

**December 1, 2023, HCD Comments on the  
Draft Revised Housing Element Submitted to HCD on November 28, 2023**

Comment Number	HCD Comment	Changes Recommended by Goldfarb & Lipman LLP
#1a.	<p><i>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).)</i></p> <p><i>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).)</i></p> <p><b>Income and Racial Concentration Area of Affluence (RCAA):</b> The element now includes actions to promote an inclusive community; however, the element must provide specific analysis of income and RCAA at a regional level (town compared to the broader region) to better formulate appropriate policies and programs. The analysis should at least address trends, conditions, coincidence with other fair housing factors (e.g., race, highest resource, overpayment), effectiveness or absence of past strategies (e.g., lack of publicly assisted housing and lack of multifamily zoning), local data and knowledge and other relevant factors.</p>	<p>Revise analysis of trends, conditions, and coincidence with other fair housing factors, such as overpayment.</p> <p>May consider addressing other factors, such as those relating to the effectiveness of past strategies to address fair housing issues.</p>
#1b.	<p><b>Contributing Factors to Fair Housing Issues:</b> Based on a complete analysis, the element should re-assess and prioritize contributing factors to fair housing issues. For example, the Town is wholly a RCAA, highest resource and highest median incomes in contrast to the rest of the region. As a result, fair housing issues such as the lack of affordable housing and segregation from the rest of the region should be a high priority.</p>	<p>May consider including additional analysis explaining how housing opportunities will increase access to jobs, transportation, and etc.</p> <p>Compare the factors identified as contributing to fair housing issues to the goals and provide concrete metrics and/or milestones for determining fair housing results.</p>
#1c.	<p><b>Goals and Actions:</b> As noted above, the element must include a complete analysis of affirmatively furthering fair housing (AFFH). The element must be revised to add goals and actions based on the outcomes of a complete analysis.</p> <p>In addition, while the element includes some actions toward AFFH and enhancing housing mobility (e.g., choices and affordability), actions should be added, numeric targets should be increased, and geographic targeting should be finetuned to better promote inclusive neighborhoods throughout the Town. This is particularly important since over 80 percent of the lower-income regional housing need allocation (RHNA) is isolated in two census tracts. As noted in HCD's prior review and the assessment of</p>	<p>Suggest removing subjective language in <b>Program J</b> that may be considered a constraint to housing.</p> <p>Add language to <b>Program T</b> indicating that the priority is to increase homesharing matches in lower-density neighborhoods.</p> <p>Add language in the Housing Element explaining why 96 entitlements targeted in <b>Program AU</b> is an aggressive numeric target.</p>

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	<p>fair housing, the Town is wholly a racially concentrated area of affluence, highest resource and highest median incomes in contrast to the rest of the region.</p> <p>These conditions and circumstances warrant significant and robust actions (not limited to the RHNA) to promote housing mobility and increasing housing choices and affordability throughout the Town, including lower-density neighborhoods. Actions should be added and revised with aggressive numeric targets and geographic targets throughout the Town, including lower-density neighborhoods. Examples include creating more housing choices and affordability in single-family neighborhoods beyond complying with law (e.g., SB 9, ADUs) such as missing middle housing types, targeting affordable housing funding, homesharing, more than one unit of converted space within a single-family structure, increased multifamily capacity, enhanced efforts on religious institutional sites and other alternative land use and financing strategies.</p>	
#2a.	<p><i>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).)</i></p> <p><i>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... (Gov. Code, § 65583, subd. (c)(1).)</i></p> <p><b><u>Small Sites:</u></b> The element identifies several sites with parcels less than a half- acre (p. D-13) that have common ownership and, in some cases, expressed interest to redevelop the site. For small sites with expressed interest in redevelopment, the element should clarify that the expressed interest is also in consolidating the sites. For the remaining sites (Sites D-2 and D-5), the element should explain the circumstances leading to the potential for consolidation such as necessity to consolidate due to access, feasibility, shape, or site planning flexibility. Based on the outcomes of this analysis, the element should add or modify Program K (Lot Consolidation) to further promote lot consolidation, if appropriate.</p>	<p>Revise language in D-2 to clarify whether there is interest expressed by the property owner regarding lot consolidation.</p> <p>Include a stronger statement in <b>Program K</b> (Lot Consolidation) that the Town will adopt an ordinance with incentives.</p>
#2b.	<p><b><u>Electronic Sites Inventory:</u></b> For your information, while the Town has submitted an electronic sites inventory as part of this submittal, pursuant to Government Code section 65583.3, the Town must submit an electronic sites inventory with its adopted housing element. Please see</p>	N/A

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	HCD's housing element webpage at <a href="https://www.hcd.ca.gov/planning-andcommunity-development/housing-elements">https://www.hcd.ca.gov/planning-andcommunity-development/housing-elements</a> for a copy of the form and instructions. The Town can reach out to HCD at <a href="mailto:sitesinventory@hcd.ca.gov">sitesinventory@hcd.ca.gov</a> for technical assistance.	
#2c.	<p><b><u>Adequate Sites Programs:</u></b></p> <p>As noted in the prior review, if necessary to make appropriate zoning available to accommodate the lower-income RHNA, programs must be revised to meet all requirements pursuant to Government Code section 65583.2, subdivisions (c), (h) and (i). The element includes Programs D (Program By Right Zoning Text Amendment to Accommodate RHNA), AR (General Plan Amendment) and AS (Adequate Sites for Housing) to address these requirements. With respect to sites identified in prior planning periods, the element meets statutory requirements, but these actions must be completed by January 31, 2024. With respect to a shortfall of adequate sites to accommodate the lower-income RHNA, the element includes Programs AR and AS. However, the Programs commit to the appropriate zoning given the rezoning occurs after the statutory deadline of January 31, 2023. HCD understands the Town completed the rezoning after the statutory deadline and, therefore, the rezoning must meet all by right requirements pursuant to Government Code section 65583.2, subdivisions (h) and (i). Based on a cursory review, the rezoning does not appear to meet these requirements. As a result, these programs must clearly commit to meet all by-right requirements by January 31, 2024.</p> <p>In addition, please be aware, the recent California appellate decision in <i>Martinez v. City of Clovis</i> found that while overlays can be used in a rezone, when the base zone allows residential development, both the base zone and the overlay zone must comply with the minimum density requirements of Government Code section 65583.2, subdivision (h). The Town may need to adjust its rezoning strategy if the underlying zoning for sites that will be rezoned allows minimum densities less than 20 dwelling units per acre. <i>Martinez v. City of Clovis</i> (2023) 90 Cal.App.5th 193, 307 Cal.Rptr.3d 64.</p>	Include language in the response memorandum to HCD that the Housing Element Overlay Zone Ordinance will be amended to comply with the requirements in Government Code Sections 65583.2(h) and (i) and is scheduled to be heard by the Planning Commission on January 24, 2024, and the Town Council in February.
#3a.	<p><i>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).)</i></p> <p><i>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</i></p>	<p>Include additional analysis about how the development standards, either individually or cumulatively function as a constraint on housing development. Analyze lot coverage or setbacks in the zones identified in HCD's comment.</p> <p>Provide narrative describing the reasoning for amending the Zoning Code to align the open space requirements with the Objective Standards Checklist for multi-family and condominium development and whether it is considered a governmental constraint.</p>

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	<p><i>disabilities...(Gov. Code, § 65583, subd. (c)(3).)</i></p> <p><b><u>Land Use Controls:</u></b> HCD's prior review found that the Town must list and evaluate development standards in the North Forty Specific Plan and High Density Residential and Commercial designation. In response, the Town has now listed development standards by each zoning district but should also analyze those development standards for impacts on housing supply and cost and most importantly, the ability to encourage maximum densities without exceptions. For example, lot coverages, heights, and setbacks in the Multifamily Residential (RM) zone; and lot coverage heights and guest parking requirements in the North Forty Specific Plan could be constraints. Based on the outcomes of a complete analysis, the element should add or modify programs to include specific commitment to review and revise these development standards as necessary.</p>	
#3b.	<p><b><u>Local Processing and Permit Procedures:</u></b> The element now discusses decision-making bodies and lists approval findings for the Architecture and Site Application. However, the element should also analyze these processes to better inform programs to address identified constraint. For example, the element mentions the decision-making body depends on the scope of the application. The element should explain the scope, resulting decision-making body and impacts on approval timing and certainty. In addition, the element lists approval findings and concludes some findings may be constraints then modifies Program AQ (Zoning Code Amendments) to amend approval findings (considerations). But the element should discuss which approval findings may be constraints to better inform implementation of Program AQ.</p>	Expand on the justification for the removal of subjective findings for a Conditional Use Permit for a multi-family or mixed-use project.
#3c.	<p><b><u>Programs:</u></b> As noted above, 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. In addition, programs should be revised, as follows:</p> <ul style="list-style-type: none"> <li>• <b><u>Program D (Additional Capacity for the North Forty Specific Plan):</u></b> The Program should also commit to establish or modify development standards to facilitate achieving maximum densities, regardless of the level of affordability and should specify to either remove the unit cap or increase the unit cap to allow maximum build out of each parcel, including State Density Bonus Law or other circumstances that might warrant increasing allowable densities.</li> <li>• <b><u>Program V (Housing opportunities for Persons living with Disabilities):</u></b> Given the importance of promoting housing access for persons with disabilities, the Program could be modified with a date earlier in the planning period (e.g., by December</li> </ul>	<p><b>Programs D, V, and AW:</b> No suggested edits.</p> <p><b>Program AA:</b> Refine language.</p> <p><b>Program AQ:</b> Consider rewording the program to state, "monitor HOEZ development standards and complete first evaluation of said standards by December 2026 and then annually thereafter."</p>

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	<p>2024).</p> <ul style="list-style-type: none"> <li>• <u>Program AA (Reduce Parking Standards)</u>: The Program currently commits to “Initiate a study to determine specific updates...” While initiating a study and making a determination are important steps by themselves, these actions do not result in outcomes. The Program should clearly commit to amending the municipal code. For example, the Program could commit to: “Initiate a study and outreach, including with developers, and amend the Municipal Code, as follows:...”</li> <li>• <u>Program AQ (Zoning Code Amendments)</u>: The Program commits to apply the Housing Element Overlay Zone (HEOZ) to identified sites and modify development standards. HCD understands this action has been completed. Based on a cursory review of the Town’s Ordinance 2347, some development standards such as heights may be a constraint on achieving maximum densities. As a result, this Program should commit to monitor and evaluate these development standards, including outreach with the development community, and making adjustments, as appropriate, by a specified date.</li> <li>• <u>Program AW (Story Poles and Netting Policy)</u>: While the Program now commits to revise Story Poles and Netting Policy Requirements; these requirements are constraints and impact housing costs; supply (number of units) and approval certainty and should be removed or replaced with cost effective measures to promote certainty for the developers and the community. Further, the element should evaluate the effectiveness of any future requirements or measures, and making adjustments, as necessary, by a specified date (e.g., by 2028).</li> </ul>	
#4.	<p><i>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).)</i></p> <p><b>Program Q Accessory Dwelling Units (ADU)</b>: While the Program now commits to amend the ADU Ordinance, it must also commit to establish incentives such as modifying development standards (e.g., heights), pursuing funding; waiving fees beyond ADU law; proactive marketing and establishing points of contact to ease permitting processes. In addition, the Program commits to monitor production and affordability of ADUs annually but should also commit to making adjustments by a specified date (e.g., within six months) if production and affordability are not meeting assumptions. Further, the Program should clearly commit to options beyond incentives such as rezoning if production and affordability far differs from assumptions.</p>	<p>Modify <b>Program Q</b> to include proactive marketing through Countywide efforts for interested property owners and grant opportunities to fund the development of ADU’s and JADU’s.</p> <p>Suggest including more defined language regarding a commitment to making a modification if the production of ADU’s or JADU’s differs from the assumptions from the Housing Element.</p>
#5	<p><i>Local governments shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the Housing Element, and</i></p>	<p>Include additional language regarding any continued public hearings about the Housing Element that have occurred.</p>

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	<p><i>the element shall describe this effort. (Gov. Code, § 65583, subd. (c)(9).)</i></p> <p><b>Public participation</b> 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. HCD particularly encourages the Town to continue engaging commenters on this review. These comments contained valuable insights that can result in a more effective housing elements, especially related to programs and specific commitment. HCD's future reviews will continue to consider the extent to which the revised element documents how the Town solicited, considered, and addressed public comments in the element. The Town's consideration of public comments must not be limited by HCD's findings in this review letter.</p>	
Note	<p>For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), as the Town failed to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023); programs to rezone and make prior identified sites available or address a shortfall of capacity to accommodate the RHNA (e.g., Program D: Program By Right Zoning Text Amendment to Accommodate RHNA, Program AR: General Plan Amendment, Program AS: Sites Previously Identified) must 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).</p>	N/A