

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

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November 10, 2022

Afshan Hamid, Director  
Planning Department  
Town of Moraga  
329 Rheem Boulevard  
Moraga, CA 94556

Dear Afshan Hamid:

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

Thank you for submitting the Town of Moraga's (Town) draft housing element received for review on August 12, 2022. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. In addition, HCD considered comments from East Bay for Everyone, David Bruzzone, South Bay YIMBY, YIMBY Law, Greenbelt Alliance, and Fennemore Wendel 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 (Article 10.6 of the Gov. Code). The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

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 accommodate the regional housing needs allocation, including for lower-income households, shall be completed no later than one year from the statutory deadline. Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i). Please be aware, if the Town fails to adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until rezones to accommodate a shortfall of sites pursuant to Government Code section 65583, subdivision (c) paragraph (1), subparagraph (A) and Government Code section 65583.2, subdivision (c) 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.

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>.

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

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 Jamillah Williams, of our staff, at [Jamillah.Williams@hcd.ca.gov](mailto:Jamillah.Williams@hcd.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul McDougall".

Paul McDougall  
Senior Program Manager

Enclosure

## APPENDIX TOWN OF MORAGA

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/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/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).)*

As part of the evaluation of programs in the past cycle, the element must provide an explanation 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).

### **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))*

Enforcement: While the element includes analysis of fair housing complaints, it must describe the Town's compliance with existing fair housing laws and regulations. For additional information, please see pages 28-30 on HCD's Affirmatively Furthering Fair Housing (AFFH) Guidance Memo at <https://www.hcd.ca.gov/community-development/affh/index.shtml>.

Integration and Segregation: While the element included an analysis of integration and segregation patterns for race, familial, status, and income, it must also include an analysis of local and regional patterns and trends for persons with disabilities.

Local Data, Knowledge, and Other Relevant Factors: While the element provides some general information on broad policies that can historically lead to issues in fair housing and lending patterns, the element must still supplement the analysis and complement state and federal data with local data and knowledge to capture emerging trends and issues, including utilizing knowledge from local and regional

advocates, public comments, and service providers. Additionally, the element should analyze historical land use, zoning, governmental and nongovernmental spending including transportation investments, demographic trends, historical patterns of segregation, or other information that may have impeded housing choices and mobility.

**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 AFFH. A full 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 effects the existing patterns for all components of the assessment of fair housing (e.g., segregation and integration, access to opportunity). 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 program(s) to encourage and promote affordable housing; however, most of these programs do not appear to facilitate any meaningful change nor address affirmatively furthering fair housing requirements. Furthermore, the element must include metrics and milestones for evaluating progress on programs, actions, and fair housing results.

Given that the Town is considered the highest resource community, the element should focus on programs that enhance housing mobility and encourage development of more housing choices and affordable housing. 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. For more information, please see HCD's AFFH guidance at <https://www.hcd.ca.gov/affirmatively-furthering-fair-housing>.

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

**Housing Stock Condition:** While the element states that the County has received some complaints about building conditions, substandard housing conditions is not a major issue in the Town. However, the element still must estimate the number of units in need of major 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 non-profit housing developers or organizations. For additional information, see the Building Blocks at <https://www.hcd.ca.gov/housing-stock-characteristics>.

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).)*

The Town has a RHNA of 1,118 housing units, of which 501 are for lower-income households. To address this need, the element relies on vacant sites, including sites in Specific Plan Areas. To demonstrate the adequacy of these sites and strategies to accommodate the Town's RHNA, the element must include complete analyses:

**Realistic Capacity:** The element states that sites in the inventory were assumed to achieve 60-80 percent of maximum densities depending on various factors. However, the inventory reflects capacity assumptions that range from 50-100 percent. The element should reconcile this information, accurately detail the methodology and assumptions for determining realistic capacity and provide support for those assumptions. For example, the element should demonstrate what specific trends, factors, and other evidence led to the assumptions. The estimate of the number of units for each site must be adjusted as necessary, based on the land use controls and site improvements, typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction, and on the current or planned availability and accessibility of sufficient water, sewer, and dry utilities.

Additionally, the element identifies sites in nonresidential zones (e.g., mixed-use zones) and states that these zones allow for both vertical and horizontal mixed-use projects, the town will be providing an increase in densities, and the commercial FAR is measured separately from the residential capacity therefore the site can accommodate both commercial and residential. However, the element specifically needs to analyze the likelihood that the identified units will be developed as noted in the inventory in zones that allow nonresidential uses (e.g., mixed-use). This analysis should consider the likelihood of nonresidential development, performance standards, and development trends supporting residential development. Also, the element should describe the difference between realistic capacity and theoretical capacity. For additional information, see the Building Blocks at <https://www.hcd.ca.gov/analysis-of-sites-and-zoning>.

**Zoning for Lower-Income Households:** Pursuant to Section 65583.2(c)(3)(A) and (B), the element must identify sites with zoning and densities appropriate to encourage and facilitate the development of housing for lower-income households based on factors such as market demand, financial feasibility, and development experience within zones. For communities with densities that meet specific standards (at least 20 units per acre for Moraga), this analysis is not required (Section 65583.2(c)(3)(B)). While the analysis states that sites identified to accommodate the low-income RHNA meet the 20 units per acre standard, the sites inventory appears to rely on sites with zoning less than 20 units an acre e.g., C4, C5, and C6. The element should reconcile this information and provide an analysis demonstrating that the zoning is appropriate to facilitate housing for lower-income households.

Suitability of Nonvacant Sites: The element identifies nonvacant sites to accommodate the regional housing need for lower-income households. First, based on the information provided in the element, some sites are described to have existing uses but are reflected in the inventory as vacant (e.g., Site E1 and E2). The inventory denotes these sites as vacant but further states that these sites include a storage for RVs and temporary uses such as for Christmas tree sales. Sites with improvements regardless of use are considered nonvacant and should be identified as such. Second, while the element described the criteria used to identify redevelopment potential for nonvacant sites and generally describes those criteria in the inventory on a site-by-site basis, the element should include the actual values for that criteria. For example, the inventory indicates where sites have “low improvement value” and are “underutilized” but should assign a numerical value where applicable including for building age.

To provide sufficient capacity for the RHNA during the planning period and as part of identifying sites with potential for development, the element should consider public comments received regarding the inclusion of sites from property owners written interest in residential development in the planning period.

In addition, based on the sites inventory, the housing element relies 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.

Finally, if the element utilizes sites with existing residential uses. Absent a replacement housing policy, these sites are not adequate sites to accommodate lower-income households. The replacement housing policy must meet the requirements set forth in Government Code section 65915, subdivision (c) (3).

Small and Large Sites: Sites larger than ten acres in size or smaller than a half-acre in size are deemed inadequate to accommodate housing for lower-income households unless it is demonstrated, with sufficient evidence, that sites are suitable to accommodate housing for lower-income households. The element identifies certain sites larger than ten acres and smaller than 0.5 acres to accommodate the lower-income RHNA. This element notes factors such as common ownership, adjacency to other parcels, and additional factors. However, the element should sufficiently analyze and describe the criteria utilized to deem small and large sites appropriate to accommodate the lower income RHNA. Additionally, the element should relate that criteria to the actual inventory to facilitate a complete analysis. For sites expected to be consolidated, the element must demonstrate the potential for lot consolidation. For example, analysis describing Moraga’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 redevelopment, recent trends of lot consolidation, and information on the owners of each aggregated site.

Publicly Owned Sites: The element identifies one publicly owned site to accommodate the RHNA. The element must include additional discussion on the publicly owned site. Specifically, the analysis should address general plan designations, allowable densities, support for residential capacity assumptions, existing uses and any known conditions that preclude development in the planning period and the potential schedule for development. If zoning does not currently allow residential uses at appropriate densities, then the element must include programs to rezone sites pursuant to Government Code section 65583.2, subdivisions (h) and (i). In addition, the housing element must include a description of whether there are any plans to sell the property during the planning period and how the jurisdiction will comply with the Surplus Land Act Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5.

Previously Identified Nonvacant and Vacant Sites: The inventory indicates that some sites may have been reused in the previous planning periods. Nonvacant sites identified in the prior planning period or vacant sites identified in two or more consecutive planning periods are inadequate to accommodate housing for lower-income households unless the element includes a program that requires rezoning within one or three years (whichever is applicable) of the beginning of the planning period to allow residential use at appropriate densities by right for housing developments in which at least 20 percent of the units are affordable to lower-income households. (Gov. Code, § 65583.2, subd. (c).) The element should clarify which sites were used in the previous planning periods and include a program as appropriate.

Accessory Dwelling Units (ADUs): The element is projecting 32 ADUs for an average of 4 ADUs per year over the eight-year planning period to accommodate a portion of its RHNA. The projections are based off ADU building permit trends. However, HCD's records indicate that from 2018-2021, the Town permitted a total of 9 ADUs for an average of 2.25 ADUs per year or 18 ADUs for the planning period. While the element can assume beyond HCD's safe harbor methodology, it must provide additional analysis and support for those assumptions. Depending on the analysis, the element must commit to monitor ADU production and affordability throughout the course of the planning period and implement additional actions if not meeting target numbers anticipated in the housing element. If necessary, additional actions, should be taken in a timely manner (e.g., within six months). The degree of additional actions should be in stride with the degree of the gap in production and affordability. For example, if actual production and affordability of ADUs is far from anticipated trends, then rezoning or something similar would be an appropriate action. If actual production and affordability is near anticipated trends, then measures like outreach and marketing might be more appropriate.

Sites Inventory Electronic Form: Please note, pursuant to Government Code section 65583.3, subdivision (b), the Town must utilize standards, forms, and definitions adopted by HCD when preparing the sites inventory. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/community-development/housing-element/index.shtml> 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. Please note, upon adoption of the housing element, the Town must submit an electronic version of the sites inventory with its adopted housing element to [sitesinventory@hcd.ca.gov](mailto:sitesinventory@hcd.ca.gov) .

Sites with Zoning for a Variety of Housing Types: The element notes that in some zones, the use is allowed but not explicitly noted in the municipal code such as supportive and transitional housing, manufactured homes, etc., The element should include a program to address this inconsistency.

Emergency Shelters: The element must describe compliance with Government Code section 65583, subdivision a)(4)(A) or include a program to comply with this requirement. The element requires two parking spaces per facility and one space per six occupants. However, pursuant to Government Code section 65583, subdivision a)(4)(A), parking for emergency shelters should only be the number of spaces necessary for staff working in the shelter and no more than other uses in the same zones. The element should discuss compliance with this requirement or include a program to address it. In addition, the element should address the suitability of the zone including addressing proximity to transportation and services and any conditions inappropriate for human habitability.

Single Room Occupancy (SRO) Units: The element must identify and analyze zoning for SROs. Based on this analysis, the element should include programs as appropriate.

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: The element must independently and cumulatively analyze all relevant land use controls for potential impacts on providing a variety of housing types and achieving maximum allowable densities. The analysis should include but not limited to the minimum lot sizes requirements of 2-3 acres and minimum of 60 residential units for the R-20A and R-20B for pre-subdivision sites and setback and FAR requirements that act as a potential constraint on small lot development and providing a variety of housing types. Lastly, HCD has received several public comments indicating that many of these standards combined with other requirements might conflict with state laws, act as a constraint to achieving densities, project feasibility, and providing a variety of housing types. The element should analyze these and other standards and how they interact with other requirements such as scenic corridor requirements and the several site-specific environmental constraints including slopes. As part of this analysis, the element should also consider if the implementation of these standards conflict with the Housing Crisis Act of 2019 (SB 330, 2019).

SB 330, 2019: The Housing Crisis Act of 2019 was signed by Governor Newsom on October 9, 2019 and became effective on January 1, 2020. The Housing Crisis Act (Gov. Code, § 66300) generally prohibits a locality from enacting a development policy, standard or condition that reduces intensity, imposes moratoriums, enforces subjective

design standards, or implements any provision that limits approvals or caps population. These provisions remain in effect until January 1, 2025. Specifically, Government Code section 66300, subdivision (b)(1)(D), with limited exception not applicable here, does not allow affected jurisdictions to adopt new or enforce existing limits on the number of land-use approvals or permits. HCD has received public comments regarding concerns with potential downzoning, specifically the adoption of the Hillside & Ridgeline Regulations, the Moraga Center Specific Plan Implementation Project, and the Town's proposal to replace the "Study" designation with a "Rural Residential" designation. The Town should analyze each of these for consistency with these requirements and if necessary, add programs to immediately suspend action.

Local Processing and Permit Procedures: The element notes several permits and procedures that are subject to discretionary approvals including Hillside permits, grading applications, projects in Zone B, replacing external existing features, etc. A description of the findings for these permits include projects to "contribute to the image of the town and impacts on property values." Additionally, the Hillside development permit along with grading permits require that projects preserve the natural appearances of the views. The analysis must evaluate these processing and permit procedures' impacts as potential constraints on housing supply (number of units), costs, timing, feasibility, and approval certainty.

Planned Development (PD): The element indicates all residential development requires a Planned Development (PD) permit. However, it must describe and analyze the permit processing procedures impacts as potential constraints on housing supply and affordability, particularly for residential development affordable to lower-income households. The analysis must describe approval procedures and decision-making criteria, and whether they are discretionary approvals. For additional information, see the Building Blocks at <https://www.hcd.ca.gov/processing-permitting-procedures>.

Fees: The element includes a hypothetical multifamily project with 100 units and analyzes potential fees for that project. The analysis indicates that the total project fees is 27 percent of the total project costs. Fees that are more than 10-15 percent of total project costs can be a potential constraint to development. Additionally, excessive fees for multifamily projects have significant impacts on housing affordability and production. The element should include an evaluation of these fees and add programs to address the constraint as appropriate.

Zoning and Fees Transparency: The element must clarify its compliance with new transparency requirements for posting all zoning and development standards for each parcel on the jurisdiction's website pursuant to Government Code section 65940.1(a)(1).

Constraints on Housing Persons with Disabilities:

*Residential Care Homes:* The element states group homes of seven or more are permitted only in high-density zones. For your information, excluding these uses from residential zones or subjecting the uses to conditional use permits (CUP) is generally

considered a constraint and programs should be modified as appropriate with specific commitment to allow the use in all residential zones with objectivity and certainty.

***Reasonable Accommodation:*** The element identifies approval findings for granting a reasonable accommodation including finding related to impacts on surrounding uses – essentially a CUP finding. However, reasonable accommodation should be a unique exception process from a CUP, especially given its importance in addressing barriers to housing for persons with disabilities. The element should include a program to amend the Reasonable Accommodation Ordinance and remove constraints, namely the “potential impact on surrounding uses” approval finding.

5. *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).)*

**Special Needs Households:** While the element includes data and a general discussion of housing challenges faced by special needs households, it still must provide an analysis of the existing needs and resources for each special needs group including seniors, farmworkers, persons with disabilities including developmental disabilities, and female-headed households. For example, the element should discuss the existing resources to meet housing needs (availability of shelter beds, number of large units, number of deed restricted units, etc.), an assessment of any gaps in resources, and proposed policies, programs, and funding to help address those gaps.

## **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).)*

To address the program requirements of Government Code section 65583, subdivision (c)(1-6), and to facilitate implementation, programs should include: (1) a description of the Town’s specific role in implementation; (2) definitive implementation timelines; (3) objectives, quantified where appropriate; and (4) identification of responsible agencies and officials. Program 29 (Fee Deferral) must go beyond “considering” and commit to specific action.

In addition, numerous programs continue to indicate an “ongoing” implementation status. While this may be appropriate for some programs, programs with quantified objectives or specific implementation actions must include completion or initiation dates resulting in beneficial impacts within the planning period. Additionally, several programs are generally focused on simply promoting, supporting, increasing awareness and disseminating information. However, the element should revise these programs to have more proactive and tangible outcomes. Programs that should be addressed but are not limited to include 9, 11, 17, 24, 25, 28, 17, 32, 36, 38, and 39. For additional information, see the Building Blocks at <https://www.hcd.ca.gov/program-overview-and-quantified-objectives>.

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 town’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 B2, 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:

Availability of Zoning: The element indicates that certain sites will need to be rezoned to allow for residential uses and the appropriate densities to accommodate the RHNA. While the element does include a program to complete this rezoning upon adoption of the housing element, please note that if zoning is not in place by the beginning of the planning period (January 31, 2023), for sites that are expected to accommodate the Town’s lower-income RHNA, programs must commit to housing element rezone requirements pursuant to Government Code section 65583.2 (h) and (i). Specifically, the program identifies acreage, allowable densities, and anticipated units to be rezoned and must 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 CUP, planned unit development permit, or other discretionary review or approval.
- accommodate a minimum of 16 units per site;
- require a minimum density of 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.

Publicly-Owned Sites: The element identified publicly-owned sites to accommodate a portion of the RHNA. The element should include a program with numerical objectives that ensures compliance with the Surplus Land Act, provides incentives and actions along with a schedule to facilitate development of publicly-owned sites. Actions should include outreach with developers, issuing requests for proposals, incentives, fee waivers, priority processing and financial assistance.

Program 37: Allowances for Special Housing Types: While this program commits to zoning for employee housing, it must specifically commit to complying 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.

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).)*

Extremely Low-Income (ELI) Households and Persons with Disabilities: The element must include a program(s) with specific actions and timelines to assist in the development of housing special needs populations including ELI households and persons with disabilities. The element includes a program for shared housing and coordinating with providers. However, given the Town's lack of development in the past planning period, the element should include stronger program(s) such as commitments to priority processing, granting fee waivers or deferrals, modifying development standards, and granting concessions and incentives for housing developments that include units affordable to extremely low-income households.

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 B4, the element requires a complete analysis of potential 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.

5. *Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent... (Gov. Code, § 65583, subd. (c)(7).)*

Program 16 – ADU Production: The element included a program to streamline ADUs, create an informational website, and maintain state required fee reductions.

Streamlining ADUs when they are already permitted ministerial and maintain fee reductions are requirements under state law. This program should go beyond complying with state law and actively incentivizes or promotes ADU development for very low-, low-, and moderate-income households. This can take the form of flexible zoning requirements, development standards, or processing and fee incentives that facilitate the creation of ADUs, such as reduced parking requirements, fee waivers and more. Other strategies could include developing information packets to market ADU construction, targeted advertising of ADU development opportunities or establishing an ADU specialist within the planning department.

4. *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).)*

Program to AFFH: While the element includes Program 42 to address fair housing issues, it must address housing mobility and new housing choice in high opportunity areas. Additionally, the program states it will “consider an agreement with a fair housing provider to provide fair housing services, first-time home buyer counseling, and tenant/landlord services,” but must go beyond “considering” and commit to specific action. To strengthen this program, for example, the element could include a program committing to implement Government Code section 8899.50(b) which requires the Town to administer its programs and activities relating to housing and community development in a manner to AFFH and take no action that is materially inconsistent with its obligation to AFFH.

For your information pursuant to Government Code section 8899.50 “Affirmatively furthering fair housing” means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to AFFH extends to all public agency’s activities and programs relating to housing and community development.

### **C. 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 for new construction and rehabilitation, it did not include objectives for units that will be conserved during the planning period because the Town does not have any at-risk units. However, quantified objectives are not limited to at-risk preservation. Conservation objectives may include the variety of strategies employed by the Town to promote tenant stability, code enforcement and repair programs that conserve the housing stock, and the preservation of units at-risk of conversion to market rate.