

## Frequently Asked Questions Re Housing Element and North 40 Phase 2 Project

Posted 7-29-2025

- 1) Is a development application that deemed complete on April 18, 2023, subject to the Housing Element that was adopted on January 30, 2023 even though HCD determined that the adopted Housing Element could not substantially comply with state law?

The January 30<sup>th</sup> Housing Element was adopted on January 30, 2023. Resolution No. 23-006 stated that the Town Council was adopting the City's Housing Element and that the Resolution took effect upon its adoption. However, there is a court decision holding that General Plan amendments take effect 30 days after adoption in order to allow time for a referendum. (*Midway Orchards v. County of Butte*, 220 Cal.App.3d 765 (1990).) Resolution No. 23-006 was not referended. Therefore, the Housing Element was in effect 30 days after adoption of the Resolution. This means that the January 2023 Housing Element was effective March 1, 2023, and applied to planning applications that were submitted after that date. SB 330 preliminary applications submitted between March 30, 2023, and the adoption of the amended Housing Element on June 4, 2024, vested to the Town's development standards in place when they were submitted, including the January 30<sup>th</sup> Housing Element.

Government Code Section 65589.55 provides specifically that the compliance status of a Housing Element is determined on the date when a preliminary application is submitted. But nothing in state law provides that a Housing Element that HCD has determined does not "substantially comply" with state housing law for purposes of Housing Element certification is null and void.

HCD's determination of "substantial compliance" is relevant for purposes of the Builder's Remedy. Government Code section 65589.5(d)(5) provides that one ground upon which a local agency can deny a proposed project containing affordable housing is that the project is inconsistent with both the zoning ordinance and general plan land use designation. However, the Town must have an adopted Housing Element in "substantial compliance" with state Housing Element law to use that finding. Government Code Section 65585.03 provides that a Housing Element is not consistent with state law unless either a court or HCD finds it consistent. Because HCD did not determine that the Town's January 30, 2023, Housing Element substantially complied with state Housing Element law, the Town cannot use that basis to deny Builder's Remedy projects if a preliminary application was filed while the January 30, 2023, Housing Element was in effect.

- 2) Use of Net Acreage to Determine Project Density – Why is the density of the North 40 Phase 2 project calculated using net acreage, excluding land required for public dedication?

The Housing Element provides the following regarding density calculations:

Residential developments are regulated by an allowed density range (minimum and maximum) measured in "dwelling units per acre." Residential development is calculated

by dividing the number of housing units on the site (excluding accessory units) by the “gross lot area.”

Town Code Section 29.10.020 defines “lot area” as;

The total horizontal lot area included within lot lines, except as otherwise provided in the chapter, and excluding land required for public dedication and any land determined to be riparian habitat.

As defined, “lot area” excludes land required for public dedication. “Gross lot area” cannot be any greater than “lot area” and means the total “lot area.” Based on the definition of “lot area,” this excludes land required for public dedication.

- 3) Density Computation in Housing Element vs. State Density Bonus Law – Why does the density computation described in the Housing Element differ from state density bonus law?

The Town is using 1) “gross lot area” (as described above) in order to determine whether the project complies with the Town’s Housing Element and 2) “gross acreage” for purposes of adhering to the state density bonus law. This is because the state density bonus law requires that density be calculated based on gross acreage (Government Code Section 65915(f))– which is a separate question from whether a project complies with the Town’s Housing Element.

- 4) Impact on Housing Element Sites Inventory and RHNA Obligations – Will the North 40 Phase 2 project affect the Town’s ability to meet its RHNA allocation?

In its Housing Element, the Town calculated the number of units to be accommodated on the North 40 Phase 2 site as 474 units. The applicant proposes 450 units. Pursuant to state “no net loss” law (Government Code Section 65863), if an applicant proposes either fewer units or different income categories than shown in the Housing Element, the Town must show that there are still adequate sites to meet the Town’s Regional Housing Needs Allocation (“RHNA”) in all income categories. Although the total number of units proposed in the North 40 is lower than shown in the Housing Element, the Town will continue to have adequate sites to provide the total number of units required to meet the RHNA. However, if the Town approves the North 40 Phase 2 project, the Town will also need to make findings that the adequate sites remain to accommodate the Town’s RHNA allocation at all income levels. If it is not possible to make that finding, the Town will need to rezone sites that are sufficient to accommodate the Town’s RHNA allocation within 180 days of project approval. (Government Code Section 65863(c)(2).)

- 5) Reliance on the January 30, 2023, Housing Element – Did the North 40 Phase 2 Project vest to the January 30, 2023, Housing Element even though it was not certified by the State?

The North 40 Phase II project vested to the Town’s adopted January 30, 2023, Housing Element. While the January 30<sup>th</sup> Housing Element was not deemed substantially compliant with state Housing Element law by HCD, which is now required in order to have a “certified” Housing

Element, the Housing Element took effect upon its adoption. No state law provides that a housing element not in compliance with state law is null and void.

6) CEQA Review for the North 40 Phase 2 Project – How will the North 40 Phase 2 Project be analyzed under CEQA?

The Town's CEQA consultant is currently preparing an initial study to determine whether there are significant impacts that were not analyzed in the EIR for the 2040 General Plan.