



TOWN OF MORAGA
PLANNING DEPARTMENT

February 24, 2023

Jamillah Williams
Department of Housing and Community Development
Division of Housing Policy Development
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833

**SUBJECT: TOWN OF MORAGA SIXTH CYCLE HOUSING ELEMENT RESPONSE TO
COMMENTS ON HOUSING ELEMENT COMMENT LETTERS (RECEIVED 1/12
AND 1/25/2023)**

Dear Ms. Williams:

The Town of Moraga submitted its Adopted 6th Cycle Housing Element for HCD Review on January 26, 2023 to HCD. The Town acknowledged and received several comments from the public that the Town is responding to. Although the Town received comments, it did not result in re-circulation of the Housing Element prior to submittal. The Town will continue to be responsive and work in a good faith effort to comply with requirements of the State and outreach to all residents and stakeholders.

The responses list the name of the commenter first, corresponding comment and response follow. The Town of Moraga responses are provided as follows:

**RESPONSE TO COMMENTS ON HOUSING ELEMENT COMMENT LETTERS
(RECEIVED 1/24 AND 1/25/2023)**

Letter from David R. Bruzzone, received January 24, 2023, 7 PM

Comment	Response
1	The comment provides the context for the letter and the author's perspective on the revised Housing Element.

- 2 The comment notes the length of time required from the start of the MCSP planning process (2002) to adoption of zoning standards (2010) and completion of the implementation project (2020).

Response: The MCSP and implementation project are discussed in the Constraints section of the Housing Element, along with information on the development standards. For clarification, the R-20 zoning applying to the MCSP's large vacant residential sites was adopted in 2010.

- 3 The comment suggests the Town applied new standards to previously approved projects in 2020 that made these projects impossible to build.

Response: The standards adopted in 2020 did not apply retroactively to previously approved projects.

- 4 The comment addresses delay in project applications that were deemed incomplete because they were inconsistent with Town policies and design guidelines and were determined to need additional CEQA review.

Response: The Town deems project applications incomplete when they do not have the required elements of a complete application (such as a complete site plan). Furthermore, the intent of the programmatic EIR for the MCSP was not to eliminate all environmental review for subsequent projects. Rather, it was to provide a base level of CEQA clearance so that future environmental review could be done more cost-effectively for the applicant and be focused on site-specific issues related to each particular project. Lastly, it should be noted that the two current complete applications for development within the MCSP are subject to preliminary applications submitted prior to the effectiveness of the MCSP Implementation Ordinance. Therefore, the Town is not reviewing compliance with the MCSP Implementation Ordinance, as required by SB 330.

- 5 The comment suggests that the allowable number of units in the MCSP needs to be raised from 630 units to accommodate assisted living and memory care.

Response: Adoption of the Comprehensive Advanced Planning Initiative (CAPI) on January 25, 2023 and certification of the EIR provides CEQA clearance for a substantially higher number of dwelling units in the Moraga Center area than the original 630 units studied in the 2010 EIR. Moreover, congregate care facilities are generally not considered dwelling units unless they include private kitchens in each unit.

- 6 The comment identifies issues with the R-20 zoning, including setbacks, parking, lot size, FAR, building spacing. It indicates that these standards force applicants to use a PD process, which presents challenges.

Response: The Constraints analysis addresses these issues. Further, Program 4 of the Housing Element expressly states the Town’s intent to address issues with the R-20 zone to “ensure the top end of density range is achievable.” In addition, Program 26 states the Town’s intent to amend the PD regulations, which has already been initiated.

- 7 The comment notes that the 20 DUA density is the default density for affordable housing and that R-20 only applies in MCSP and not in Rheem.

Response: As stated in the Housing Element, the Town has increased most of the R-20 areas from 20 units per acre to 24 units per acre, recognizing that 20 DUA is intended to be the bottom of the range for potentially affordable housing units and not the top of the range.

- 8 The comment suggests that the rules for MCSP are more restrictive than the rules for Rheem.

Response: The development standards for the two new Rheem mixed use zones are based on the standards for the MCSP mixed use zones. The permitted and conditionally permitted uses in the zones are the same. The new Rheem Park Office-Residential zone aligns with the MCSP Mixed Office-Residential zone, and the new Rheem Park Commercial-Residential zone aligns with the MCSP Mixed Retail-Residential zone. R-20 zoning is not used in the Rheem Center because Rheem does not have equivalent large open areas (e.g, orchards, etc.). Vacant properties in the Rheem Park area are urban infill sites less than an acre that have historically been zoned for commercial land uses.

- 9 The comment indicates that the R20 standards are too restrictive, forcing applicants to use a discretionary process.

Response: See responses to comment 6 and 7.

- 10 The comment states that the MCSP-IP process changed the way the Town calculates density from a gross to a net calculation.

Response: The Town’s method of calculating density did not change in 2020.

- 11 The comment suggests that the 12.4-acre parcel owned by the writer is being “discriminated against” because it is not being upzoned to 24 DUA, as the other R-20 parcels are.

Response: There are three R-20 parcels in Moraga and they are all owned by the author of the comment letter. Two have been just upzoned to R-24 (in January 2023) and one has retained its current R-20 zoning. One of the properties being upzoned is completely flat and the other is gently sloped. By contrast, the 12.4-acre property has a greater slope, sits at a higher elevation, is further from the

commercial district, and is less well situated for higher densities. HCD guidelines suggest that factors such as slope and access to infrastructure are appropriate considerations when identifying appropriate sites for lower-income housing. Moreover, the 12.4-acre site exceeds the 10-acre threshold used by HCD to identify sites suitable for lower-income housing.

- 12 The comment states that the Town did not coordinate and support a special study for Bollinger Valley.

Response: The direction of the 2002 General Plan was that the property owners in the Bollinger Canyon Study Area would prepare a “special study” for this area, which is comprised of 20 parcels and approximately 423 acres. To date, there has been no collaborative effort on the part of the 13 owners of the 20 parcels in the Bollinger Valley Study Area to prepare such a study. Instead, the owner of two parcels comprised of approximately 186 acres prepared a study and applied for approval of both rezoning and Conceptual Development Plan for a residential development project. The Town supported the efforts of the property owner, but the Town Council ultimately denied the application in November 2018 based on multiple grounds, including inconsistencies with General Plan policies, e.g., excessive grading and insufficient provision of access. The Town is currently in the process of evaluating and implementing zoning for the area.

- 13 The comment states that Bollinger Valley is “undergoing a drastic downzoning.”

Response: No downzoning is proposed as the property is a “Study Area” where residential uses are not currently a permitted use. The existing Study designation does not have an associated density range and does not allow residential uses by right. Prior to the Town’s incorporation, the County of Contra Costa had residential zoning for Bollinger Valley, but that zoning has not been in effect since the 1970s. The proposed zoning creates opportunities for residential development by right that do not exist under current zoning.

- 14 The comment asks why the Bollinger Valley is not listed as a Housing Opportunity Site for Above Moderate Income units (with ADUs).

Response: Bollinger Valley is not listed as a Housing Opportunity Site as the site currently lacks infrastructure and has constrained access and has not yet been rezoned for residential use. Also, the Town has a significant surplus of Above Moderate Income units. The RHNA for Above Moderate Income units is 445 units. The Town has identified capacity for 928 Above Moderate Income homes, which is 208 percent of the RHNA assignment.

- 15 The comment asserts that the Town’s new Affordable Housing Ordinance restricts Below Market Rate (BMR) Accessory Dwelling Units (ADUs) in residential districts with densities greater than 6 DUA.

Response: This is not an accurate characterization of the new Ordinance. The Town allows ADUs in all residential districts, in accordance with State law and has worked with HCD on its ADU Ordinance. The Town's new Affordable Housing Ordinance (adopted December 2022) includes no restrictions on ADUs, which continue to be permitted in all residential districts. The new Ordinance simply allows developers of low-density subdivisions to satisfy their inclusionary housing requirement with market-rate ADUs in lieu of owner-occupied units or conventional apartments.

- 16 The comment implies the Town could meet much more of its lower income RHNA requirement with ADUs, and further suggests the Town has been too conservative in estimating the monthly rents in market-rate ADUs.

Response: The Town has followed HCD guidelines in estimating future ADU production. While other jurisdictions have higher ADU forecasts, they have relied on historical data to support those forecasts. Moraga has also allocated its ADUs by income according to ABAG's September 2021 guidance for cities that have historically under-produced affordable housing. The Town has included Program 16 in its Housing Element to incentivize and promote ADU construction.

- 17 The commenter is suggesting that Moraga has the highest fees in Contra Costa County when water service is included.

Response: As cited in the Housing Element, the source of the Town's analysis is the C4 Collaborative, which is a consortium of all 19 cities in Contra Costa County, plus the County itself. Their analysis indicates that Brentwood's fees are higher than Moraga's.

- 18 The comment asserts that the Town violated SB 330 when it adopted the MCSP Implementation Ordinance because it shifted from a gross density standard to a net density standard and increased setbacks along creeks and scenic corridors, as well as adopting new lot dimensions and FAR requirements.

Response: The Town has prepared separate correspondence indicating its compliance with SB 330. See also response to Comment 10. Further, the Town adopted setbacks consistent with existing County and Town regulations in the MCSP Implementation Ordinance. Further, the adopted development standards were consistent with the standards set forth in the MCSP, which was adopted in 2010.

- 19 The comment states that FAR is intended to be a guideline rather than a standard, and should not be codified.

Response: As it is a numeric standard, FAR is rarely used a design "guideline" and is more frequently used as a zoning standard. The Housing Element acknowledges that the FAR standards in the MCSP should be revisited; it includes

Program 4 (clauses b, c, and f) as well as Program 33 (clause a) to work with property owners and ensure that the standards are updated to reflect best practices.

- 20 The comment states that the Town has applied R-20 ministerial standards to other areas in the MCSP.

Response: It is not clear to what areas the comment is referring. The Town has only applied R-20 standards to R-20 areas. Further, the intent of the ministerial standards is to make more projects eligible for streamlined approval, not to add another layer of discretionary review. See also Responses to Comments 6 and 9.

- 21 The comment states that the Town has introduced a “new” policy that includes a preference for ground floor commercial uses in mixed use districts.

Response: While the actual policy is not referenced in the comment, staff notes that General Plan Policy CD 6.1 was edited in 2022 to support mixed use neighborhoods. The text cites housing above ground floor commercial uses as an example of an “enhancement” in the Town’s mixed use areas; it does not require mixed use or change the Town’s policy. The preference for mixed use development in the Town’s commercial centers is a longstanding policy and an underlying premise of the MCSP.

- 22 The comment states that requiring both VMT and LOS analysis will add cost and delays to projects.

Response: LOS analysis is no longer required under CEQA. Most projects in the Moraga Center and Rheem Centers will be screened out of VMT analysis requirements provided they are consistent with the plans for these areas. Local traffic assessments (LTAs) may still be required to evaluate project-level impacts, but this is a streamlined process rather than an additional requirement.

- 23 The comment suggests that senior care facilities should have a higher allowable number of beds/rooms per acre, citing Aegis Living and Moraga Royale as examples.

Response: Aegis Living and Moraga Royale are congregate care facilities and are not considered multi-family housing. The Town does not regulate the number of beds or rooms per acre. In this context, assisted living and congregate care facilities without private kitchens for each dwelling unit are not subject to density standards (units per acre). It should also be noted that Aegis and Moraga Royale are two story buildings, while MCSP allows three-story buildings and heights of 45 feet for senior housing.

- 24 The comment suggests that the densities in Areas 3 (3 DUA) and 4 (12 DUA) are too low.

Response: The cited densities have been in place since 2010 and were the outcome of a lengthy community planning process that engaged property owners and others in the MCSP area. They allow for a diverse range of densities and housing types, which is consistent with the General Plan and Specific Plan vision.

- 25 The comment states that the Bluffs neighborhood has a zoning designation that is lower than actual densities.

Response: Staff acknowledges that the zoning assigned to this area following the incorporation of the Town of Moraga in 1974 was below the actual density at the time. This is also true for other areas of the town that were already developed at the time of incorporation.

- 26 The comment asks why an R-20 site identified as a potential affordable housing site in the 5th Cycle is now counted as an "Above Moderate" site.

Response: The site in question is the 12.4-acre orchard site previously zoned "R-20B". It has not been counted as an affordable site because it exceeds the 10-acre threshold used by HCD to determine the suitability of sites for lower income housing. As noted earlier (see Comment 11), the site is less well suited for affordable housing given the sloped terrain and greater distance from services relative to nearby sites that are adjacent or within the commercial center. Additionally, the placement of over 200 units of affordable housing in this location, adjacent to sites already designated for affordable housing, would be inconsistent with the Town's efforts to affirmatively further fair housing (it would cluster a majority of the Town's affordable housing opportunities in a single location).

- 27 The comment states that development standards in the MCSP orchard area make development more costly here compared to the Rheem Center, that the Town should allow ADUs to serve as BMR units in higher-density development, and that a 10% inclusionary requirement will make projects non-viable.

Response: Most of these comments are addressed in earlier responses. See response to Comment 8 (MCSP standards vs Rheem Standards) and Comment 13 (ADUs as BMR units). Regarding the 10% inclusionary requirement, it may be noted that 14 of 19 cities in Contra Costa County, plus the County itself, have inclusionary housing requirements and that 10% is at the low end of the range used by these communities. Moreover, the Town has built considerably flexibility into its ordinance, including adoption of a local density bonus to supplement the State bonus to reduce economic impacts.

Letter from Todd Williams, Fennemore Wendel, received 1/25, 5 PM

Comment Response

1 The comment provides the context for the letter and indicates that the author is the legal representative of the Bruzzone family.

2 The comment alleges that the Town has violated SB 330 and reduced densities on the Bollinger Valley, and that the Housing Element does not acknowledge the effects of the Hillside/Ridgeline regulations on the Bollinger property and other sites.

Response:

- Separate correspondence from the Town Attorney has been provided indicating that the Town is compliant with SB 330.
- Chapter 5 of the Housing Element addresses the Hillside/Ridgeline regulations (which were adopted in 2018 prior to SB 330). The sites addressed by the regulations are generally not identified as housing opportunity sites and are largely zoned for open space. Please also see the response to comment 3 below.
- There has been no reduction of allowable density in the Bollinger Valley area. Prior to the Town's incorporation, the County of Contra Costa had residential zoning for Bollinger Valley, but that zoning has not been in effect since the 1970s. The existing "Study" designation does not have an associated density range and allows housing only as a conditional use. The proposed designation includes a mix of 1 DU/Acre, 1 DU/5 acres and Non-MOSO Open Space. The Town estimates the development capacity of the area to be 51 units, and the proposed zoning recognizes housing as a permitted use. Please also see the response to Comment 4 below.

3 The letter restates the point that the Housing Element does not address constraints imposed by the Hillside and Ridgeline Ordinance.

Response: The impacts of the Hillside/Ridgeline Regulations are addressed in Chapter 4 of the Housing Element. The analysis concludes that the Regulations do not affect the Town's ability to meet its RHNA, as the Town currently has the capacity for more than twice the number of above moderate-income housing units as are required under the RHNA. Moreover, vacant land subject to the Regulations is primarily zoned as open space (MOSO and Non-MOSO). Consistent with HCD guidance for site selection, the sites identified for low- and moderate-income housing are largely flat infill sites with infrastructure and services. The Town upzoned these properties in January 2023 to increase their capacity, support more affordable and transit-oriented development, and respond to the urgent need for low- and moderate-income housing in the community.

- 4 The letter makes reference to a “downzoning” of Bollinger Valley, suggests Bollinger Valley properties should be a housing opportunity site, and further suggests that ADUs in the development could be a source of low and very low-income units.

Response: As noted in the response to comment 2, there has been no reduction in allowable density in Bollinger Valley. The 423-acre Study Area is currently in agricultural and open space use and is comprised of 20 parcels with 13 different owners. The Study Area is located on the eastern perimeter of the town in an area characterized by steep hillsides, limited access, and minimal infrastructure. It is designated on the General Plan Land Use Map as a “Study Area” and zoned as a “Study Area”. There is no density range associated with this General Plan and zoning designation.

The Town is currently considering replacing the “Study” zoning district with a combination of zoning districts that reflect the context and limitations of the area. The proposed zoning districts include 1 DU/Acre, Rural Residential (1 DU/ 5 acres), and Non-MOSO Open Space. The new Rural Residential districts would allow residential uses by right, whereas the current “Study” designation does not. Staff has estimated that these designations will create the capacity for approximately 51 units.

Designating this area as a “Housing Opportunity Site” would be inconsistent with HCD’s site selection guidelines. As noted in the response to comment 3, the Town has already provided more than double the required capacity for above moderate-income units. The recently adopted Housing Element has involved extensive rezoning of urban infill properties to create opportunities for lower income, higher density housing, consistent with HCD’s Sites Inventory Guidebook.

- 5 The letter suggests that housing in Bollinger Canyon could include ADUs that could house Saint Mary’s students, and further argues that the site is closer to Highway 24 and Lafayette BART than most of Moraga.

Response: The proposed zoning would not preclude ADUs in new development. The Town is actively encouraging ADUs in existing Moraga homes, and in new construction. The site is 5.5 miles from BART and Highway 24, which is a greater distance from BART than either the Rheem Center (3.7 miles) or Moraga Center (5.2 miles).

- 6 The author implies that the Bollinger Study Area is currently zoned for 3 units per acre and is being downzoned.

Response: See Response to Comment 4. The site is zoned “Study”, which a non-residential designation that only permits agricultural uses by right. There is no density range associated with this zoning district, since it is not a residential

designation. The comment is referring to zoning that has not existed since the 1970s.

- 7 The comment asserts that the EIR for the Housing Element overstated impacts when compared to a Project-Level EIR that was completed several years ago but never certified, and further that the downzoning of Bollinger Valley will cause displacement.

Response: As noted earlier, no downzoning of Bollinger Valley is planned and no displacement will occur. The conclusions of the EIR may have been different for several reasons, including the time lapse between when the project level EIR was prepared and when the program level EIR was prepared, the size of the area being evaluated (423-acre Study Area comprised of 20 parcels with 13 owners versus 186 acres in one ownership) and the nature of the EIR itself (a program-level analysis of a policy document vs a project-level analysis of a specific development proposal).

- 8 The comment asserts that the Housing Element treats MCSP differently than the Rheem Center by placing restrictive standards on the orchard property (Areas 3, 4, and 5)

Response: The Rheem standards were intentionally designed to match the MCSP standards; the two areas were only treated differently to the extent that they present different development opportunities. The MCSP area is three times larger than Rheem and includes a roughly 50-acre orchard zoned for residential development (corresponding to Areas 3, 4, and 5). There is no equivalent area in Rheem, which contains only two small (less than one acre) vacant properties. The land use designations for Areas 3, 4, and 5 were developed collaboratively with the property owner prior to adoption of the Moraga Center Specific Plan in 2010 and accommodate a diverse range of housing types.

- 9 The author expresses the view that the responses to comments on the FEIR were not adequate.

Response: The responses to comments were adequate. The Town Council certified the EIR on January 25, 2023.

- 10 The author expresses the view that the responses to HCD comments were not adequate.

Response: The Town met with HCD to review HCD's comments and discuss appropriate responses and has provided comprehensive edits to meet the requirements of the Government Code. It is the Town's position that these edits result in a substantially compliant Housing Element.

As stated earlier, the Town has identified capacity for more than twice the number of above-moderate income units than are required by the RHNA. Much of this capacity is associated with vacant low-density sites, some of which are infill properties where there are opportunities for mixed income housing.

- 11 The comment suggests the Town reconsider the Bollinger Valley as a housing opportunity site given its potential to provide above moderate-income housing with ADUs and characterizes the decision to omit this site as “anti-development.”

Response: The suggested course of action would be inconsistent with HCD guidance for housing opportunity site selection and would not achieve local, regional, or statewide housing and climate change goals. On January 25, 2023, the Town of Moraga approved zoning changes that create the capacity for hundreds of new high-density housing units. It also increased the maximum allowable density on most of its vacant multi-family sites. This action fully accommodates the RHNA (plus a substantial buffer), supports the mission to affirmatively further fair housing, and is consistent with the regional sustainable communities strategy (Plan Bay Area 2050). The Town has embraced a vision that supports development in locations consistent with statewide greenhouse gas emission reduction goals by concentrating higher-density mixed income housing in its two commercial centers.

- 12 This comment is a concluding statement suggesting that Bollinger Valley be included as a Housing site.

Response: See responses to Comments 2 through 7 and response to Comment 11 above.

Letter from David Weiland, Coleman and Horowitz, LLP, received January 25, 2023

- 1 The first part of the letter indicates that the author is legal counsel for Kin Properties and is writing to object to the Resolutions and Ordinances under consideration by the Town Council. The letter repeats the contents of the Resolution and Ordinances.

Response: While the letter does not indicate the address/parcel number in question, or the name of the business, prior staff communication confirms that the property is the 24-Hour Fitness gym at 351 Rheem Boulevard. It is important to note that this property has NOT been listed as a Housing Opportunity Site, although it is in the area being rezoned to allow higher-density residential and mixed use development.

- 2 The author asserts that the proposed rezone will reduce the investment value of the property to “near zero” and deprive the owners of the reasonable use of their properties.

Response: The rezoning would not reduce the property’s investment value, as it increases the range of permitted land uses on the property. The new zoning allows numerous commercial and civic uses by right, and additional commercial and civic uses with a conditional use permit. It also allows multi-family residential uses and mixed use development by right, where the current zoning does not allow residential uses at all. Adoption of the new zoning would have no impact on the current business, as fitness centers larger than 10,000 square feet are a conditionally permitted use under the proposed zoning and the existing business can remain in use.

As previously noted, this property is not listed as a Housing Opportunity Site, and the Town has not assumed its reuse in the next eight years.

Letter from Hazelwood Place Neighbors, received January 25, 2023

- 1 The letter is from a group of property owners residing on Hazelwood Place, a single-family residential street with parcels that share a rear lot line with a Housing Opportunity Site. The subject Housing Opportunity Site is being rezoned to allow 24 units per acre rather than the 20 unit per acre density that is permitted today. The authors are concerned with the effects of the rezoning on evacuation capacity, safety, wetlands, and land use compatibility.

Response: The Housing Opportunity Site in question was rezoned to R-20 (20 units/acre) in 2010 as part of the Moraga Center Specific Plan. Under SB 330, the Town may not amend the R-20 standards in a manner that would reduce the intensity of housing. Thus, the Town may not reduce setbacks, height limits, lot coverage, or floor area ratio standards. The sole impact of the proposed change is

to allow 24 units per acre rather than 20 units per acre on the property. No changes to other development standards are proposed. As a result of the rezone, a slightly larger number of units may be built on the property, but within the same envelope that is already permitted under current zoning. The mass, height, and footprint of the building will be no larger than what is already permitted under current zoning.

The Town will work closely with the neighbors and the owners of the Opportunity Site as future projects on this site are considered. The Program-Level EIR for the Housing Element indicated there are no wetlands on this property. Depending on what is proposed on this site in the future, the Town may also require a site-level vegetation survey *or local traffic analysis evaluating ingress and egress and evacuation needs.*

Sincerely,



Afshan Hamid, AICP
Planning Director

cc: Brian Dolan, Interim Town Manager
Barry Miller, Planning Consultant
Stephanie Hagar, BAE Urban Economics
Sohab Mehmood, HCD
Paul McDougall, HCD