# City of Colusa California

## STAFF REPORT

**DATE:** February 18, 2025

**TO:** City Council – Public Hearing Regarding Westcott Subdivision, General Plan Amendment, Rezone and Development Agreement

**FROM:** Jake Morley, Planning Consultant Through City Manager, Jesse Cain

**AGENDA ITEM:** City Council to hold a public hearing and introduce and conduct the first reading by title only, Ordinance entitled "An Ordinance of the City Council for the City of Colusa adding Section 41.5 relating to Implementation of AB 1397 (2017) – Local Planning: housing element and finding the Ordinance Exempt from the California Environmental Quality Act"

**Recommendation:** The Planning Commission and Staff recommend that the City Council hold a public hearing on the proposed Ordinance amendment (**Attachment 1**) and introduce the Ordinance by reading its title only:

> Ordinance of the City Council of the City of Colusa adding Appendix A – Article 41.5 of the Colusa Municipal Code and finding the ordinance exempt from the California Environmental Quality Act (CEQA)

**BACKGROUND:**
September of 2017, AB 1397- Local Planning: housing element - was adopted to create new state regulations specific to the vacant land inventory list contained in the Housing Elements. On December 1, 2020, the Colusa City Council adopted the City's 2020-2028 Housing Element. The Housing Element was certified by the State Department of Housing and Community Development (HCD). The Housing Element includes numerous programs that the city is required to initiate to implement the policies and achieve the quantified objectives listed in the Housing Element.

One such program, listed in the Housing Element is Program H-2, which identifies a list of 14 regulatory items that the city will implement within six months of adopting of the Housing Element (see **Attachment 2** – Table 9.7.2 City of Colusa Goals, Objectives, Policies and Programs).

On May 24, 2024, HCD sent a Letter of Inquiry (**Attachment 3**) requesting an update on the status of Program H-2 and to provide any related documentation demonstrating implementation. Subsequently, the city staff notified HCD that no formal zoning code

amendments have been adopted or prepared for consideration as outlined in Program H-2.

On September 5, 2024, HCD sent a Revocation of Housing Element Compliance Finding letter (**Attachment 4**) noting that HCD has found that the City's housing element is no longer in substantial compliance with Housing Element Laws and therefore revoked certification.

Through conversations with HCD, HCD noted that of the 14 items listed in Program H-2, that Item "H" is the item that needs corrective action.

Program H-2, Item "H" states:

> *To allow residential uses by right for housing developments which at least 20% of the units are affordable to lower income household on vacant sites that were identified in the two previous housing elements to compliance with California Government Code § 65583.2(c) as referenced in Table 9.5-2 (corrected) of his Housing Element*

Table 9.5-2 of the Colusa Housing Element (**Attachment 5**) contains an inventory list of all vacant parcels and unit development capacity. This table identifies 48 individual properties totaling 173.77 acres across a variety of zoning designations and a variety of locations within the city (See Vacant Inventory Land Map, **Attachment 6**). At full buildout, the vacant inventory could potentially accommodate up to 467 units.

Under AB 1397 it means that local government's review of a residential project that 1) are listed on the vacant inventory list of the Housing Element and 2) providing at minimum 20 percent of the total units as affordable and 3) the affordable income limit is classified as Low Income would be "by right".

"By right" means that such projects that fulfill the above limitations would not be subject to requirements of use permits, planned development permits or other discretionary review or approval that would constitute a "project" under the California Environmental Quality Act (CEQA).

However, "by right" does not exempt a project from existing regulatory requirements such as those found in the Colusa Municipal Code (setbacks, height limits, parking, and landscaping etc.). Nor does "by right" mean development would not be subject to other regulations regarding Low Impact Development (LID) standards, California Building Code (CBC) regulations, the American Disability Act (ADA) Accessibility guidelines or other regulations related to building in flood plains, managing stormwater or adhering to water restriction requirements as additional examples.

"By right" also does not mean projects would be exempt from any objective design standards if the City adopts standards in the future.

Potential Consequences of Noncompliance
Various consequences may apply to the city when it does not have a certified Housing Element.

First, noncompliance results in ineligibility or delay in receiving state funds that require a compliant housing element as a prerequisite, including, but not limited to the following:

- Permanent Loal Housing Allocation Program
- Local Housing Trust Fund Program
- Infill Infrastructure Grant Program
- SB 1 Caltrans Sustainable Communities Grants
- Affordable housing and Sustainable Communities Programs

Second, jurisdictions that do not meet their housing element requirements may face additional financial and legal ramifications. HCD may notify the California Office of the Attorney General, which may bring lawsuits for violations of State Housing Element Law.

Further, state law provides for court-imposed penalties for persistent noncompliance, including financial penalties. For example, Government Code section 65585, subdivision (l)(1), establishes a minimum fine of $10,000 per month, up to $100,000 per month. If a jurisdiction remains noncompliant, a court can multiply those penalties by a factor of six. Other potential ramifications could include the loss of local land use authority to a court-appointed agent.

In addition to these legal remedies available in the courts, under the Housing Accountability Act (Gov. Code, § 65589.5, subd. (d)), jurisdictions without a substantially compliant housing element cannot rely on inconsistency with zoning and general plan standards as a basis for denial of a housing project for very low-, low-, or moderate-income households (Housing Accountability Act, also known as the "Builder's Remedy").

Planning Commission
On January 8, 2025, the Planning Commission recommended approval (2 yes, 1 no, 1 abstain, 1 absent) to the City Council to adopt the implementation ordinance and to find the Colusa Municipal Code amendment exempt from the California Environmental Quality Act (CEQA).

**DISCUSSION AND ANALYSIS:**
Adoption of the ordinance will ensure that the Housing Element will once again be certified by HCD, thereby removing potential consequences, and regaining local authority and control. Adoption also encourages potential developers to bring projects to the city that would aid in the city meeting its local Regional Housing Need Allocation (RHNA) numbers.

From a Colusa Municipal Code (CMC) position, there are no instances in the CMC where a discretionary permit is currently need on existing residential zoned lands, in that the City does not currently have an Architectural Review, Site Review or other discretionary process and the CMC permits residential projects in all its residential zoning districts by right (R-1, R-2, R-3 and R-3). Use Permit approval for residential properties is noted in the Commercial and Mixed-use zones, which are not listed on the vacant land inventory as the inventory list is limited to residential zoned properties only.

Further, existing regulations found in the California Environmental Quality Act (CEQA) already provide provisions to exempt projects in specific situations. Such as Section 15303 – *New Construction or Conversion of Small Structures*, which exempts single family and multi-family structures up to 6 units, while Section 15332 – *Infill Exemption Projects*, allows projects to be exempt on site that are 5 acres of less with services and surrounded by development. In addition, other potential projects could be exempt by tiering from the General Plan Environmental Impact Report (EIR) (section 15183 of CEQA).

Staff believes that utilization of a future project under AB 1397 would be limited given existing CMC regulations and requirements, coupled with existing CEQA statutes.

The following General Plan Goals, Policies and Actions are appliable to the project:

Goal HSG-1: To provide a continuing supply of affordable housing to meet the needs of existing and future Colusa residents in all income categories.

Policy HSG 1.1: The City shall enforce its land use policies that allow residential growth to be accommodated with a variety of housing types within a range of densities.

Policy HSG 1.3: The City shall ensure that adequate infrastructure and public services are available prior to approval of developments projects within the City.

Policy HSG 1.4: The City shall provide for future (long-term) regional housing needs by maintaining an adequate supply of developable land for all housing types and affordability levels.

Policy HSG 1.5: The City shall encourage the production of for-sale and rental housing units that will provide a variety of housing types, tenure, and density—at all levels of affordability.

Policy HSG 1.6: The City shall promote more intensive residential development of vacant and underutilized land contiguous to existing development, particularly within walking distance of downtown Colusa, to reduce the cost of off-site improvements and create a compact City form.

Policy HSG 5.1: The City shall maintain sufficient capacity in the appropriate land use districts to allow for the Regional Housing Needs Allocation.

Policy HSG 5.2: The City shall maintain sufficient multi-family designated land use and zoning districts to provide sufficient capacity for the low- and very low-income housing needs.

Policy HSG 7.4: The City shall continue to encourage innovative housing types, site planning and mixed-use developments.

Policy LU 5.1: Development patterns shall tier off existing development and avoid leapfrogging, including areas intended for annexation that are presently outside the city limits.

Policy LU 5.2: Development patterns shall extend primarily from Highways 20 and 45. To the extent feasible, initial phases of new developments shall begin as close as possible to existing urban areas.

Policy LU-6.1: Growth shall provide a strong diversified economic base and a reasonable balance between employment and housing for all income groups.

Policy LU-6.3: Growth shall be managed to ensure that adequate public facilities and services are planned for and provided in a manner that protects the public's health, safety, and welfare.

**FINDINGS**
The required findings for adopting the Ordinance and CEQA Exemption are found within the Ordinance (**Attachment 1**).

**PUBLIC CONTACT AND ENVIRONMENTAL REVIEW**
A 20-day public hearing notice was published in the Pioner Review on December 6, 2024 and January 24, 2025 and a notice was also placed at the planning counter. The Ordinance amendment has been determined exempt pursuant to the California Environmental Quality Act Section 15060(c)(2) and 15061(b)(3), which states that CEQA applies only to projects which have direct or reasonably foreseeable physical change to the environment and the activity is covered by the general rule that CEQA applies only to projects that have potential for causing significant effect on the environment. As a Municipal Code text amendment, it can be seen with certainty that there is no possibility of physical change to the environment by this activity, and therefore the proposed revisions to the Municipal Code are exempt from further review under CEQA.

**BUDGET IMPACT**
None Expected

**ATTACHMENTS**
1. Ordinance of the City Council
2. Table 9.7.2 City of Colusa Goals, Objectives, Policies and Programs
3. HCD - Letter of Inquiry - May 24, 2024
4. HCD - Revocation of Housing Element Compliance Finding Letter - September 5, 2024
5. Table 9.5-2 of the Colusa Housing Element
6. Vacant Inventory Land Map