with housing during the planning period.</p>
B.3.f	<p><u>Suitability of Nonvacant Sites:</u> The element identifies nonvacant sites to accommodate the regional housing need for households of all incomes. A complete analysis should 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, including market demand for the current uses, leases, or other indicators of turnover in uses.</p> <p>In addition, the housing element appears to rely 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.</p> <p>Lastly, Appendix A references several sites in the inventory with existing residential uses. Absent a replacement housing policy, these sites are not adequate sites to accommodate lower-income households. The replacement housing policy has the</p>	<p>The analysis added to Chapter 3 and Appendix G (described above) demonstrates that comparable non-vacant sites with similar existing conditions, uses, and constraints in other peer communities within Marin County have been redeveloped with high density housing in recent years when zoning and development standards comparable to those proposed with the Fairfax Workforce Housing Overlay are in place. Further, property owner outreach has been conducted to confirm owner interest in redevelopment with multifamily housing and to identify actions that Town can take to support redevelopment of the underutilized sites, including zoning amendments and a focus geological study which are addressed through programs in Chapter 4, the Housing Action plan. Therefore, on this basis, the Town has determined that redevelopment of these 17 underutilized commercial properties and two vacant properties with housing at densities sufficient to accommodate lower income RHNA during the planning period is feasible. Pursuant to Gov. Code, § 65583.2, subd. (g)(2), the Town will adopt findings based on the substantial evidence contained in this Housing Element that the existing uses will not impede additional residential development.</p>

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	same requirements as set forth in Government Code section 65915, subdivision (c) (3).	Additionally, Program 3-G Development and Replacement Unit Requirements has been added to Chapter 4 to satisfy the requirements of Government Code section 65915, subdivision (c) (3).
B.3.g	<p><u>Suitability and Availability of Infrastructure:</u> The element must demonstrate sufficient existing or planned water, sewer, and other dry utilities supply capacity, including the availability and access to distribution facilities to accommodate the Town’s regional housing need for the planning period. (Gov. Code, § 65583.2, subd. (b).) For additional information, see the Building Blocks at https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/analysis-sites-and-zoning.</p>	Additional analysis was added to Appendix C, pp. C-40 through C-41. Overall, public utility infrastructure is in place in developed areas of Fairfax and new development would be required to provide connections. In hillside areas, the cost of extensions would be higher, but the introduction of development standards to facilitate low impact clustered residential development in these areas would minimize both costs and environmental impacts. Development in hillside areas would be of market rate housing and the costs would be factored into real estate sales prices. As such, overall there is adequate public infrastructure in place to serve the projected need and while extensions to new development would be needed, the provision of infrastructure does not pose an excessive constraint to development.
B.3.h	<p><u>Water and Sewer Priority:</u> 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. HCD recommends including a cover memo describing the Town’s housing element, including the Town’s housing needs and regional housing need. For additional information and sample cover memo, see the Building Blocks at https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/priority-water-and-sewer.</p>	A new program has been added to Chapter 4: Program 3-I Water and Sewer Priority. Consistent with SB 1087 (Government Code Section 65589.7), within 2 weeks of adoption of Housing Element the Town will provide a copy of the adopted Housing Element to water and sewer providers upon finalization of the document and will work with water and sewer providers to adopt written policies and procedures that grant priority for service allocations to proposed developments that include housing units affordable to lower income households.
B.3.i.i	<p><u>Sites with Zoning for a Variety of Housing Types:</u></p> <ul style="list-style-type: none"> • <i>Emergency Shelters:</i> The element should describe the development standards of the Central Commercial, Commercial Highway, and Public Domain districts that allow emergency shelters by-right and include analysis that identifies total acreage capacity, proximity to transportation and services, hazardous conditions, and any other conditions rendering 	Additional information and analysis has been incorporated into Appendix C to address this comment. Please see redlines on page C-13.

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	<p>these sites inappropriate for human habitability. In addition, the element should evaluate operating standards imposed on emergency shelters as potential constraints. Capacity calculations must comply with the requirements of Chapter 654, Statutes of 2022 (AB 2339). Lastly, the element should describe how emergency shelter parking requirements are consistent with AB 139/Government Code section 65583, subdivision (a)(4)(A) or include a program to comply with this requirement.</p>	
B.3.i.ii	<ul style="list-style-type: none"> • <i>Mobilehomes and Manufactured Housing:</i> The element identifies constraints on zoning for mobilehomes and manufactured housing and references a program to address these constraints. However, no corresponding program was found and the element should be revised accordingly. Lastly, Appendix A references several sites in the inventory with existing residential uses. Absent a replacement housing policy, these sites are not adequate sites to accommodate lower-income households. The replacement housing policy has the same requirements as set forth in Government Code section 65915, subdivision (c) (3) 	<p>These constraints were addressed in zoning amendments adopted by the Town Council in November 2023.</p> <p>Additionally, Program 3-G Development and Replacement Unit Requirements has been added to Chapter 4.</p>
B.3.i.iii	<ul style="list-style-type: none"> • <i>Employee Housing:</i> The element must demonstrate zoning is consistent with the Employee Housing Act (Health and Safety Code, § 17000 et seq.), specifically, sections 17021.5 and 17021.6. Section 17021.5 requires employee housing for six or fewer employees to be treated as a single-family structure and permitted in the same manner as other dwellings of the same type in the same zone. Section 17021.6 requires employee housing consisting of no more than 12 units or 36 beds to be permitted in the same manner as other agricultural uses in the same zone. The element should be revised to add or modify programs as necessary. 	<p>Appendix C (p. C-14) has been amended to clarify that the zoning ordinance, prior to November of 2023, required a conditional use permit to allow either employee housing or agricultural uses in the RS 7.5, 6, and 5.5-7 districts but allows single-family units by right in those districts, which is inconsistent with the State Employee Housing Act. Section 17021.5 of the State law requires employee housing for six or fewer employees to be treated as a single-family structure and permitted in the same manner as other dwellings of the same type in the same zone. Section 17021.6 requires employee housing consisting of no more than 12 units or 36 beds to be permitted in the same manner as other agricultural uses in the same zone. In November 2023, the Town amended the Code as necessary to allow employee housing as required by State law.</p>
B.4.a	<p><u>Land-Use Controls:</u> While the element included a description of land use controls, it must also analyze them independently and cumulatively with all other all relevant</p>	<p>A discussion of the local standards and the degree to which they act as a constraint on housing development has been added to Appendix C (see pp. C-</p>

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	<p>land use controls for potential impacts on providing a variety of housing types and achieving maximum allowable densities. For example, the element should clarify if the Town imposes minimum unit size requirements. In addition, the analysis should also specifically address requirements related to parking, heights, lot coverage, and limits on allowable densities for potential constraints on housing. In addition, the element should discuss how multifamily zoning encourages and facilitates a variety of housing types including density, development standards, and permit procedures. For example, the General Plan limits multifamily development in multifamily zones, including the R-M and RM-S zone to 7-12 dwelling units per acre (p. C-2) and the element should be clarified to indicate how zoning is allowed to exceed the densities outlined in the General Plan. As another example, multifamily projects at higher densities in the RM zone are subject to a CUP (pg. C-3), and heights in most zones are limited to 28.5 feet (pg. C-5). Lastly, the element notes that multifamily housing is required to provide two spaces per unit, including additional guest spaces (pg. C-6). HCD finds that requiring smaller bedroom types (e.g., studio and one-bedroom units) to provide two parking spaces is considered a constraint. The element should be revised to add or modify programs based on the outcomes of a complete analysis.</p>	<p>7). The cumulative effect of the zoning restrictions, the high land and construction costs in Marin County, and the cost of financing collectively act as a constraint on housing development in Fairfax. Programs to address these constraints in Chapter 4 include: Program 1-A Develop and Adopt Town Center Plan; Program 1-B School Street Plaza; Program 1-D Shopkeeper Housing; Program 1-E Live-Work Units; Program 1-G Innovative and ‘Non-Traditional’ Forms of Housing; Program 2-A Workforce Housing Overlay; Program 2-B Rezoning Sites from Prior Inventories; Program 2-C Establish Objective Design and Development Standards; Program 2-E Affordable Housing Density; Program 2-G Processing and Permit Procedures; Program 2-J Focused Geologic Study in the Town Center Area; Program 3-E Inclusionary Housing Program and Commercial Linkage Fee.</p>
B.4.b	<p><u>Fees and Exactions:</u> The element includes a general discussion of the Town’s fees (pgs. C-22-23) but it must also analyze their impact as potential constraints 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.</p> <p><u>For additional information and a sample analysis and tables, see the Building Blocks at https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/fees-and-exactions.</u></p>	<p>Appendix C has been updated to include the requested analysis. As Table C-8 shows, the building permit and design review fees Fairfax charges are lower than all nearby municipalities.</p>
B.4.c	<p><u>Processing and Permitting Procedures:</u> The element recognizes that the Town’s procedural requirements involve multiple discretionary reviews prior to approval. While the element does include programs to adopted objective design standards and by-right processing for multifamily housing of up to four units, multifamily</p>	<p>Information has been added on p. C-19 of Appendix C to address this comment.</p>

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	<p>housing of more than four units will still be subject to a CUP. The analysis must evaluate the processing and permit procedures' impacts as potential constraints on housing supply and affordability. The analysis should address the approval bodies for required multifamily permits, the number of public hearings, approval findings and any other relevant information. The analysis should address impacts on housing cost, supply, timing and approval certainty. For example, the element should identify and analyze approval findings for impacts on approval certainty, the presence of processes to promote certainty and add or modify programs as appropriate.</p>	
B.4.d	<p><u>Codes and Enforcement:</u> While the element includes a discussion of the Town's building codes, it must also describe the Town's procedures for enforcement of the existing housing stock (e.g., proactive or complaint-based outreach).</p>	<p>Code enforcement activities related to existing residential housing stock occur in two primary ways: (1) Complaint-based outreach. Persons can file a complaint and code enforcement staff will investigate. Outreach to the property owner and/or residents will occur to seek voluntary corrections of any violation. Continued violations can result in citations, hearings and other enforcement; (2) Residential resale inspections. Prior to any sale of any property in Fairfax that contains a residential unit, an inspection process is required according to Chapter 15.08 (Reports of Residential Building Records). Called a residential resale inspection, all code deficiencies are identified and any that are considered a health or safety threat are re required to be corrected prior to property transfer.</p> <p>This information will be incorporated into Appendix C of the Housing Element.</p>
B.4.e	<p><u>Constraints on Persons with Disabilities:</u> Zoning should implement a barrier-free definition of family. The element must identify and analyze the Town's definition of family as a potential constraint on housing for persons with disabilities and include programs as necessary.</p>	<p>In November 2023, the Town amended the Code to include this definition as required by State law.</p>
B.4.f	<p><u>Local Ordinances:</u> The element must analyze any locally adopted ordinances that directly impact the cost and supply of residential development (e.g., inclusionary requirements, short-term rentals, growth controls, etc.).</p>	<p>Please see discussion of other ordinances added to Appendix C, pp. C-23 through C-24.</p>

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B.4.b	<u>Fees and Exaction:</u> The element shows the total amount of fees per unit for typical single-family and multifamily development but should also list and evaluate planning fees for (e.g., rezone, general plan amendments, variances, conditional use permit (CUP)) their impact on housing costs.	Tables C-7 and C-8 on pp. C-27 and C-28 of Appendix C have been added and the analysis updated to address this comment.
B.5	<u>Permit Approval Times:</u> While the element includes a general discussion of permit processing times (pp. C-18-19), it must still identify the length of time between receiving approval for a housing development and submittal of an application for building permits. The element must address any hinderance on the development of housing and include programs as appropriate.	Appendix C, page C-20 includes a discussion of the length of time between receiving approval for a housing development and submittal of an application for building permits. Reducing the time needed to obtain all necessary construction permits may be more difficult than expediting entitlements. The Town employs an outside consulting service to provide plan check services, which augments Town staff capacity and helps to reduce the time required for permit issuance.
B.6	While the element includes an inventory of assisted housing developments, several of these have unknown affordability end dates (pgs. B-42-43). For your information, CHP data indicates affordability expiration dates for the following developments: Bennett House (2073), Fairfax Vest Pocket Community (2056), and Victory Village (2072). In addition, affordability for the Creekwood development is anticipated to end in 2031. The element should be reconciled to include this information. If units are at-risk during the planning period, the element may need to add or modify programs accordingly.	Table B-27 in Appendix B, Housing Needs has been updated with information from the California Housing Partnership to address this comment.
C. Housing Programs		
C.1	Programs must demonstrate that they will have a beneficial impact within the planning period. Beneficial impact means specific commitment to deliverables, measurable metrics or objectives, definitive deadlines, dates, or benchmarks for implementation. Deliverables should occur early in the planning period to ensure actual housing outcomes. All programs should be evaluated to ensure meaningful and specific actions and objectives. Programs containing unclear language (e.g., “Evaluate”; “Consider”; “Encourage”; etc.) should be amended to include more specific and measurable actions. Programs to be revised include, but are not limited to, Program 1-G (Encourage Innovative and ‘Non-Traditional’ Forms of Housing), Program 1-M (Zoning Incentives for accessory dwelling units (ADUs)/junior	The following programs were revised to include more committal language to address this comment: Programs 1-A, 1-G, 1-M, 3-E, 3-F, and 4-A. Additionally, as noted in the Element, the Town has already implemented several programs in Chapter 4 through updates to the municipal code.

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	accessory dwelling units (JADUs)), Program 3-E (Inclusionary Housing Program and Commercial Linkage Fee).	
C.2.a	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 Town 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:	The comment is noted. Please see responses below for details of how it has been addressed.
C.2.a.i	<p><u>Program 2-A (Workforce Housing Overlay):</u> The element indicates a shortfall of sites and indicates rezoning through an overlay will occur to accommodate the RHNA. While the element includes Program 2-A, the program must also specifically commit to:</p> <ul style="list-style-type: none"> • permit owner-occupied and rental multifamily uses by-right for developments in which 20 percent or more of the units are affordable to lower income households. By-right means local government review must not require a conditional use permit, planned unit development permit, or other discretionary review or approval. • accommodate a minimum of 16 units per site; • require a minimum density of 16/20 units per acre; and • at least 50 percent of the lower-income need must be accommodated on sites designated for residential use only or on sites zoned for mixed uses that accommodate all of the very low and low-income housing need, if those sites: <ul style="list-style-type: none"> ○ allow 100 percent residential use, and ○ require residential use occupy 50 percent of the total floor area of a mixed-use project. 	Please see revisions to Program 2-A in Chapter 4. Additionally, site-by-site calculations were done to confirm that all sites identified to accommodate lower income RHNA would permit at least 16 units per site under the proposed Workforce Housing Overlay development standards (see p. 3-23).
C.2.a.ii	Lastly, please be aware, the recent California appellate decision in <i>Martinez v. City of Clovis</i> found that while overlays can be used in a rezone, when the base zone allows residential development, both the base zone and the overlay zone must comply with the minimum density requirements of Government Code section	Please see revisions to Program 2-A in Chapter 4 made to address this comment. In parallel with adoption of the Workforce Housing Overlay, amendments will be made to the CH, CL, and CC zones to establish a

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	65583.2, subdivision (h). The Town may need to adjust Program 2-A, if the underlying zoning for sites that will be rezoned using the Workforce Housing Overlay allows minimum densities less than 20 dwelling units per acre. <i>Martinez v. City of Clovis</i> (2023) 90 Cal.App.5th 193, 307 Cal.Rptr.3d 64.	minimum density of 20 dwelling units per acre when residential uses are proposed.
C.3	The element must include a program(s) with specific actions and timelines to assist in the development of housing for extremely low-income households. The program(s) could commit the Town to adopting priority processing, granting fee waivers or deferrals, modifying development standards, granting concessions and incentives for housing developments that include units affordable to extremely low-income households; assisting, supporting or pursuing funding applications; and outreach and coordination with affordable housing developers.	A new program was added to Chapter 4 to address this comment. Please see Program 3-H Housing for Special Needs Populations and Extremely Low Income Households.
C.4	As noted in Finding(s) B4 and B5, the element requires a complete analysis of potential governmental and non-governmental constraints. Depending upon the results of that analysis, the Town may need to revise or add programs and address and remove or mitigate any identified constraints.	As noted above, Programs 1-A, 2-A, 1-G, 1-M, 3-E, 3-F, and 4-A have been revised and new Program 3-H Housing for Special Needs Populations and Extremely Low Income Households has been added in response to this comment.
D. Quantified Objectives		
D.1.a	While the element includes quantified objectives, it currently targets no objectives for conservation or preservation and should be revised accordingly. Conservation objectives may include a variety of strategies employed by the Town to promote tenant stability, financial assistance offered to homeowners for repair and maintenance, and the preservation of units at-risk of conversion to market rate uses. As an example, quantified objectives could incorporate numerical targets or anticipated outcomes from Program 1-K(Fee Discounts).	Table 4-3 in Chapter 4 was updated to address this comment. New objectives for conservation/preservation were added for extremely low, very low, low, and above moderate income housing, based on the projected effectiveness of Programs 1-K and 3-E in the Revised Draft Element.
E. Consistency with General Plan		
E.1.	The element must describe how consistency was achieved and how it will be maintained during the planning period. For example, the element could include a program to conduct an internal consistency review of the General Plan as part of the annual General Plan implementation report required by Government Code section 65400. The annual report can also assist future updates of the housing element.	A new section on General Plan consistency was added to Chapter 1 of the Revised Element. It demonstrates that the 2023-31 Housing Element builds upon the Town's current, adopted General Plan and is broadly consistent with its goals, policies, and implementation actions. As part of a second phase of work planned for the spring of 2024, the Land Use, Town Center, and Safety

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		Elements of the General Plan will be updated to maintain internal consistency with the 2023-31 Housing Element, and through implementation of Programs 5-A and 5-B, the Town will continue to review the General Plan and Housing Element annually for internal consistency as amendments are proposed and adopted.

RESOLUTION 23-59

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX CERTIFYING AN ENVIRONMENTAL IMPACT REPORT AND MAKING CERTAIN FINDINGS AS REQUIRED BY THE CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA") IN CONNECTION WITH THE APPROVAL OF GENERAL PLAN AMENDMENT ADOPTING AN UPDATE OF THE HOUSING ELEMENT FOR THE PERIOD OF 2023-2031

WHEREAS, the California Government Code Section 65302 mandates that each jurisdiction shall include a Housing Element in its General Plan, and that the Housing Element be updated periodically to reflect current conditions and legal requirements and set forth goals, policies and programs for the preservation, improvement and development of housing for all economic segments of the community and housing for persons with special needs; and

WHEREAS, State Housing Element Law (Government Code Sections 65580 et seq.) requires that the Town Council adopt a Housing Element for the eight-year period 2023-2031 to accommodate the Town of Fairfax regional housing needs allocation ("RHNA") of 490 housing units, comprised of 149 very-low income units, 86 low-income units, 71 moderate-income units, and 184 above moderate-income units; and

WHEREAS, the Town of Fairfax has prepared Housing Element Update 2023-2031 ("Housing Element") in compliance with State Housing Element Law; and

WHEREAS, as provided in Government Code Section 65350 et. seq., the Housing Element constitutes a General Plan Amendment; and

WHEREAS, on March 31, 2023 for the legally required 30-day local review period. A Revised Notice of Preparation (NOP) of a Draft Environmental Impact Report for the Fairfax General Plan Housing Element Update was released on April 3, 2023. Both documents were posted on the Town website and promoted via Town Newsletter. The 30-day public comment period for the Draft Housing Element concluded on April 30, 2023 and the scoping period for the revised NOP closed on May 2, 2023.

WHEREAS, as provided in Government Code Sections 65352 – 65352.5, the Town of Fairfax referred the Housing Element to all California Native American tribes on the contact list provided by the Native American Heritage Commission and to other entities listed; and

WHEREAS, the Housing Element must be adopted to comply with State law, accommodate the RHNA, affirmatively further fair housing, and facilitate and encourage a variety of housing types for all income levels, including multifamily housing (Gov. Code Sections 65583.2 and 65583(c)); and

WHEREAS, in accordance with Government Code Section 65585 (b), on May 12, 2023, the Town submitted the draft Housing Element to the State Department of Housing and Community Development (HCD) to begin the legally required 90-day HCD review period; and

WHEREAS, the Town received a review letter from HCD on August 11, 2023, outlining questions and concerns related to adequacy of the draft Housing Element and based on this letter and further consultations with HCD, Town staff have addressed comments and revised the Housing Element; and

WHEREAS, on September 26, 2023, pursuant to CEQA and the CEQA Guidelines, the Town prepared and circulated for public comment a Draft Environmental Impact Report (“DEIR”), State Clearinghouse No. 2022080624, for the Project; and

WHEREAS, the public review period on the DEIR ran from September 26, 2023 to November 13, 2023, for more than the required 45 days of review. Comments have been addressed in the Final EIR; and

WHEREAS, on November 29, 2023, the Planning Commission conducted a duly and properly noticed public hearing, reviewed the Housing Element and all pertinent maps, documents and exhibits, including HCD’s findings, the Town’s response to HCD’s findings, the staff report and all attachments, and oral and written public comments; recommended the Town Council consider certification of the Environmental Impact Report, upon completion of the Final EIR, and determined the Housing Element to be consistent with State law and the General Plan of the Fairfax; and

WHEREAS, on November 30, 2023, the Final EIR was posted for the required seven (7) day public review period; and

WHEREAS, on December 13, 2023, the Town Council conducted a duly and properly noticed public hearing, reviewed and considered the Housing Element and all pertinent maps, documents and exhibits, including HCD’s findings, the Town’s response to HCD’s findings, the staff report, the recommendation from the Planning Commission and all attachments, and oral and written public comments; and determined the Housing Element to be consistent with State law and the General Plan;

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF FAIRFAX DOES RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. That the above recitations are true and correct and are incorporated by reference into this action.

Section 2. In accordance with the requirements of CEQA, the Town Council has reviewed and considered the information contained in the DEIR. The Commission finds that the EIR was prepared in compliance with CEQA, and that the Town complied with CEQA’s procedural and substantive requirements.

Section 3. The revisions to the Housing Element made after circulation of the Environmental Impact Report (EIR) do not alter the analysis set forth in the EIR and no revisions are required to the EIR.

Section 4. Pursuant to CEQA Guidelines section 15091(e), the documents and other materials that constitute the record of proceedings upon which the Town Council has based its recommendations are located in and may be obtained from the Town of Fairfax, Development Services Department located at 142 Bolinas Road, Fairfax, CA 94930.

AND BE IT FURTHER RESOLVED THAT the Town Council of the Town of Fairfax hereby certifies the FEIR, makes the finding of facts with respect to the proposed significant effects on the environment as identified in the FEIR (Exhibit B), as required under Sections 15091, 15092, and 15093 of the CEQA Guidelines, and adopts the Statement of Overriding Considerations (Exhibit D) and the MMRP (Exhibit C).

The foregoing resolution was duly adopted at a regular meeting of the Town Council of the Town of Fairfax held in said Town on the ___ day of _____ 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Barbara Coler, Mayor

ATTEST: _____
Michele Gardner, Town Clerk

Attached:

Exhibit A – [Draft Environmental Impact Report](#)

Exhibit B – [Final Environmental Impact Report](#)

Exhibit C – [Mitigation Monitoring and Reporting Program](#)

Exhibit D – Findings of Fact and Statement of Overriding Considerations (to be added prior to the meeting)

Exhibit A

Draft Environmental Impact Report

Exhibit B
Final Environmental Impact Report

Exhibit C
Mitigation Monitoring and Reporting Program

Exhibit D
Findings of Fact and Statement of Overriding Considerations

RESOLUTION 23-60

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX ADOPTING A GENERAL PLAN AMENDMENT TO UPDATE THE HOUSING ELEMENT FOR THE PERIOD OF 2023-2031 AND AFFIRMATIVELY FURTHER FAIR HOUSING, AND COMPLY WITH STATE HOUSING ELEMENT LAW

WHEREAS, the California Government Code Section 65302 mandates that each jurisdiction shall include a Housing Element in its General Plan, and that the Housing Element be updated periodically to reflect current conditions and legal requirements and set forth goals, policies and programs for the preservation, improvement and development of housing for all economic segments of the community and housing for persons with special needs; and

WHEREAS, State Housing Element Law (Government Code Sections 65580 et seq.) requires that the Town Council adopt a Housing Element for the eight-year period 2023-2031 to accommodate the Town of Fairfax regional housing needs allocation (“RHNA”) of 490 housing units, comprised of 149 very-low income units, 86 low-income units, 71 moderate-income units, and 184 above moderate-income units; and

WHEREAS, the Town of Fairfax has prepared Housing Element Update 2023-2031 (“Housing Element”) in compliance with State Housing Element Law, which is attached as Exhibit A to this Resolution by reference; and

WHEREAS, as provided in Government Code Section 65350 et. seq., the Housing Element constitutes a General Plan Amendment; and

WHEREAS, pursuant to the California Environmental Quality Act (“CEQA”) an Environmental Impact Report (EIR) has been completed in support of Housing Element Update project and the Town Council certified the EIR (Resolution 23-59); and

WHEREAS, as provided in Government Code Sections 65352 – 65352.5, the Town of Fairfax referred the Housing Element to all California Native American tribes on the contact list provided by the Native American Heritage Commission and to other entities; and

WHEREAS, the Housing Element must be adopted to comply with State law, accommodate the RHNA, affirmatively further fair housing, and facilitate and encourage a variety of housing types for all income levels, including multifamily housing (Gov. Code Sections 65583.2 and 65583(c)); and

WHEREAS, in accordance with Government Code Section 65585 (b), on May 12, 2023, the Town submitted the draft Housing Element to the State Department of Housing and Community Development (HCD) for its review; and

WHEREAS, on August 11, 2023, HCD contacted the Town with a list of questions and concerns about the adequacy of the draft Housing Element, and based upon that letter, Town staff revised the Housing Element; and

WHEREAS, on November 29, 2023, the Planning Commission conducted a duly and properly noticed public hearing, reviewed the Housing Element and all pertinent maps, documents and exhibits, including HCD's findings, the Town's response to HCD's findings, the staff report and all attachments, and oral and written public comments; determined the Housing Element to be consistent with State law and recommended that the Town Council certify the EIR and adopt the 2023-31 Housing Element.

WHEREAS, on December 13, 2023, the Town Council conducted a duly and properly noticed public hearing, reviewed and considered the Housing Element and all pertinent maps, documents and exhibits, including HCD's findings, the Town's response to HCD's findings, the staff report, the Planning Commission recommendation, and all attachments, and oral and written public comments; and determined the Housing Element is consistent with State law and the General Plan of the Fairfax.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF FAIRFAX DOES RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. That the above recitations are true and correct and are incorporated by reference into this action.

Section 2. Environmental Clearance: The 2023-31 Housing Element has been analyzed according to the California Environmental Quality Act and an Environmental Impact Report was certified by the Town on December 13, 2023 (Resolution 23-59).

Section 3. Findings. The Town Council make the following findings:

- a. The Housing Element Update is internally consistent with the Fairfax General Plan.
- b. As required by Government Code Section 65585(e), the Town Council has considered the findings made by the Department of Housing and Community Development included in the Department's letter to the Town of Fairfax dated August 11, 2023, consistent with Government Code Section 65585(f), and as described in Exhibit A to this Resolution, incorporated herein by this reference, the Housing Element has been amended in response to the findings of the Department to substantially comply with the requirements of State Housing Element Law as interpreted by HCD.
- c. The Housing Element substantially complies with State Housing Element Law, as provided in Government Code 65580 et seq. and contains all provisions required by State Housing Element Law.

- d. Pursuant to Gov. Code, § 65583.2 (g)(2), based on the substantial evidence contained in the Housing Element, existing uses will not impede additional residential development.

- e. Based on substantial evidence in the record, the existing uses on the non-vacant sites identified in the site inventory to accommodate the RHNA are likely to be discontinued during the planning period and therefore do not constitute an impediment to planned residential development on the site during the planning period.

Section 4. The Town Manager shall transmit the adopted Housing Element to the California Department of Housing and Community Development for review pursuant to Government Code Section 655585(g). The Town Manager in consultation with the Town Attorney is further directed and authorized to make all non-substantive changes to the Housing Element to make it internally consistent or to address any non-substantive changes or amendment requested by the Department to achieve certification.

The foregoing resolution was duly adopted at a regular meeting of the Town Council of the Town of Fairfax held in said Town on the ___ day of _____ 2023, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Barbara Coler, Mayor

ATTEST: _____
Michele Gardner, Town Clerk

Attached:

[Exhibit A 2023-2031 Housing Element, Public Hearing Draft \(Volume 1\) and Appendices \(Volume 2\)](#)

Exhibit A

2023-2031 Housing Element, Public Hearing Draft (Volume 1) and Appendices (Volume 2)