

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

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October 17, 2022

Thomas Lai, Director
Community Development Agency
County of Marin
3501 Civic Center Drive
San Rafael, CA 94903

Dear Thomas Lai:

RE: County of Marin's 6th Cycle (2023-2031) Draft Housing Element

Thank you for submitting the County of Marin's (County) draft housing element received for review on July 19, 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 Jenny Silva with the Campaign for Fair Housing Elements 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 make prior identified sites available or 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 County 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) (1) (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 County 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 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 County will meet 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 County 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>.

HCD appreciates the work and assistance of the County's housing element team during the review. We are committed to assist the County in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Reid Miller, of our staff, at Reid.Miller@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX COUNTY OF MARIN

The following changes are necessary to bring the County'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. 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).)*

Outreach and Enforcement: While the element includes an extensive discussion of outreach and enforcement capacity, it should also discuss how the County complies with state and federal fair housing laws, including regulations, lawsuits, and related enforcement actions. For more information, see page 29 of HCD's Affirmatively Furthering Fair Housing Guidance Memo at <https://www.hcd.ca.gov/planning-and-community-development/affirmatively-furthering-fair-housing>.

Concentrated Areas of Poverty and Concentrated Areas of Affluence: The element identifies areas of concentrated poverty, high segregation and poverty and concentrated areas of affluence but should include specific analysis of these areas to guide an appropriate policy response. The analysis should at least address evaluating trends, conditions, comparisons to other neighborhoods, effectiveness or absence of past strategies, local data and knowledge and other relevant factors related to equitable quality of life. The element must add or modify programs based on the outcomes of this analysis.

Disproportionate Housing Needs including Displacement Risk: The element includes some discussion of persons experiencing homelessness, like reporting characteristics such as race and disability. However, the element should also analyze the disproportionate impact on protected characteristics and evaluate patterns or concentrations of persons experiencing homelessness including proximity to transportation and services.

Other Relevant Factors: The element provides some historical context for some areas such as Marin City; however, the element should utilize other relevant factors to complement state and federal data and complete an analysis of fair housing conditions. Other relevant factors could include historical land use, zoning and barriers to housing choices, investment practices, seeking investment or lack of seeking investment to

promote affordability and inclusion, information about redlining/greenlining, restrictive covenants and other discriminatory practices, land use related lawsuits, local initiatives, demographic trends or other information that complements the state and federal data.

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).)*

Extremely Low-Income (ELI) Households: While the element quantifies existing and projected ELI households, it must also analyze their housing needs. Specifically, analysis of ELI housing needs could consider tenure, overpayment, magnitude of needs, resources and strategies and gaps in meeting those housing needs and then add or modify programs as appropriate.

3. *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 Conditions: The element identifies the age of the housing stock (p. C-118). However, it must 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 sources such as the housing authority or Environmental Health Services (p. 37). For additional information, see the Building Blocks at <http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/housing-stock-characteristics.shtml>.

4. *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).)*

Realistic Capacity: While the element mentions residential capacity assumptions are conservative and one recent project example, it should list other recent examples by zone, allowable density, built density and affordability to better support realistic residential capacity assumptions. In addition, the calculation of residential capacity should also account for the likelihood of 100 percent nonresidential development. For example, the element could analyze all development activity in nonresidential zones allowing 100 percent nonresidential uses, how often residential development occurs and adjust residential capacity calculations, policies, and programs accordingly. This analysis may incorporate any proposed policies such as residential performance standards, prohibition of commercial uses and should clarify that all zones allow residential uses, particularly 100 percent residential uses.

Suitability of Nonvacant Sites: The element must demonstrate the potential for additional development on nonvacant sites. The element generally lists three types of

nonvacant sites: (1) underutilized residential sites, (2) underutilized nonresidential sites and (3) publicly owned sites (e.g., County, State and School). For underutilized residential and nonresidential sites, the element should consider additional factors (e.g., existing versus allowable number of units or floor area, property owner interest, structure conditions, vacancies) and include a discussion of recent trends to support the various factors. For publicly owned sites, the analysis should address allowable densities, support for residential capacity assumptions, existing uses, any known conditions that preclude or could promote development in the planning period, status, and potential schedule for development. Based on this analysis, the element should add or modify programs. Programs should include a schedule of actions to facilitate development in the planning period in stride with assumptions in the inventory such as numerical objectives, compliance with the Surplus Land Act, outreach with developers or property owners, removing barriers to development, issuing requests for proposals, incentives, fee waivers, priority processing and financial assistance.

In addition, if relying upon nonvacant sites to accommodate more than 50 percent of the regional housing need allocation (RHNA) for lower income households, 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 regional housing need allocation.

Large Sites: Sites smaller than half an acre or greater than ten acres are deemed inadequate to accommodate housing for lower-income households unless it is demonstrated, with sufficient evidence, that sites of equivalent size and affordability were successfully developed during the prior planning period or other evidence demonstrates the suitability of these sites. The element describes various larger sites and the potential for development, including acreage. However, the element should describe how affordability will be facilitated (e.g., inclusionary) or how sites will be parceled in a manner to facilitate affordability (e.g., 50 to 150 units) then add or modify programs as appropriate to support and encourage the necessary circumstances to facilitate affordability.

Accessory Dwelling Units (ADU): The element assumes 280 ADUs in the planning period toward various incomes of the RHNA but must also provide supporting information for affordability assumptions. For example, the element may utilize data and approaches available through the Association of Bay Area Governments (ABAG).

Availability of Infrastructure: The element lists water capacity by service area and development potential in terms of the number of housing units. The element should conduct a similar analysis for sewer capacity to demonstrate adequate total capacity to accommodate the RHNA.

AB 725: For jurisdictions that are considered Metropolitan, the element must identify at least 25 percent of the remaining moderate and above-moderate RHNA on sites that

allow at least four units of housing (e.g., four plex or greater). (Gov. Code, § 65583.2, subd. (c)(4).)

Electronic Sites Inventory: Pursuant to Government Code section 65583.3, subdivision (b), upon adoption of the housing element, the County must submit an electronic version of the sites inventory with its adopted housing element to sitesinventory@hcd.ca.gov. HCD has not received a copy of the electronic inventory. Please note, the County 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#element> for a copy of the form and instructions. The County can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance.

Zoning for a Variety of Housing Types

- *Emergency Shelters*): While the element describes development standards and a non-discretionary process for emergency shelters, it should also discuss capacity, including potential for reuse, proximity to transportation and services and any conditions inappropriate for human habitability.
 - *Transitional and Supportive Housing and Group Homes*: The element mentions transitional and supportive housing and group homes (six or fewer and seven or more persons) are allowed in all residential zones. However, Table H-3.18 appears to exclude these uses from several residential zones. The element should clarify whether these uses are allowed in all residential zones and add or amend programs if necessary.
5. *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... (Gov. Code, § 65583, subd. (a)(5).)*

Fees and Exaction: The element lists the cumulative impact of fees on two development scenarios but should list all impact fees, including those not controlled by the County and then analyze the cumulative impact of fees on development.

Local Processing and Permit Procedures: While the element includes some general information about processing and permit procedures, it should also describe the procedures for a typical single family and multifamily development. The analysis should address the approval body(s), the number of public hearing if any, approval findings and any other relevant information. The analysis should address impacts on housing cost, supply, feasibility, timing, and approval certainty. For example, the element should list and analyze approval findings for impacts on approval certainty, the presence of processes or guidelines to promote certainty and add or modify programs as appropriate.

Additionally, the analysis should specifically address the Master Plan/Design Review process, including steps, approval body, typical number of hearings, findings of approval, lack of fixed development standards and processing times. The analysis should address impacts on housing cost, supply, feasibility, timing, and approval certainty.

Finally, HCD recognizes the County's efforts related to the creation of Objective Design and Development Standards or a Form-Based Code with anticipated adoption by the end of 2022. If the schedule for adoption does not occur as anticipated, the element should include a program committing to adopt the standards early in the planning period.

On/Off-Site Improvements: The element mentions standards for on- and off-site improvements are detailed in the County Code but should also list typical examples of improvements and evaluate their impact on housing cost, supply, timing and feasibility.

Other 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). While the draft element provides a brief description of inclusionary requirements, it should analyze impacts as potential constraints on the development of housing for all income levels. The analysis should evaluate the inclusionary policy's implementation framework, including levels of mandated affordability and the types of options and incentives offered to encourage and facilitate compliance with the inclusionary requirements. The County could engage the development community to facilitate this analysis.

6. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including... requests to develop housing at densities below those anticipated in the analysis... (Gov. Code, § 65583, subd. (a)(6).)*

Requests Lesser Densities: The element must include analysis of requests to develop housing at densities below those identified in the sites inventory. In response, the element (p. 93) notes none of the identified sites in the prior planning period were developed. The element should closely examine why none of the identified sites in the prior planning period were developed, including obstacles and circumstances leading to the lack of development and add or modify programs to address identified constraints.

C. Housing Programs

1. *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 A4, 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 County 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:

- *Concurrent Rezoning*: HCD understands the County will be completing rezoning prior to the start of the planning period (January 31, 2023) to accommodate the RHNA, including for lower-income households. Please be aware, if rezoning is not completed by January 31, 2023, the element must add or revise program(s) to rezone sites with appropriate zoning and development standards pursuant to Government Code sections 65583, subdivision (c)(1), and meet all requirements pursuant to 65583.2, subdivisions (h) and (i).
- *Program 11 (Water Availability)*: The Program currently commits to collaborate with providers to conduct an assessment. However, the program should include specific commitment and discrete timing toward actual housing outcomes in the planning period, such as applying for funding, updating plans, adopting additional conservation measures. In addition, the Program commits to deliver the housing element to water providers but should also commit to deliver the housing element to sewer providers.

2. *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).)*

To assist in the development of housing for lower-income households, the element should be revised, as follows:

- *State Density Bonus Law*: As noted on page 143, the element should include a program to amend the County's density bonus ordinance in compliance with state law.
- *Program 15 (Housing for Farmworkers and Hospitality Workers)*: The Program commits to develop a strategy by 2025 but should also commit to how often the County will pursue implementation (e.g., at least annually).
- *Program 16 (Project Homekey)*: The Program should commit to how often the County will pursue funding.
- *Program 25 (Incentives for Affordable Housing)*: The Program commits to annual outreach to evaluate effectiveness of incentives. In addition, the Program should commit to annual outreach with affordable housing developers to identify and pursue development opportunities.

3. *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 Findings A5 and A6, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the County may need to revise or add programs and address and remove or mitigate any identified constraints.

In addition, Program 32 (Comprehensive Review of Zoning and Planning Policies) commits to conduct a “review” of zoning and planning to remove discriminatory language and policies. The Program should also commit to actions beyond reviewing such as revising, removing, modifying, or establishing appropriate zoning and planning policies.

- 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... (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding A1, the element must include a complete assessment of fair housing. Based on the outcomes of that analysis, the element must add or modify programs.

- 5. The housing program shall preserve for low-income household the assisted housing developments identified pursuant to paragraph (9) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (9) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance. (Gov. Code, § 65583, subd. (c)(6).)*

While the element includes Program 23 (Preservation of At-risk Housing) with many meaningful actions, the Program should also commit to assist with funding and support funding applications.

- 6. 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).)*

The element includes Program 4 (Accessory Dwelling Units (ADU)) to facilitate ADU production and review the production of ADUs once in the planning period. A review of production should also: (1) review affordability, (2) conduct a review more than once in the plan period (e.g., 3-4 times) and (3) commit to a menu of alternative actions that includes rezoning, if necessary, by a specific date (e.g., within six months of review).