

**TOWN OF FAIRFAX
STAFF REPORT
Department of Planning and Building Services**

TO: Fairfax Planning Commission

DATE: November 29, 2023

FROM: Jeffrey Beiswenger, AICP, Planning & Building Director

ACTION: Conduct a public hearing and consider adoption of: (1) Resolution No. 2023-32 Recommending that the Town Council Certify an Environmental Impact Report; and (2) Resolution No. 2023-33 recommending that the Town Council Adopt the 2023-2031 Housing Element

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

RECOMMENDATION

Conduct a public hearing and consider adoption of:

1. Resolution No. 2023-32 Recommending that the Town Council Certify an Environmental Impact Report (Attachment 1); and
2. Resolution No. 2023-33 recommending that the Town Council Adopt the 2023-2031 Housing Element (Attachment 2).

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 Town Council adoption.

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 Alternative) 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 at:

<https://www.townoffairfax.org/housing-element-documents/>

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 completed to date 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.

The Town began work on the 6th Cycle Housing Element in 2021, which has required a more robust process than previous cycles due to increased state regulation, oversight, and potential penalties, and tightened timelines.

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 on the Draft EIR are being prepared and will be included in the Final EIR prior to Town Council consideration.

ATTACHMENT

1. Resolution 2023-32
Exhibit A. Draft Environmental Impact Report
2. Resolution 2023-33
Exhibit A. Draft Housing Element

PLANNING COMMISSION RESOLUTION NO. 2023-32

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF FAIRFAX RECOMMENDING THE TOWN COUNCIL CERTIFY AN ENVIRONMENTAL IMPACT REPORT AND MAKE 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.

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.

WHEREAS, the public review period on the DEIR ran from September 26, 2023 to November 11, 2023, for a total of 45 days of review. Comments will be addressed in the Final EIR.

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.

NOW, THEREFORE, THE PLANNING COMMISSION 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 Planning Commission 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 Planning Commission hereby recommends Town Council certification of the EIR upon completion of the final EIR.

Section 4. Pursuant to CEQA Guidelines section 15091(e), the documents and other materials that constitute the record of proceedings upon which the Planning Commission 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

DULY AND REGULARLY ADOPTED on this 29th day of November, 2023 by the Town of Fairfax Planning Commission by the following vote:

AYES: _____ NOES:_____ ABSENT:_____ ABSTAIN:_____

_____, Chairperson, Fairfax Planning Commission

Attest: _____
Recording Secretary

Attachments:

Exhibit A – Draft Environmental Impact Report

PLANNING COMMISSION RESOLUTION NO. 2023-33

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF FAIRFAX RECOMMENDING THE TOWN COUNCIL ADOPT 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 Planning Commission is recommending that the Town Council certify the EIR (Resolution 2023-32); 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 (Exhibit A), 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; recommended adoption of the Environmental Impact Report and determined the Housing Element to be consistent with State law and the General Plan of the Fairfax.

NOW, THEREFORE, THE PLANNING COMMISSION 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 has been prepared for certification by the City.

Section 3. Findings. The Planning Commission hereby finds and recommends 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 Planning Commission 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. 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 Planning Commission hereby recommends that the Town Council of the Town of Fairfax adopt the proposed Housing Element General Plan Amendment.

Attachment 2

DULY AND REGULARLY ADOPTED on this 29th day of November, 2023 by the
Town of Fairfax Planning Commission by the following vote:

AYES: _____ NOES: _____ ABSENT: _____ ABSTAIN:

_____, Chairperson, Fairfax Planning Commission

Attest:
Recording Secretary

Attachments:
Exhibit A – 2023-2031 Housing Element