



# FAIRFAX SPECIAL TOWN COUNCIL MEETING STAFF REPORT

**MEETING DATE** October 18, 2023  
**PREPARED FOR** Mayor and Town Council  
**PREPARED BY** Jeffrey Beiswenger, AICP, Building & Planning Director  
Andrew Hill, Dyett & Bhatia  
**SUBJECT** Status Update on the Town of Fairfax 2023-31 Housing Element Update

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## RECOMMENDATION

Receive a status update on the Town of Fairfax 2023-31 Housing Element Update and provide comments to staff.

## DISCUSSION

This staff report provides an overview of comments on the Draft Housing Element from the California Department of Housing and Community Development (HCD), a summary of revisions in progress to address the comments, and an outline of meetings and milestones for finalization of the project.

## BACKGROUND

The Town submitted the Draft 2023-31 Housing Element to HCD on May 9, 2023 to begin the legally mandated 90-day review period by the State. On August 11, 2023 the 90-day period for State review closed and HCD sent a letter to the Town, noting that while the Draft Housing Element addresses many of the statutory requirements, some revisions will be needed to comply with State Housing Element law. Subsequently, on September 1, 2023, HCD staff visited Fairfax for a tour of the Housing Element sites and a discussion of the findings in the August 11 letter.

In the course of discussions, HCD provided helpful clarifications regarding their findings, and Town staff and the consultant have been working to collect additional data and prepare a redline version of the Draft Element, reflecting revisions made in response to HCD comments. The intent is to meet again with HCD staff and confirm that the revisions adequately address their comments, and then to publicly release the Revised Draft at the end of November together with the Final Environmental Impact Report (EIR) ahead of adoption hearings before the Planning Commission in December and the Town Council in January. Zoning amendments needed to ensure the Town can accommodate its assessed share of the Regional Housing Needs Allocation (RHNA) are proceeding in parallel, with the intent of bringing the amendments to the Council for adoption in the new year.

### Overview of HCD Comments and Revisions in Progress

The comments in the HCD letter of August 11 are generally related to the following topics: sites inventory; capacity projections; constraints analysis; housing programs; and other topics. For each of these topics, a summary of HCD comments and related revisions in process is provided below. The HCD comment letter is included as Attachment A.

### Sites Inventory

Several of the HCD comments relate to the suitability of sites included on the Housing Element inventory, presented in Chapter 3 of the Draft Housing Element. Overall, HCD has requested additional data and analysis to further demonstrate the viability of the sites for redevelopment within the 2023-31 planning period. As there are relatively few vacant sites in Fairfax, the Town needs to rely on non-vacant sites to

accommodate the majority of the RHNA, and under State law (Government Code Section 65583.2(g)(2)), this means that the Element must provide substantial evidence that the existing uses will not impede development as projected. HCD has requested additional information to ensure that this requirement is met.

During the September site visit, HCD staff remarked that the sites all appear to be suitable candidates for redevelopment and recommended that a narrative description be prepared to further describe site context and characteristics. In response, staff has prepared more detailed descriptions of the existing uses on the sites for incorporation into the electronic inventory form in Appendix A, and the consultant is preparing a narrative with photos for inclusion in Appendix G, which provides supporting information regarding the inventory.

The HCD letter highlights the recent California appellate court decision in *Martinez v. City of Clovis*, which may have implications for Fairfax. The Draft Housing Element proposes a Workforce Housing Overlay that would apply to underutilized commercial sites in the Town Center area and along Sir Francis Drake Boulevard, giving property owners the option to develop high density housing if they choose. Where the base zoning of overlay sites permits residential uses, the appellate court has ruled that the minimum density of the base zone must be at least 20 dwelling units per acre (du/ac), the density deemed appropriate to accommodate housing for lower income households in Marin County. Overlay sites are in the CH, CL, and CC zoning districts where residential uses are permitted or conditionally permitted; however, minimum density is not specified for these base zones. Therefore, a text amendment may be needed to establish an appropriate minimum density for residential uses if they are proposed. To this end, a new program will be added to the Housing Element and the text amendments will be brought to the Town Council for consideration together with the other zoning amendments in the new year.

The HCD letter also highlights several legal requirements applicable to Fairfax. The current zoning is not adequate to accommodate all of the Town's RHNA, so rezoning of some properties will be required. In cases where a jurisdiction needs to rezone to accommodate a RHNA shortfall, Government Code Section 65583.2(h) requires that the sites identified to accommodate the lower income portion of the RHNA shortfall must be rezoned to:

- Permit multifamily development "by right," subject to objective standards;
- Permit at least 16 units per site at a density of at least 20 du/ac;
- Permit 100 percent residential developments; and
- If mixed use is permitted, require that at least 50 percent of the floor area in a mixed-use development be for residential uses.

The proposed Workforce Housing Overlay addresses most of these requirements, as it would permit multifamily development "by right" subject to objective standards, establish a density of at least 20 du/ac, and permit (but not require) 100 percent residential developments. Given that the inventory includes several smaller sites, however, not all overlay sites would have capacity for at least 16 units in view of the maximum density permitted. In particular, two sites at the eastern end of Sir Francis Drake (1577 and 1625 Sir Francis Drake Boulevard), which are identified for lower income RHNA, will need to be recategorized as moderate-income sites. Two other sites further west on Sir Francis Drake Boulevard (2082 and 2086 Sir Francis Drake Boulevard) would also not be able to accommodate 16 units each under the maximum permitted zoning, but they are adjacent and under common ownership and so they will be shown on the inventory as a single site with sufficient capacity to meet the requirements of Government Code Section 65583.2(h). Calculations will be added to Appendix G to demonstrate this to HCD and Program 2-A will be updated to reflect the requirement that at least 50 percent of the floor area in a mixed-use development be for residential uses.

Additionally, one other change will be made to the sites inventory and Map 3-6 Sites Available for Housing. Since the Draft Housing Element was sent to HCD for review, the Wall Property has been purchased and it is unclear whether the property will be available for housing. It will be removed from the inventory and map. The Draft Housing Element previously assumed 10 above moderate single-family homes on the Wall Property, consistent with the original Marinda Heights application. There is an adequate buffer in the inventory for the above moderate units.

### Realistic Capacity Projections

State Housing Element law requires that the Town identify adequate sites to accommodate its share of the RHNA and project the realistic capacity for housing on the sites. To support the capacity projections, a survey of recent residential developments in comparable Marin County jurisdictions was conducted and representative densities from that survey were used to project the realistic capacity of sites in Fairfax. Details of the representative projects were included in Appendix G to the Draft Housing Element. HCD comments request additional analysis to further support the capacity projections. First, because many of the sites on the Fairfax inventory are located in areas of natural hazard risk, including liquefaction and flooding risk that adds to the cost and complexity of development, HCD staff has recommended that Appendix G be updated to discuss the presence of similar environmental constraints on the sites in other jurisdictions referenced. An initial review of the other Marin County projects indicates that almost all of the reference sites were in areas of high or very high liquefaction risk and several were also in areas of flood risk. This additional detail will be incorporated into Appendix G to help further demonstrate the other Marin County sites are appropriate as a basis for capacity projections. Chapter 3 of the Draft Housing Element already includes analysis that indicates these natural hazards have not historically prevented residential development in Fairfax.

Further, the HCD letter requests an analysis of the zoning standards applicable to the referenced Marin County sites and a comparison with the zoning standards applicable to sites on the Fairfax Housing Element inventory. The intent of this analysis is to demonstrate that comparable standards will be in place in Fairfax and therefore that the projections in the Draft Housing Element are realistic. This comment pertains to sites in the Town Center area and along Sir Francis Drake Boulevard, where the Draft Housing Element calls for a Workforce Housing Overlay (Program 2-A) that would allow property owners the option to develop multifamily housing to meet local needs if they choose to do so. The consultant is compiling data on zoning standards for the reference projects, and an initial review indicates that the standards are consistent with those currently being contemplated for the Workforce Housing Overlay. Upon completion of the analysis, the results will be incorporated into Appendix G when it is released for public review in November. Zoning amendments to implement the Workforce Housing Overlay are scheduled to come before the Planning Commission and Town Council in the new year.

The HCD comment letter also notes that public comments on the Draft Housing Element indicated some sites are unlikely to develop during the planning period due to sloped terrain and lack of egress. These comments refer to large sites with single-family zoning identified to accommodate above moderate RHNA. Program 2-D was incorporated into the Draft Housing Element to help address the issue identified. This program involves the development of zoning standards that permit the option to develop low impact, small scale clustered housing on relatively flatter portions of these sites while requiring that large areas of open space be preserved onsite and scenic view sheds protected. Clarifications to this effect will be added to the Draft Housing Element. Zoning amendments to implement the low impact clustered residential option are scheduled to come before the Planning Commission in December and before Town Council in January.

### Affirmatively Furthering Fair Housing (AFFH)

Appendix E of the Draft Housing Element contains an Assessment of Fair Housing Conditions in Fairfax. The HCD letter requests that this analysis be updated to include an evaluation of whether buildout of the inventory would result in an equitable distribution of housing units by income category throughout the community. The intent of the analysis is to help confirm that the inventory would not create an

overconcentration of lower or above moderate housing in any given area. After the adjustments to the inventory described above have been made, a statistical model will be run to evaluate the income mix in each Census tract or Census block group in Fairfax. The results will be incorporated into Appendix E to address the HCD comment. Given that Fairfax is generally considered a "highest-resource" area, the anticipated increase in workforce housing units in the Town Center Area and the construction of ADUs and JADUs throughout town will likely demonstrate a positive impact on overall fair housing pattern.

Additionally, Table E-12 will be updated to address a comment in the HCD letter. Specifically, the version of the table included in the Draft does not fully reflect the findings of the preceding analysis or the extent of programs to address those issues that were included in Chapter 4, the Housing Action Plan. Therefore, it will be reorganized and expanded to ensure that it clearly identifies the meaningful actions the Town has committed to and that geographic targeting, metrics, and milestones for evaluating progress on programs is included.

### Housing Programs

Chapter 4 of the Draft Housing Element identifies a suite of implementation programs that outline the actions the Town will take to facilitate housing construction and address local needs over the planning period. Several of the comments in the HCD letter relate to edits or additions needed to comply with State law. First, because some of the sites on the inventory contain existing housing units, a replacement housing program that requires the developer of any non-vacant site identified in the Housing Element to provide replacement of units affordable to the same or lower income level is required as a condition of approval must be added. Additionally, several new programs must be added to demonstrate compliance with State law, including a program committing the Town to sharing the adopted Housing Element with utility service providers; and a program amending the Zoning Code to treat employee housing for six or fewer employees as a single-family structure and permitted in the same manner as other dwellings of the same type in the same zone. Program 3-C regarding Low-Barrier Navigation Centers will be updated to ensure compliance with AB 139/Government Code section 65583, subdivision (a)(4)(A).

The HCD letter also requests that three programs be modified to make a more specific commitment. Program 1-M calls for the Town to "consider" zoning amendments that offer incentives for ADU and JADU. To address the HCD comment, the word "consider" could be replaced with "adopt." Similarly, Program 3-E calls for the Town to explore the feasibility of adopting an inclusionary housing requirement and commercial linkage fee. In fact, the Town is currently conducting hearings for adoption of these items, so the text will be clarified to reflect that. Program 1-G calls for the town to "encourage" innovative and 'non-traditional' forms of housing. This program can be converted to a policy to reflect that it is something the Town will undertake on an ongoing basis through discussions with applicants at the planning counter, rather than a specific action to be done once and crossed off a list.

### Other Topics

The HCD comment letter also addresses the following topics. Edits in progress to address them are described below:

- Quantified Objectives: Chapter 3 of the Draft Housing Element includes a table of quantified objectives (Table 3-8), illustrating the number of units at each affordability level. This indicates that the Town will strive to see these units constructed, rehabilitated, and preserved over the planning period based on needs, available resources, and constraints. The Draft Housing Element sets objectives for new construction and rehabilitation, but not for preservation. The HCD letter recommends adding an objective for preservation and suggests that the Town's Rent Stabilization and Just Cause Evictions Ordinances can be a basis for projecting preservation objectives. Staff will review data compiled as the ordinances were prepared and incorporate a preservation objective into the Revised Draft Housing Element when it is released for public review in November.

- Fifth Cycle Accomplishments: A description of actions taken to implement programs from the 2015-23 Housing Element was included in Appendix D of the Draft Housing Element, based on the Annual Progress Reports submitted to HCD in 2018. In response to the HCD letter, this appendix will be expanded to document the key accomplishments from the Fifth Cycle and incorporate additional analysis of the cumulative effectiveness of programs targeting special needs groups, which include older adults, persons with disabilities, large households, female-headed households, farmworkers, and persons experiencing homelessness.
- Special Needs Groups: Appendix B discusses the statutorily defined special needs groups, including older adults, persons with disabilities, large households, female-headed households, farmworkers, and persons experiencing homelessness. HCD has requested further discussion of the challenges faced by these groups, the existing resources to meet those needs, and an assessment of any gaps in resources for these groups. The consultant has redlined Appendix B adding text to specifically address each requirement for each special needs group with reference to HCD's Building Blocks webpage.
- Constraints Analysis: Appendix C discusses various governmental, economic, and environmental constraints to housing development. HCD's comment letter has requested additional data and analysis related to local fees and exactions, permit processing times, code enforcement procedures, and the cumulative effect of local land use and zoning controls on housing production. Staff has compiled the required data and information, and work is underway to incorporate the.
- General Plan Consistency: State law requires that all elements of the General Plan be internally consistent with one another. The HCD letter requests that a discussion on General Plan consistency be added to the document and suggests that the Town could add a program to monitor consistency through annual review during the planning period.
- Updates to Land Use and Safety Elements. The Housing Element Update requires certain updates to the Land Use and Safety Elements for compliance with new State law and to help ensure the internal consistency of the General Plan. Given the legal requirements to finalize the Housing Element and adopt the zoning amendments needed to accommodate RHNA by January 31, 2024, these components of the project are proceeding first and the Land Use and Safety Element updates will be completed in the spring, following the anticipated adoption of the zoning. A description of the updates needed to the Land Use and Safety Elements for General Plan consistency will be added to Chapter 1 of the Housing Element and Program 5-B Annual Review will be updated to clarify that General Plan consistency will be monitored through the annual reporting process each year of the Housing Element cycle.

### Next Steps

As discussed above, Town staff will be meeting again with HCD staff to review proposed revisions and confirm that they adequately address the comments in the HC Letter of August 11, 2023. The Revised Draft Housing Element will be released for public comment at the end of November together with the Final Environmental Impact Report (EIR), and adoption hearings will be scheduled before the Planning Commission in December and the Town Council in January. Zoning amendments needed to ensure the Town can accommodate its assessed share of the Regional Housing Needs Allocation (RHNA) are proceeding in parallel, with the intent of bringing the amendments to the Council for adoption in the new year. Attachment B includes a list of project milestones and dates.

### **FISCAL IMPACT**

None

### **ATTACHMENTS**

- A. HCD Comment Letter
- B. Milestone Schedule

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

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August 11, 2023

Heather Abrams, Town Manager  
Town of Fairfax  
142 Bolinas Road  
Fairfax, CA 9930

Dear Heather Abrams:

**RE: Review of the Town of Fairfax's 6<sup>th</sup> Cycle (2023-2031) Draft Housing Element**

Thank you for submitting the Town of Fairfax's (Town) draft housing element received for review on May 15, 2023. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by a telephone conversation on June 29, 2023 with you and your consultant, Andrew Hill. In addition, HCD considered comments from YIMBY Law, Greenbelt Alliance, David Kellogg, Michael Mackintosh, Jenny Silva, and one anonymous individual pursuant to Government Code section 65585, subdivision (c).

The draft element addresses many statutory requirements; however, revisions will be necessary to comply with State Housing Element Law (Gov. Code, § 65580 et seq). The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

As a reminder, the Town's 6th cycle housing element was due January 31, 2023. As of today, the Town has not completed the housing element process for the 6th cycle. The Town's 5th cycle housing element no longer satisfies statutory requirements. HCD encourages the Town to revise the element as described above, adopt, and submit to HCD to regain housing element compliance.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government fails to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), then any rezoning to make prior identified sites available or accommodate the regional housing needs allocation (RHNA) shall be completed no later than one year from the statutory deadline pursuant to Government Code sections 65583, subdivision (c) and 65583.2, subdivision (c). Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i). Please be aware, if the Town fails to adopt a

ATTACHMENT A

compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until these rezones are completed.

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the Town should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

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

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the Town to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: <https://www.opr.ca.gov/planning/general-plan/guidelines.html>.

We are committed to assisting the Town in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact me at [Melinda.Coy@hcd.ca.gov](mailto:Melinda.Coy@hcd.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Melinda Coy', with a long horizontal stroke extending to the right.

Melinda Coy  
Proactive Housing Accountability Chief

Enclosure

## APPENDIX TOWN OF FAIRFAX

The following changes are necessary to bring the Town's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on HCD's website at <https://www.hcd.ca.gov/planning-and-community-development/hcd-memos>. Among other resources, the housing element section contains HCD's latest technical assistance tool, *Building Blocks for Effective Housing Elements (Building Blocks)*, available at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks> and includes the Government Code addressing State Housing Element Law and other resources.

### **A. Review and Revision**

*Review the previous element to evaluate the appropriateness, effectiveness, and progress in implementation, and reflect the results of this review in the revised element. (Gov. Code, § 65588 (a) and (b).)*

The 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.

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.

### **B. Housing Needs, Resources, and Constraints**

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

*Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and*



*other characteristics protected by the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2), Section 65008, and any other state and federal fair housing and planning law. (Gov. Code, § 65583, subd. (c)(5).)*

**Sites Inventory:** 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).

**Goals, Priorities, Metrics, and Milestones:** 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 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.

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.

- 2. Include an analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected needs for all income levels, including extremely low-income households. (Gov. Code, § 65583, subd. (a)(1).)*

*Include an analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition. (Gov. Code, § 65583, subd. (a)(2).)*

*Analyze any special housing needs such as elderly; persons with disabilities, including a developmental disability; large families; farmworkers; families with female heads of*

*households; and families and persons in need of emergency shelter. (Gov. Code, § 65583, subd. (a)(7).)*

Overcrowding: 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).

Housing Conditions: 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.

Special Needs: 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.

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

Parcel Listing: 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](https://www.hcd.ca.gov/community-development/housing-element/docs/sites_inventory_memo_final06102020.pdf).

Electronic Sites Inventory: 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](mailto:sitesinventory@hcd.ca.gov) for technical assistance.

Realistic Capacity: 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, include additional supporting information for the assumptions, and make adjustments as necessary.

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.

Small Sites: 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.

Suitability of Nonvacant Sites: 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.

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.

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).

Suitability and Availability of Infrastructure: 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>.

Water and Sewer Priority: For your information, water and sewer service providers must establish specific procedures to grant priority water and sewer service to developments with units affordable to lower-income households. (Gov. Code, § 65589.7.) Local governments are required to immediately deliver the housing element to water and sewer service providers. 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>.

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

- *Emergency Shelters:* 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 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.
- *Mobilehomes and Manufactured Housing:* 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.
- *Employee Housing:* 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.

4. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Government Code section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7). (Gov. Code, § 65583, subd. (a)(5).)*

Land-Use Controls: While the element included a description of land use controls, it must also analyze them independently and cumulatively with all other all relevant 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.

Fees and Exactions: 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.

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>.

Processing and Permitting Procedures: 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 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.

Codes and Enforcement: 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).

Constraints on Persons with Disabilities: 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.

Local Ordinances: 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.).

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

Permit Approval Times: 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.

6. *Analyze existing assisted housing developments that are eligible to change to non-low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of use restrictions. (Gov. Code, § 65583, subd. (a)(9) through 65583(a)(9)(D).).*

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.

### **C. Housing Programs**

1. *Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the Housing Element through the administration of land use and development controls, the provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available. The program shall include an identification of the agencies and officials responsible for the implementation of the various actions. (Gov. Code, § 65583, subd. (c).)*

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 accessory dwelling units (JADUs)), Program 3-E (Inclusionary Housing Program and Commercial Linkage Fee).

2. *Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city’s or county’s share of the regional housing need*

*for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. (Gov. Code, § 65583, subd. (c)(1).)*

As noted in Finding B3, the element does not include a complete site analysis, therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the 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:

Program 2-A (Workforce Housing Overlay): 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:

- 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:
  - allow 100 percent residential use, and
  - require residential use occupy 50 percent of the total floor area of a mixed-use project.

Lastly, please be aware, the recent California appellate decision in *Martinez v. City of Clovis* 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 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. *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 307 Cal.Rptr.3d 64.

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



The 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.

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

As noted in 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.

#### **D. Quantified Objectives**

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

While the element includes quantified objectives, 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).

#### **E. Consistency with General Plan**

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

The element 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.

## Fairfax Housing Element Update Project Milestone Schedule

	Start	Finish
<b>HOUSING ELEMENT</b>		
HCD review period ends	11-Aug	11-Aug
Town Council Briefing on HCD letter and updates to Draft Housing Element (redlined)	18-Oct	18-Oct
Public release of Revised Draft Housing Element	28-Nov	28-Nov
Town Council Adoption Hearing	13-Dec	13-Dec
<b>ZONING</b>		
<i>Zoning Module 1: Technical Amendments</i>		
PC hearing	14-Sep	14-Sep
PC continued meeting	21-Sep	21-Sep
TC first reading	18-Oct	18-Oct
TC adoption	1-Nov	1-Nov
<i>Zoning Module 2: Low Impact Clustered Residential Standards</i>		
PC study session	12-Oct	12-Oct
PC hearing (module 2)	14-Dec	14-Dec
TC first reading	10-Jan	10-Jan
TC adoption	24-Jan	24-Jan
<i>Zoning Module 3: Workforce Housing Overlay</i>		
PC study session	16-Nov	16-Nov
PC hearing (module 3)	11-Jan	11-Jan
Public notice for 1st reading	12-Jan	12-Jan
TC first reading	24-Jan	24-Jan
TC adoption	7-Feb	7-Feb
<b>CEQA</b>		
Publish DEIR	26-Sep	26-Sep
Public Comment period on DEIR	26-Sep	11-Nov
Planning Commission Hearing on DEIR	16-Nov	16-Nov
Circulate FEIR/Noticing	30-Nov	30-Nov
Town Council Certification Hearing	13-Dec	13-Dec