

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

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



March 30, 2023

David Crompton, Chief of Planning
Development Services Department
Town of Danville
510 La Gonda Way
Danville, CA 94526

Dear David Crompton,

RE: Town of Danville's 6th Cycle (2023-2031) Adopted Housing Element

Thank you for submitting the Town of Danville (Town) housing element that was adopted on January 17, 2023 and received for review on January 31, 2023. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review. HCD considered comments from Housing Action Coalition, East Bay for Everyone, Kevin Burke, pursuant to Government Code section 65585, subdivision (c).

The adopted element addresses many statutory requirements described in HCD's November 10, 2022 review; however, revisions will be necessary to comply with State Housing Element Law (Article 10.6 of the Gov. Code). The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

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.

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 (January 31, 2023), then any rezoning to make prior identified sites available or accommodate the regional housing needs allocation (RHNA), including for lower-income households (Programs 8.1.c and 10.3.a), shall 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). 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 rezones to make prior identified sites available or accommodate a shortfall of sites pursuant to Government Code section 65583, subdivision (c) (1) (A) and Government Code section 65583.2, subdivision (c) are completed.

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 will meet housing element requirements for these and other funding sources.

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>.

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 Connor Finney, of our staff, at Connor.Finney@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

Enclosure

APPENDIX TOWN OF DANVILLE

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 Revise

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).)

Cumulative Evaluation of Special Needs Households: The element was not revised to address this finding. Please see HCD's prior review for additional information.

B. Housing Needs Resources and Constraints

1. *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).)*

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).)

Extremely Low-Income (ELI) Households: Although the element includes additional demographic information regarding ELI households, as found in HCD's prior review, the element still must include an analysis examining availability and gaps in resources and success of past efforts to formulate appropriate programmatic response that commensurate the magnitude of need.

Special Needs: The element now includes some general information about the housing needs and characteristics for certain populations; however, it must still examine the gaps in addressing the needs to better formulate appropriate policies and programs. Please see HCD's prior review for more information.

2. *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).)*

Fair Housing Enforcement and Capacity: Although the element includes a discussion on how the Town complies with existing fair housing laws and regulations, it still needs to include information on any past fair housing lawsuits, consent decrees or other related legal matters.

Disproportionate Housing Needs: The element was revised to include some information on housing problems and indicate there may be rehabilitation needs (p. H-D-93). However, as found in HCD's prior review, the element should discuss any areas or locations of potentially higher needs of rehabilitation and replacement. The element may utilize local data and knowledge such as service providers and code enforcement officials to assist this analysis.

Local Data, Knowledge and Other Relevant Factors: The element was revised to discuss certain programs, housing choice vouchers and that the Town has historically promoted single-family and lower-density zoning. However, the element should discuss additional relevant factors and incorporate local data and knowledge to complement the state and federal data and examine the patterns and trends in socio-economic characteristics and concentrations. For example, the element should include information on other factors to support the analysis such as local opposition, land use decisions, local and state funding applications, or lack thereof for affordable housing programs, investment practices, including utilizing knowledge from local and regional advocates, public comments, and service providers.

Contributing Factors to Fair Housing Issues: Based on the outcomes of a complete analysis, the element must list and prioritize contributing factors to fair housing issues.

3. *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).)*

Progress in Meeting the Regional Housing Need Allocation (RHNA): The element was not revised to address this finding. Please see HCD's prior review for additional information.

Realistic Capacity: The element now includes a listing of some projects in various sections of the element. For example, projects noted on page H-18 indicate that projects are building at densities lower than 30-35 du/ac (e.g., 7.2 du/ac). Additionally, as found in HCD's prior review, the listing of projects should evaluate projects by zone, affordability and frequency of exceptions such as density bonus. Based on a complete analysis, the element may need to rescale assumptions less than the maximum allowable densities (e.g., 80 to 90 percent and 50 percent).

In addition, the element does not address HCD's prior review regarding the likelihood of residential where zoning allows 100 percent nonresidential uses. HCD has also received public comments indicating sites identified in mixed-use and downtown zones require commercial and there are certain trends indicating an ongoing demand for 100 percent nonresidential uses. In addition to addressing HCD's prior review, the element should also consider and address public comments. Please see HCD's prior review for more information.

Suitability of Nonvacant Sites: While the element was revised to remove sites and, in some cases, indicate the existing use, it generally was not revised to demonstrate the potential for redevelopment as found in HCD's prior review. In addition, HCD received public comments with information including in some cases owners' correspondence indicating that these sites may not have redevelopment potential. The element must address and consider public comments and address HCD's prior review. Please see prior review for more information.

In addition, for your information, the element relies on nonvacant sites to accommodate 50 percent or more of the housing needs for lower-income households, which triggers requirements to make findings based on substantial evidence that the existing use is not an impediment and will likely discontinue in the planning period. While the resolution of adoption includes findings, any changes to the analysis should be reflected in future re-adoption of the element, if necessary.

Small Sites: The element was not revised to address this finding. Please see HCD's prior review for additional information.

Publicly-Owned Sites: The revised element now indicates that certain Town-Owned and publicly-owned sites were identified in the housing element. The element must include additional discussion on each of the Town-Owned sites identified to accommodate the RHNA. Specifically, the analysis should address general plan designations, allowable densities, support for residential capacity assumptions, existing uses and any known conditions that preclude development in the planning period and the potential schedule for development. If zoning does not currently allow residential uses at appropriate densities, then the element must include programs to rezone sites pursuant to Government Code section 65583.2, subdivisions (h) and (i). In addition, the housing element must include a description of whether there are any plans to dispose the property during the planning period and how the jurisdiction will comply with the Surplus Land Act.

Infrastructure: The element now indicates water demand to address the RHNA would exceed water projections and that the Town will review projects on a case-by-case basis. Given the apparent lack of water capacity, the element must include programs to address water infrastructure capacity such as pursuing funding and other opportunities to expand water supply through conservation or employing strategies to secure additional water capacity.

Environmental Constraints: The element was not revised to address this finding. Please see HCD's prior review for more information. In addition, the element still notes that certain sites have environmental constraints and HCD has received public comments

regarding these issues as well. the element should address public comments on environmental constraints to the development of identified sites.

Accessory Dwelling Units (ADUs): Previous submissions of the element projected 40 ADUs per year towards the RHNA. The revised element is now projecting 30 ADUs per year. However, as found in HCD's prior review, these projections are not supported by the current trends. Additionally, as noted in HCD's prior review, the element must accurately utilize past ADU production numbers based on the Town's annual progress reports (APR). The Town must reconcile permitting trends with the Town's APRs and adjust assumptions as appropriate. Please see HCD's prior review for more information.

Zoning for a Variety of Housing Types (Emergency Shelters): The element now indicates that emergency shelters are allowed in the Downtown Business District 3 for six or fewer residents and that for shelters with additional residents, a land use permit is required. First, the limit on number of residents to six people and requiring larger facilities to receive a land use permit is a constraint. Additionally, HCD's prior review found that the element should specifically clarify if the Town permits emergency shelters without any discretion in at least one zone. Various revisions of the element indicates that the element does not comply with this requirement (pp. H-D-99 and H-F-8) and the element should add or modify programs as appropriate.

For your information, zoning to permit emergency shelters without discretionary action was required as part of the 4th cycle housing element and prior to the 5th cycle housing element. HCD cannot find the element in compliance until the appropriate zoning to permit emergency shelters without discretionary action is demonstrated or completed.

Please be aware Chapter 654, Statutes of 2022 (AB 2339), adds specificity on how cities and counties plan for emergency shelters and ensure sufficient and suitable capacity. Future submittals of the housing element may need to address these statutory requirements. For additional information and timing requirements, please see HCD's memo at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/ab2339-notice.pdf>.

4. *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)).*

Land Use Controls: The element was not revised to address this finding. Please see HCD's prior review for additional information.

Fees and Exaction: The element was not revised to address this finding. Please see HCD's prior review for additional information.

Processing and Permit Procedures: The element stated that multifamily is allowed by-right and subject to design review and planning commission approval (p. H-B-24). The element now indicates multifamily projects are subject to providing development plans requiring planning commission approval and design review board hearings with a combined 2-4 hearings. Furthermore, the element indicates design review is used to ensure compatibility with character and views, among other things (p. H-B-20). The element also explains that a development plan is required for these projects. While the element describes these processes, it must still analyze these requirements for impacts on cost, timing, size, feasibility and approval certainty. The analysis should consider approval criteria and findings.

In addition, the element was not revised to address the Planned Unit Development (PUD) process. Please see HCD's prior review for additional information.

Housing for Persons with Disabilities

- *Reasonable Accommodation* – While the element was revised to include approval findings for a reasonable accommodate request, it notes that the reviewing authority can impose additional conditions regarding impacts on surrounding uses and consideration of physical attributes to the property and structures - essentially a conditional use permit (CUP) finding. However, reasonable accommodation should be a unique exception process from a CUP, especially given its importance in addressing barriers to housing for persons with disabilities. The element should include a program to amend the reasonable accommodation ordinance and remove constraints, namely the “potential impact on surrounding uses” approval finding.
- *Group Homes of Seven or More Persons* – The element was not revised to address the Town's definition of family. Additionally, while the element stated it revised Program 7.1.H to address HCD's prior review regarding group homes, the element was not revised to address this finding. Please see HCD's prior review for more information.

Inclusionary Requirements: The element was revised to include some additional information on the Town's inclusionary requirements. However, the element should also discuss alternatives for compliance, incentives for meeting requirements and the required in-lieu fees. The analysis should evaluate impacts on costs and feasibility. alternatives and incentives for meeting requirements, could discuss in-lieu fees.

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. (Gov. Code, § 65583, subd. (c).)*

Programs must be revised to 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 (month, year), dates, or benchmarks for implementation. While the element included some minor revisions, it generally did not address HCD's prior review.

As noted, several programs still include language that does not commit to tangible outcomes beyond "reviewing" or "considering" Examples of programs that should be revised with specific commitment include Programs 1.1.a (Capital Improvement Program), 2.1.a (Downtown Specific Plan), 2.1.b (New Mixed-Use Developments), 6.1.b (Funding Sources to Support Affordable Housing Development), 6.1.d (Parking Standards for Different Housing Types), 6.1.e (Waive Processing Fees for Multifamily Lot Consolidations), 6.3.b (Retention of Affordable Rental Units), 6.3.c (ADU Fee Reductions), 7.1.b (Developmentally Disabled), 7.1.c (Larger Units), 7.1.e (Transitional and Supportive Housing Regulations), 8.1.b (Lot Consolidation and Redevelopment of Nonvacant Sites), and 8.2.a (Building Height). Additionally, programs may need to be revised or modified based on a complete analysis of governmental constraints, special needs populations, affirmatively furthering fair housing (AFFH) and sites to accommodate the RHNA.

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 B3, 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:

Program 10.3.a (Zoning to Accommodate RHNA): To address the regional housing need for lower-income households, the element includes a program to rezone sites concurrent with adoption of the element. HCD understands the Town adopted rezoning prior to the beginning of the planning period (January 31, 2023). For your information, if these sites were not rezoned prior to the beginning of the planning period and if rezoning is necessary to accommodate a shortfall of adequate sites in the planning period, sites must permit housing by-right pursuant to Government Code sections 65583, subdivision (c)(1) and 65583.2, subdivisions (h) and (i). If the Town has adopted its rezoning efforts, the element should include information (e.g., zoning, analysis,

resolution) demonstrating that the zoning was available prior to the beginning of the planning period.

Programs 6.1.e and 8.1.b (Lot Consolidation): The element is relying on the consolidation of several small lots. The revised element modified Programs 6.1.e and 8.1.d with timelines and a commitment to a feasibility study. However, the programs must specifically commit to outcomes beyond reviewing, considering and exploring. This is particularly important given the lack of implementation in the prior planning period. In addition, Program 8.1.b should commit to a minimum menu that will be considered beyond fees to encourage lot consolidations such as expedited review, financial assistance and modification of development standards and density beyond State Density Bonus Law.

Program 7.1.k (Homeless Shelter Regulations): While this program was revised to include a timeline, additional changes will be needed to address HCD's prior review. Specifically, the program currently commits to review and amend regulations where necessary. However, the element should review the regulations as part of this update and the program should affirmatively commit to amend regulations based on the outcomes of a complete analysis as noted in Finding B3.

Publicly-Owned Sites: The element identified Town-Owned sites to accommodate a portion of the RHNA. The element should include a program with numerical objectives that ensures compliance with the Surplus Land Act, provides incentives and actions along with a schedule to facilitate development of Town-Owned sites. Actions should include outreach with developers, issuing requests for proposals, incentives, fee waivers, priority processing and financial assistance, issuing permits and alternative actions if sites are not developed as anticipated.

Program 6.2.a (SB 330 and Replacement Housing): While the element now includes a program to track the need for replacement units on nonvacant sites, the element must specifically commit to establishing a policy for sites with existing residential uses. The replacement housing policy has the same requirements as set forth in Government Code section 65915, subdivision (c) (3).

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).)*

Assist in Development Programs: The element now includes programs 6.1.b, 7.1.a, 7.1.b, 7.1.c, 7.1.d, etc., to address this finding. However, several of these programs do not include commitments to actions with tangible outcomes. Based on the Town's lack of progress in implementing and addressing special needs populations from the previous planning period and given the need demonstrated in the analysis, the element must be revised with significant programs and commitments to address the need of these populations. These programs must have specific actions to assist housing for persons with special needs (e.g., farmworkers, elderly, homeless and persons disabilities, including developmental). The program should commit the Town to annually identifying opportunities and reviewing progress towards meeting the needs. In addition,

programs should include firm commitments to annual outreach with affordable developers to identify development opportunities and further assist through actions such as adopting priority processing, granting fee waivers or deferrals, granting concessions and incentives for housing developments (beyond density bonus law) that include units affordable to lower and moderate-income households, assisting and supporting or pursuing funding applications.

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 Findings B4 and B5, the element requires a complete analysis of potential governmental and nongovernmental 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.

Additionally, while Program 6.1.d (Parking Standards) now includes discrete timing, the program still does not commit to actions beyond “studying” and “considering”. As noted in HCD’s prior review, programs must have specific commitment toward housing outcomes in the planning period and the program should clearly commit to revising parking standards.

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... (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding B2, the element must include a complete assessment of fair housing. Based on the outcomes of that analysis, the element must add or modify programs. Goals and actions must 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. For example, although the contributing factors identified exclusionary zoning and lack of multifamily housing in higher resource areas, there must be significant and meaningful actions to promote housing mobility (not limited to the RHNA) or housing choices and affordability throughout the Town. Additionally, as found in HCD’s prior review, actions must have specific commitment, metrics, milestones, and geographic targeting as appropriate and must address housing mobility enhancement (more choices and affordability across geographies); new housing choices and affordability in higher opportunity and income areas (e.g., missing middle housing types); place-based strategies for community revitalization and displacement protection.

Lastly, the analysis demonstrated that that the Town along with its neighbors is predominately highest resourced, highest income, and wholly a racially concentrated area of affluence. Additionally, the element identified majority of its RHNA in one census

tract. To promote housing choices and affordability throughout the Town, the element must include a significant suite of programs to promote housing mobility and provide new opportunities in higher resource areas. These programs should not be limited to the RHNA and, instead, target meaningful change in terms of housing choices and affordability.

6. *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).)*

Program 6.3.c (ADU fee reductions): Program 6.3.c should still include specific commitment to housing outcomes, beyond analysis and making recommendations. Please see HCD's prior review for additional information.

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).)

HCD's prior review found that the element must include quantified objectives for rehabilitation and conservation objectives by income group. In response, the revised element referenced programs to address rehabilitation and conservation but still must include numerical objectives. Please see HCD's prior review for additional information.

E. Public Participation

The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort. (Government Code 65583(c)(7))

The element did not address HCD's prior review. As noted, the element must summarize the public comments and describe how they were considered and incorporated into the element. Additionally, the element should address, where appropriate public comments related to environmental and government constraints and site suitability.