

## **Housing Element Update Process FAQ**

### **Updated January 19, 2023**

**1. What is the timeline for Housing Element adoption?**

The Draft Housing Element was submitted for review to the California Department of Housing and Community Development (HCD) on August 11, 2022 for its 90-day first review period. The Town received a comment letter from the HCD on November 9, 2022. State law establishes a due date of January 31, 2023 for the Housing Element to be adopted by the Town and certified by HCD. After that, there is a 120-day period for the Town to work with HCD on certification.

The Town Council directed staff to complete the Housing Element, zoning code amendments, environmental analysis, conforming General Plan amendments and associated work prior to January 31, 2023. There was acknowledgement that it would be very challenging to meet that timeline but that every effort should be made. During the November and December 2022 public meetings, the Town Council, Planning Commission and residents raised a number of questions and concerns related to the Housing Element and associated zoning code amendments. Staff has been conducting direct outreach to property owners and residents to answer questions and address concerns. Additionally, Planning Commissioners and members of the public asked for additional participation by the Fire Marshal in the Housing Element adoption meetings. Significant progress has been made on these efforts; however, this additional work required more time so it is no longer possible for the Town to adopt the Housing Element by January 31, 2023. The final timeline will be determined based on Town Council's direction and updates will be provided to the community.

**2. What other public meetings have to occur to ensure Housing Element adoption and approval by the HCD?**

Both the Planning Commission and Town Council must conduct a public meeting on the Housing Element. The Planning Commission's role is to review the Housing Element and make a recommendation to the Town Council on whether the Housing Element substantially complies with State housing element law. The Town Council must adopt a resolution which documents how the Housing Element complies with the State law. Once these local actions are taken, the Housing Element will then be sent to the HCD for a second 60-day review (the first was completed on November 9, 2022). Based on past experience, if the Town adequately addresses all of HCD's first round comments, it is likely that HCD will certify the Housing Element as compliant with State law.

**3. What happens if the Housing Element is not adopted by the Town Council by January 31, 2023?**

There is a risk that a developer could file a "Builder's remedy" project which does not need to comply with either General Plan or Zoning Code regulations. (See FAQ # 5.) This potential exists until the Town adopts a substantially compliant housing element and/or HCD certifies the element. If the Town refuses to adopt a Housing Element, there are additional penalties that could apply. (See earlier [Housing Element FAQ](#).)

**4. What happens if Town Council adopts the Housing Element, but not the Zoning Code amendments required for the implementation of the Housing Element?**

The Town will need to adopt the Zoning Code amendments within one year or three years, depending on when the Housing Element is adopted. In addition, any site that is re-zoned to accommodate the Town's affordable housing may not undergo any discretionary review, such as a Conditional Use Permit (CUP).

**5. What is the Builder's Remedy? How is it distinct from other possible impacts to the Town if the Housing Element isn't adopted by January 31, 2023?**

A developer is permitted to file an application for a housing development that does not comply with the Town's existing General Plan or Zoning Ordinance if (1) the project contains 20% lower income units or 100% moderate income units and (2) the Town does not have a compliant Housing Element. Once a "builder's remedy" application is filed, the developer is entitled to proceed with that application even if the Town subsequently adopts a compliant housing element. The Building Code and Fire Code would still apply to any such projects.

**6. When will the housing planned for in the Housing Element be built?**

That is up to property owners and the market. A town must ensure that the appropriate zoning is in place to accommodate its Regional Housing Needs Allocation (RHNA) but does not control when or how much housing is actually built. New housing construction is based on a variety of socio-economic factors, such as demand, available financing, land and construction costs, etc., and is ultimately driven by private property owners.

**7. What other documents are typically adopted in connection with a Housing Element Update?**

The Housing Element must be consistent with other elements of the General Plan. To ensure consistency with the Housing Element, the Town has determined that additional minor conforming amendments are needed to the Land Use Element, the Natthhorst Triangle Plan, the Alpine Corridor Plan and the Land Use Map. In addition, State law requires the Safety Element to be updated in conjunction with the Housing Element. Unlike the Housing Element, the Safety Element has no deadline for adoption. The Town is in the process of receiving committee input on the first draft of the Safety Element. It is also expected that some of the Housing Element amendments will need to be implemented through new zoning ordinances. Finally, before the Town can take final action on these documents, it must adopt an Initial Study/Mitigated Negative Declaration (IS/MND) as required by the California Environmental Quality Act (CEQA). For background, see earlier [CEQA FAQ](#).

**8. How was a Mitigated Negative Declaration (MND) determined to be the right level of environmental review?**

The Town prepared an Initial Study (IS) to analyze the potential environmental impacts associated with the project. The Initial Study did not identify any potentially significant impacts that could not be mitigated. This in part is because the Town's existing programs in the General Plan and Zoning Ordinance ensure that development will occur in an environmentally sensitive manner. Further, the focus of these policy documents is different from the project-specific impacts. The MND is only

performing a programmatic review. As new projects are submitted, the Town will analyze each application to determine what, if any, additional environmental review is required. Finally, if the Housing Element is not approved, development will likely occur in a manner that does not comply with the General Plan and Zoning Ordinance thus leading to even further environmental impact down the line.

**a. How does the IS/MND public comment period work?**

Unlike public comment on an Environmental Impact Report (EIR), the Town is not required to respond to each single comment. Instead, the Town is only required to consider and address the comments before final action is taken. The Town, however, has prepared a more comprehensive and formal Response to Comments to ensure that all environmental comments received during the comment period are addressed.

**b. How does the Town determine which IS/MND comments are relevant and how are comments processed?**

Only comments dealing with the MND topic areas specified by the California Environmental Quality Act (CEQA) are addressed in the Response to Comments. If a comment identifies an item not addressed in the MND it is either answered in the Response to Comments document or if warranted reflected in a formal change to the IS/MND.

**c. If a housing site in the Housing Element is developed in the future, is any further environmental review required beyond the IS/MND?**

Yes, each project is evaluated under CEQA to determine what level of environmental analysis is required. Much of the Town's substantive environmental review and conditions occur outside of CEQA as part of the Town's normal application process. In addition, some projects may have to undergo additional CEQA analysis to determine whether the actual design and layout of the project will have specific impacts not analyzed in the IS/MND programmatic review.

**9. Why is the Safety Element considered in the scope of the IS/MND if a draft Safety Element update is not yet complete?**

CEQA requires the town to evaluate all aspects of a project. Since the housing element is tied to the safety element, both documents must be analyzed in the IS/MND. The IS/MND evaluates the draft Safety Element that is being circulated for public comment. If substantial changes are made to that draft, the Town will evaluate whether supplemental CEQA review would be required.