

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

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December 23, 2022

Dina Tasini, Director of Community Development
Community Development Department
Town of Tiburon
1505 Tiburon Boulevard
Tiburon, CA 94920

Dear Dina Tasini:

RE: The Town of Tiburon's 6th Cycle (2023-2031) Draft Housing Element

Thank you for submitting the Town of Tiburon's (Town) draft housing element received for review on September 27, 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. Our review was facilitated by a telephone conversation on December 20, 2022 with yourself and Christine O'Rourke, Consultant. In addition, HCD considered comments pursuant to Government Code section 65585, subdivision (c) from Kyle Doss, Kathleen Silverfield, Campaign for Fair Housing Elements, South Bay YIMBY, YIMBY Law and Greenbelt Alliance, David Kellogg, Julie and Seth Jacobs, and Jennifer Harmon.

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 these 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 (May 31, 2023), then any rezoning to make prior identified sites available or accommodate the regional housing needs allocation (RHNA) shall be completed no later than one year from the statutory deadline pursuant to Government Code sections 65583, subdivision (c) and 65583.2, subdivision (c). 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 these rezones 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. In addition, HCD received comments with many meaningful suggestions related to program commitments and other issues related to zoning and AFFH. HCD encourages the Town to consider these comments.

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.

HCD appreciates your hard work and diligence provided during the course of our review. 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 Brandon Yung, of our staff, at brandon.yung@hcd.ca.gov.

Sincerely,



Melinda Coy
Proactive Housing Accountability Chief

Enclosure

APPENDIX TOWN OF TIBURON

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/planning-and-community-development/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/planning-and-community-development/housing-elements/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 also 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). Programs should be revised as appropriate to reflect the results of this evaluation.

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))*

Racial/Ethnic Areas of Concentration of Areas of Affluence (RCAA): As the element acknowledges that a RCAA exists within the Town, and that the Town is predominantly in the high resource category according to TCAC/HCD Opportunity Maps and is predominantly higher income, the Town must consider additional actions (not limited to the Regional Housing Needs Allocation (RHNA) to promote housing mobility and improve new housing opportunities throughout the Town for existing residents and the broader region.

Sites Inventory: The element must identify sites throughout the community to foster inclusive communities. The element includes some general discussion and conclusions that identified sites for lower-income households are concentrated in central areas of the Town and certain neighborhoods. However, the element should expand on the reasoning for isolating the RHNA for lower income households and discuss whether

the distribution of sites improves or exacerbates supporting mobility and housing choice throughout the Town. Further, if the inventory continues to isolate the RHNA for lower-income households, the element must have commensurate programs with place-based strategies for new opportunities through-out the community (beyond RHNA) to result in an equitable quality of life and affirmatively further fair housing (AFFH) throughout the Town.

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: The element reports some data on the number of existing and projected ELI households, but it must also include an analysis of their housing needs. The analysis should evaluate tenure, overpayment, resources, and strategies available and the gap and magnitude of housing needs to better formulate policies and programs. Depending upon the results of this analysis, the Town may need to add or revise existing programs.

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).)*

Overpayment: While the element identifies the percentage of residents overpaying for housing by tenure (pg. 39), it must clearly quantify and analyze the number of lower-income households overpaying for housing by tenure (i.e., renter and owner) and add or modify policies and programs as appropriate.

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).)*

The Town has a RHNA of 639 housing units, of which 303 are for lower-income households. To address this need, the element relies on vacant and nonvacant sites, including sites in the yet to be created MU and MS districts. To demonstrate the adequacy of these sites and strategies to accommodate the Town's RHNA, the element must include complete analyses:

Parcel Listing: The element lists parcels by various factors such as size, zoning, and general plan designation. However, it must also include a description of existing use with sufficient detail to facilitate an analysis of the potential for additional development on nonvacant sites.

Electronic Sites Inventory: For your information, pursuant to Government Code section 65583.3, the Town must submit an electronic sites inventory with its adopted housing element. The Town must utilize standards, forms, and definitions adopted by HCD.

Please see HCD's housing element webpage at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements> for a copy of the form and instructions. The Town can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance.

Suitability of Nonvacant Sites: The description of existing uses should be sufficiently detailed to facilitate an analysis demonstrating the potential for additional development in the planning period. For example, the element includes sites with grocery stores, post office, an existing bank, and other businesses, but does not demonstrate whether these existing uses would impede development of these sites within the planning period or are likely to be discontinued. For example, while the element states that the grocery store will be retained on Site 5, it could provide additional information on how the site could be redeveloped with the existing grocery space. In addition, while some analysis was provided for Sites 1-9, no analysis was provided for Sites A-G. The element should also include current market demand for the existing uses, provide analysis of existing contracts that would perpetuate the existing use or prevent additional residential development and include current information on market conditions in the Town and relate those trends to the sites identified. For Site 8, the element should describe the timing for the facilities plan, if the site will be surplus by the school district, and any conversations with the school district to provide housing. The element must demonstrate the site will be available early enough in the planning period for development to occur.

In addition, the 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.

Sites Identified in the Prior Inventory: Sites identified in prior planning periods shall not be deemed adequate to accommodate the housing needs for lower-income households unless a program, meeting statutory requirements, requires rezoning within three years. The element should clarify if sites, including Site 8, were identified in prior planning periods and if so, which sites and include a program if utilizing previously identified sites in the current planning period.

Use of SB 9 Senate Bill 9 (Statutes of 2021) Projections: The element is projecting development of four single-family homes on each qualifying vacant single-family lot in Appendix C for a total of 174 units based on the passage of SB 9 (Statutes of 2021) to accommodate a portion of its above moderate income RHNA. To utilize projections based on SB 9 legislation, the element must support this analysis with local information such as local developer or owner interest to utilize zoning and incentives established through SB 9 and include programs and policies that establish zoning and development standards early in the planning period and implement incentives to encourage and facilitate development at the anticipated development levels.

Environmental Constraints: While the element includes a column of environmental constraints on its sites inventory and generally describes the Flood Hazard Area, it must describe how conditions relate to identified sites including how environmental conditions could impact housing development in the planning period. (Gov. Code, § 65583.2, subd. (b).) The Town should also provide analysis on how local policies to mitigate environmental hazards may impact housing development.

Sites with Zoning for a Variety of Housing Types:

- *Emergency Shelters:* While housing element law does allow a jurisdiction to limit the number of beds or persons permitted to be served nightly by a facility, standards must be designed to encourage and facilitate the development of, or conversion to, an emergency shelter. The element must analyze the 10-bed limit as a potential constraint for the development of emergency shelters. In addition, the element should describe how emergency shelter parking requirements meet AB139/Government Code section 65583, subdivision (a)(4)(A) requirements or include a program.
 - *Supportive Housing:* Permanent Supportive Housing shall be a use by-right in zones where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses pursuant to Government Code section 65651. The element must demonstrate compliance with this requirement and include programs as appropriate.
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).)*

Affordable Housing Overlay Zone: The element includes description of an Affordable Housing Overlay. While some information was provided on how the overlay allows residential the element should clarify where it applies and whether it will apply over any of the sites identified in the inventory.

Processing and Permit Procedures: While the element includes information about processing times, it should also describe the procedures by type of housing, zone, permit type, and approval body. In particular, the element should describe how projects in the MU zone will be processed and objective design standards and findings used to determine approval by the Design Review Board. The analysis should address the approval body, the number of public hearing if any, approval findings and any other relevant information. The analysis should address impacts on housing cost, supply, timing and approval certainty and add or modify programs as appropriate.

Fees: The element must describe all required fees for single-family and multifamily housing development, including impact fees, and analyze their impact as potential constraints on housing supply and affordability. The element should provide analysis

for disproportionately high fees that may post constraints that may hinder the locality from meeting its regional housing need including but not limited to the business licensing fee and street impact fee for residential development. The element should include an evaluation of these fees and add programs to address the constraint as appropriate. Specifically, the element should describe the business licensing fee for residential development and the street improvement fee.

Zoning, Development Standards and Fees: The element must clarify compliance with new transparency requirements for posting all zoning, development standards and fees on the Town's website and add a program to address these requirements, if necessary.

Local Ordinances: The element must specifically analyze locally adopted ordinances such as inclusionary ordinances or short-term rental ordinances that directly impact the cost and supply of residential development. While the element describes the framework of inclusionary requirements and available alternatives, it must also analyze their impact as potential constraints on the development of housing for all income levels, specifically housing supply and affordability. Specifically, the element should evaluate the impacts of requirements for "comparable amenity level".

Housing for Persons with Disabilities: The element briefly describes its reasonable accommodation procedures. However, the element should also describe the process and decision-making criteria such as approval findings and analyze any potential constraints on housing for persons with disabilities. In addition, the element must describe any zoning code definitions of family and any spacing or concentration requirements for housing for persons with disabilities.

6. *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).)*

While the element quantifies most of the Town's special needs populations, the element must also analyze their special housing needs. For a complete analysis of each population group, the element should discuss challenges faced by the population, the existing resources to meet those needs (availability senior housing units, number of large units, number of deed restricted units, etc.), and an assessment of any gaps in resources.

7. *Analyze existing assisted housing developments that are eligible to change to non-low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of use restrictions. (Gov. Code, § 65583, subd. (a)(9) through 65583(a)(9)(D).)*

The element states the Town has a portfolio of 104 units of affordable housing units that are at low risk of conversion to market rate (pg. 35). However, it appears as if this listing of projects may not accurately reflect the possibility for conversion to market rate. Pursuant to information provided to HCD from the California Housing Partnership, the Bradley House (15-units located on 101 Esperanza) may also be at risk of

conversion during the next ten years. Additionally, the element states that Point Tiburon Marsh (20-units of located on 22 Marsh Road) is at low-risk despite having 30-year affordability terms first established in 1987. If these projects are at risk of conversion to market rate within the ten-year period, a full analysis must include and estimated total cost for producing, replacing and preserving the units at-risk, and identification of public and private nonprofit corporations known to the Town to have the legal and managerial capacity to acquire and manage at-risk units, and an identification and consideration of use of federal, state and local financing and subsidy programs. Depending upon the results of that analysis, the Town may need to revise or add programs.

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, subd. (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.

Programs must demonstrate that they will have a beneficial impact within the planning period. Beneficial impact means specific commitment to deliverables, measurable metrics or objectives, definitive deadlines, dates, or benchmarks for implementation. Deliverables should occur early in the planning period to ensure actual housing outcomes. All programs should be evaluated to ensure meaningful and specific actions and objectives. Programs containing unclear language (e.g., "Evaluate"; "Consider"; "Encourage"; etc.) should be amended to include more specific and measurable actions. Programs to be revised include, but are not limited to, the following:

Program H-a (Focus Town Resources on Housing Opportunity Sites): As demonstrated in the review of previous housing element programs, this program was not successful. The element should modify this program to increase success based on past outcomes including describing what specific actions will be taken to implement the program.

Program H-b (Improve Community Awareness of Housing Needs, Issues, and Programs): Provide expected timeframes for completion of for all actions. Also, the

program should be expanded to promote programs beyond fair housing to align with program description.

Goal H-c (Community Outreach when Implementing Housing Element Programs):
Provide specific actions for implementation and coordination.

Program H-d (Foster Meaningful Assistance from Other Agencies): Describe metrics or objectives of this program to measure success. The Town could consider expanding the program beyond housing related programs to include other community development efforts.

Program H-f (Conduct Outreach for Developmentally Disabled Housing and Services):
Provide specific actions for implementation.

Program H-G (Foster Meaningful Assistance from Other Agencies): Provide specific timeframes for implementation.

Program H-n (Work with Non-Profits on Housing): Describe how the town will work with non-profits in relationship to housing sites and facilitate development.

Program H-z (Coordination with Affordable Housing Providers): What is the timeframe for implementation.

Program H-aa (Tenant Protection Strategies): Need firmer commitment beyond “explore”.

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 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 B4, 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:

The element indicates that sites identified in the downtown commercial areas will need to be rezoned to a new Mixed-Use (MU) designation to allow for residential uses and the appropriate densities to accommodate the RHNA. However, it is unclear from the sites inventory the timing for when those rezones will occur. In addition, as the element states

that the objective standards have not yet been developed for the MU designation, a program should be identified to ensure that development standards facilitate housing development at the maximum allowable density for the MU zone. 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 must identify 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 conditional use permit, 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 to the total floor area of a mixed-use project.

Program H-dd (Work with Non-Profits and Property Owners on Housing Opportunity Sites): Describe how the Town will facilitate lot consolidation of the sites in the inventory.

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).)*

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. The element includes Program H-n (Work with Non-Profits on Housing) to outreach to developers of affordable housing for ELI. 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 ELI 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 B5 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. *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).)*

As noted in Finding B1 the element requires a complete AFFH analysis. Depending upon the results of that analysis, the Town may need to revise or add programs.

Goals, Actions, Metrics, and Milestones: The element must be revised to include goals and actions that specifically respond to the analysis and to the identified and prioritized contributing factors to fair housing issues and must be significant and meaningful enough to overcome identified patterns and trends. 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 must include metrics and timelines that target intended outcomes, particularly for those that assist the Town in facilitating fair housing choice and supporting mobility throughout the Town. For your information, metrics (where applicable), should be targeting beneficial impacts for people, households, and neighborhoods (e.g., number of people or households assisted, number of housing units built, number of parks or infrastructure projects completed).

6. *Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, “accessory dwelling units” has the same meaning as “accessory dwelling unit” as defined in paragraph (4) of subdivision (i) of Section 65852.2. (Gov. Code, § 65583, subd. (c)(7).)*

The element included Program H-hh (Outreach and Education for Accessory Dwelling Unit Development) to promote ADU development. However, this program should actively incentivize or promote 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.

D. 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).)

The element provides a summary of quantified objectives on page 110 for the 6th cycle planning period. However, the element should have quantified objectives for rehabilitation and preservation for lower-income households based on program commitments and a complete analysis of at-risk units.