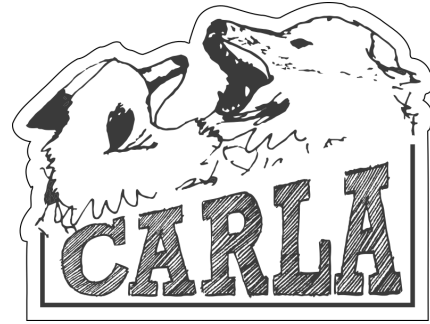


# EAST BAY FOR EVERYONE



July 12, 2022

Afshan Hamid <[ahamid@moraga.ca.us](mailto:ahamid@moraga.ca.us)>  
Planning Director  
Town of Moraga

RE: Draft Housing Element

Director Hamid,

The undersigned organizations write to provide comments on the City of Moraga's 6th Cycle Housing Element Public Review Draft.

East Bay for Everyone is a membership organization dedicated to land use and housing justice . CaRLA is a statewide legal advocacy nonprofit dedicated to ensuring all California cities do their part to solve the state's housing shortage,

Meeting housing production goals capable of relieving Moraga's shortage of affordable housing will require a housing element that takes seriously existing barriers to development. In its last RHNA cycle, Moraga identified sites with a development potential for 873 homes. Despite being more than double the town's RHNA allocation, identified sites ultimately yielded only 123 homes, a development rate of just over 14%. The currently assumed fifty percent rate of development ignores this experience. Any serious effort to meet the town's housing production goals must learn from this history of unmet projections.

The town of Moraga can do this in two ways. First, the town can substantially increase the extent of its upzoning to match a projected development rate of 14%. At this rate, meeting this cycle's allocation of 1118 homes would require the town to establish a zoning capacity for 7986 homes. Second, the town can act more aggressively to increase the rate of development by limiting opportunities for cost-spiraling discretionary review and impact fees. New development, especially multifamily housing crucial to ensuring affordability, is burdened with unnecessary review processes, overly restrictive development standards, and prohibitively expensive impact

fees. The draft does a good job of identifying these constraints, but as outlined below, does not go far enough in making firm commitments to remove them. We understand that our suggestions below would represent a substantial change of course for Moraga's housing policy, but this is the type of change needed both locally and across the state to meet California's housing needs. Our goal in this letter is to provide policy suggestions that would give Moraga a reasonable chance to meet and exceed its housing needs across all incomes, while equitably distributing new development across the town.

### **Constraints**

The following programs and policies present significant barriers to development and should be amended to increase the likelihood of Moraga meeting its housing allocation goals.

As stated above, the draft housing element is far too optimistic about the likelihood of development on the sites identified for housing development. As a result, the plan establishes a "buffer" of housing sites that would require over half to be developed at full density in order for the town to meet its housing goals. Last cycle, only 14 percent of the town's identified capacity was developed.

In order to address this shortfall, Moraga should amend the draft housing element to (1) increase the number of sites identified for higher density development, and commit to rezone these sites, (2) increase the proposed density on already-identified sites, and (3) significantly reduce identified development constraints in order to increase the likelihood that identified sites will be developed. Below, we identify the policies and programs that we believe should be adopted to address this shortfall.

### **New Sites for Housing Development and Increasing Density**

In addition to identifying new sites for high density residential development, Moraga should consider increasing the density on already identified sites and the corresponding zoning districts. We suggest:

- Program 4(C) - Moraga should commit to, not simply studying, but ending the 3 acre minimum development size for R-24 zones. Given the scarcity of multi-family zoned land in Moraga, this minimum lot size represents a real obstacle to site assembly.
- Program 5 - We appreciate the mid-cycle evaluation of Moraga Center plan and potential relaxation of density and development standards. The 30 DUA and 1.15 FAR should not, however, form the upper limit of changes. These changes should be informed by land costs, construction costs, housing costs and feedback from property owners and housing advocates.
- Program 13 - Co-housing is an important housing type, especially for college students. Beyond updating zoning and building code to allow for this type of the development, Moraga should proactively identify sites for this development near St. Mary's College.

- H3.3 - Moraga should realize its commitment to allowing affordable housing in high-resource neighborhoods by developing an affordable housing overlay to allow for higher densities for projects that contain 100% affordable housing.
- Program 18: In order to increase housing opportunities in single-family neighborhoods, Moraga should adopt an implementation ordinance to encourage duplex developments and lot splits. If it is legal for a property owner to build a very large single family home in Moraga then it should be legal for a property owner to build a duplex, triplex or fourplex inside the same building envelope. The latter will be affordable to more people and generate more in impact fees and tax revenue that can be used to fund city services.

Importantly, this program should not look to surrounding cities for examples. As we've seen, these ordinances establish the absolute minimum standards allowed under state law, and have led to little interest in new development. Instead, Moraga should commit to implementing SB 9 to allow for:

- Four unit developments on all lots in single-family neighborhoods with development standards that allow for at least 1000 square feet per unit.
- Duplexes on lots that have been split under SB 9, with zoning standards allowing for 1,200 square feet per unit.
- Impact fee waivers for SB 9 developments (see below).
- Waiver of owner-occupancy restrictions on SB 9 duplexes or fourplexes.

## **Parking**

Parking requirements are a significant cost in housing production. Moraga's housing element recognizes that arbitrary and excessive parking regulations lead to unnecessary costs but does not take sufficient steps to reduce their impact. In its current form, Moraga's housing element calls for a two-phase plan for reducing burdensome parking regulations. In the first phase, parking requirements for one bedroom apartments, studio apartments, and guest parking would be reduced. In the second phase, the Housing Element suggests that the town consider transportation demand management strategies and shared parking programs to reduce the overall need for parking.

To reduce parking requirements' contribution to overall costs and to make alternative parking arrangements more feasible the housing Element should include concrete steps to "unbundle" parking from housing. Requiring developers to provide a fixed number of parking spaces to potential renters or buyers impose costs that may preclude the development of parking alternatives. For instance, amenities like car sharing and bike parking that reduce the need for individual car ownership require upfront costs. Developers will not implement such amenities when parking regulations already require them to provide every tenant or owner with a fixed number of parking spaces and impose costs that prevent such amenities from penciling. A housing element committed to reducing parking costs would adopt programs to incentivize the development of alternative parking arrangements. Incentives could take the form of direct subsidies or reductions in cost-increasing regulations.

The need to reduce the burden of parking requirements is especially pressing for Moraga's low-income housing goals. Low income households are less likely to own a car, and own fewer cars than higher-income counterparts. The housing element recognizes that many projects which might otherwise avail themselves of density bonuses in exchange for affordability requirements are unable to do so because of the costs imposed by parking requirements. Providing maximum flexibility to developers will allow them to explore alternative parking arrangements consistent with lower-income households' reliance on public transit and drive down costs which prevent affordable housing production.

### **Environmental Protection Ordinances**

Moraga's environmental protection ordinances require a discretionary review process which increases the cost of development without substantially advancing environmental objectives.

Development of new homes, accessory buildings,, and additions to existing homes on plots with an average predevelopment slope of twenty percent or greater are required to obtain Hillside Development Permits. For projects that require approval by the Planning Commission, the granting of a HDP involves notice and public hearing. Projects are reviewed for qualities like the "naturalness of their appearance" with little relation to legitimate environmental objectives. The planning commission is permitted to attach conditions to the issuance of a permit. Discretionary review of this kind allows the public to stall housing projects for non-environmental reasons or to impose conditions of approval that are so burdensome they make a project infeasible.

Moraga's draft housing element notes that the low-income developments most likely to be killed by such discretionary review are sited in areas not requiring a Hillside Development Permit. While this may be true, this ignores the applicability of hillside and ridgeline ordinances to ADUs, one of the town's largest sources of naturally affordable housing. The housing element does identify sites for significant numbers of moderate and above-moderate housing sites production in areas requiring HDPs. This makes development of these forms of housing more expensive and less likely.

One solution would be to eliminate discretionary review procedures for all Hillside Development Permits, subjecting developments to administrative review according to objective environmental hillside regulations. Additionally, the housing element could expand the geographic scope of proposed upzonings so that all units in projected totals are on sites not requiring discretionary review for hillside development.

The same is true for the town's Fire Hazard Area regulations. Fire safety and resilience measures increase production costs. Though currently only one identified site is in a "very high" fire hazard severity zone, preliminary maps indicate that the portion of the town's area identified as a "very high" fire hazard severity zone is likely to expand. With more extensive upzonings, however, Moraga can meet its production goals by siting for all income levels in areas where both the current and projected fire hazard is low.

Grading and stormwater regulations impose discretionary review on projects for some projects requiring the movement of earth. Major grading applications are subject to approval by the town council. Again, because the housing element confines its proposed density increases to small segments of the town, several projected moderate and above moderate income sites lie in areas that would be subjected to additional review.

### **Development and Permitting Fees**

Moraga imposes high fees on all new housing construction. Fees for a single-family detached home amount to almost \$80,000. For an assumed 100-unit apartment building, fees amount to more than 4 million dollars, or more than \$40,000 per new unit.

The consequence of these fees, especially when viewed in combination with the costs imposed by lengthy discretionary review and regulatory requirements, is to increase the cost of production to the point where many housing projects are no longer economically viable.

As it stands the housing element makes no concrete proposals to reduce the burden of development and permitting fees. Program 29 suggests that the town “may consider waivers or reductions of certain fees on qualifying affordable housing developments and ADUs” and that the town consider fee deferrals until a Certificate of Occupancy is issued. The current level of impact fees is incompatible with affordable housing development and small projects. Instead of a mere suggestion, Moraga should commit to providing a waiver of impact fees for affordable housing and small multifamily developments.

Moraga could substantially reduce overall development impact fees by eliminating its burdensome parks development fees. The town imposes parks impact fees of over \$23,514 per single family home and \$6,200 per unit of multifamily housing. The figures represent 29 and 15 percent of already substantial development impact fees, driving up costs. Whereas impact fees for sanitation, school, and storm drain are clearly tied to the costs that new development imposes on local governments, parks impact fees simply assume that maintaining similar levels of service requires maintaining the same ratio of park acreage to residents. The ultimate impact of these burdensome fees, however, is to prevent new property-tax generating development that might serve as a more sustainable stream of funding for town parks. In order to simultaneously increase new housing construction and funding for parks, Moraga’s housing element should make provision for the elimination of these counterproductive impact fees.

### **Programs and Policies**

- Program 4(C) - Moraga should commit to, not simply studying, ending the 3 acre minimum development size for R-24 zones. Given the scarcity of multi-family zoned land in Moraga, this minimum lot size represents a real obstacle to site assembly.

- Program 5 - We appreciate the mid-cycle evaluation of Moraga Center plan and potential relaxation of density and development standards. The 30 DUA and 1.15 FAR should not, however, form the upper limit of changes. These changes should be informed by land costs, construction costs, housing costs and feedback from property owners and housing advocates.
- H2.6 - What specific policies will Moraga pursue to encourage development of middle housing types? Will these policies be general or spatially concentrated? Will these policies allow middle housing by-right or will a PUD be required?
  - Consider allowing up to 4 units by-right in the residentially zoned areas near St. Mary's College and the Moraga Center.
- Program 13 - Co-housing is an important housing type, especially for college students. Beyond updating zoning and building code to allow for this type of the development, Moraga should proactively identify sites for this development near St. Mary's College.
- H3.3 - Moraga should realize its commitment to allowing affordable housing in high-resource neighborhoods by developing an affordable housing overlay to allow for higher densities for projects that contain 100% affordable housing.

### Site Inventory

Prior to our site by site analysis, we would like to note that the sites analysis doesn't distinguish between recycled sites from the 4th Cycle versus the 5th Cycle. This is relevant because AB1397 requires that sites that have previously been listed in two prior housing elements and have not been developed must be re-zoned to allow by-right development. There is no discussion of this requirement of AB1397 within the site inventory or other parts of the draft.

The final housing element sites inventory should discuss AB1397, the re-use of sites from prior cycles and whether, if any, sites will be re-zoned to allow by-right development as required by AB1397 and state housing element law.

- **B1**- APN 258-160-062 - Recycled site that needs utilities. It's likely that only a small portion of the total parcel can be developed given the slope (as stated). Slopes over 20%, but rezoned for 3 DUA (from 2 DUA). Not sure if this change will encourage development.
- **B2** - APN 258-160-028 - Recycled site that needs utilities. No zoning change. Why does the Town think it will be developed now? Google maps shows hiking trails running through it. This represents another barrier to development.
- **B3** - APN 256-210-001 - Recycled site with no zoning changes and a >20% slope. States there has been a recent proposal to divide into 4 units. I can't find the application. Can the Town increase the density here to allow for greater access to the Campolindo HS and further fair housing?
- **B4** - APN 255-010-006 - Recycled site on public land. The lot is large and could accommodate higher density, especially given the school across the street. Can the Town increase the density here to allow for greater access to the Campolindo HS and affirmatively further fair housing? Is there documentation of interest from the public property owner in actually developing the property in the 6th Cycle?

- **B5** - APN 258-250-046 - 8 Madsen Ct is not a vacant lot. It is a SFH. Should be removed unless the building has recently been demolished.
- **B6** - APN 256-061-016 - No issues
- **B7**- APN 256-070-032 - Recycled site with no zoning change and >20% slope. Highly unlikely this site will be developed given the environmental constraints and steepness of the lot. This should be removed.
- **B8** - APN 258-160-028/258-541-007/008 - Available sites with power lines at the rear of the property. This is a small constraint. APN 258-160-028 is site B2 and should be removed from here.
- **B9** - APN 470-040, -042, -044 - The same owner owns these parcels. >20% slopes. Appears to be accessible from a private road. Has the owner expressed interest in developing these lots? If not, why does the City believe these will be developed in the next 8 years given the 1 DUA zoning?
- **B10** - APN 256-110-043 - Site is for sale. Slope at >20%. Requires easement for road access.
- **B11** - APN 255-381-003/-008 - Slope >20%, but there seems to be a flat patch where a house could go. Why does the Town believe these will be developed in the next 8 years given the 1 DUA zoning?
- **B12** - APN 258-520-003 - Recycled site with no zoning changes. Previous element assumed 8 units; now 4 units.
- **B13** - APN 255-310-024/-025 - Recycled site with a slightly higher density than 5th cycle HE (3 DUA vs 2 DUA), and more acres counted. Covers some of site C6. No issues.
- **B14** - APN 257-180-034/-037/-038/-040/-041 - Recycled site in a Very High fire severity zone. Current plan is for 150 Above Moderate Income units, for which there is an active proposal. Local fire district is meeting to discuss fire safety standards. Needs roads, utilities, water, and sewer. There has been pushback to developing on these parcels in the past from Canyon residents, who use Canyon Rd as an escape route for wildfire.
- **C1, C2, and C3** - Steep slopes with no change in zoning
  - **C1** - APN 255-471-004 - This appears to be an extremely unlikely site given the 20% slope and the water drainage ditch down the slope of the hill. Given the fact that there is no zoning change, why does the Town believe this site will be developed in the next 8 years?
  - **C2** - APN 255-461-001 - This is another >20% slope that will be difficult to develop. Given the fact that there is no zoning change, why does the Town believe this site will be developed in the next 8 years.
  - **C3** - APN 255-183-011 - >20% slope. Town says the lot is for sale. Given the fact that there is no zoning change, why does the Town believe this site will be developed in the next 8 years.
- **C4** - APN 258-520-001 - MCSP Area 16. >20% slope. This one *could* be possible with the new zoning of 12 DUA (from 3 DUA).
- **C5** - APN 258-410-012/258-410-026 - MCSP Area 15. Proposal submitted for 33 SF homes.

- **C6** - APN 255-310-025/255-310-026 - MCSP Area 3. I hope they can produce this one, but there is a “moderate slope” and it’s close to Moraga Creek. Also has no roads and “utilities”, but it has been rezoned. Since this is a recycled site that is planned for 12 Low income units, the Housing Element needs to specify which “utilities” are needed. AB 1397 states that any sites that would accommodate lower income housing must be served by water, sewer, and other utilities.
- **D1** - APN 257-500-006 - Recycled site that was recently rezoned for 24 DUA. Previous proposal for development has expired, but I think this one should stay.
- **D2 and D3** - These are on the same parcel. Moraga Creek runs next to, but not through them. Figure 4-2 of Chapter 4 shows where the MSCP area lines are
  - **D2** - APN 255-310-026 - This also faces the same “utilities” issue as C6: the Housing Element needs to specify which utilities are needed.
  - **D3** - Same comments as D2. This site also has a “moderate slope.”
- **E1** - APN 255-321-015/255-321-016 - MCSP Area 2, which is being rezoned from 20 to 24 units per acre. Currently partially used for RV storage with some cottages that are “not permitted for habitation,” but look like homes from google Earth. Most of this site could easily be developed.
- **E2** - APN 255-321-023/255321-005/255-321-019 - MSCP Area 8. No issues
- **E3** - APN 255-140-052 - Rezoned for the HE adoption to 24 DUA. No issues
- **E4** - APN 256-070-013/256-070-028 - Rezoned for the HE adoption to 24 DUA. Some of parcel 256-070-028 appears to be on a slope. Otherwise no issues.
- **F8 and F9**: These two sites together make up 200 units of realistic capacity, roughly 1/3 of the Town’s claimed capacity. Therefore, they require special scrutiny.
  - **F8**: The Town claims a theoretical capacity of 96 units and realistic capacity of 80 units.  
Seems good that the landowner showed interest.
  - **F9**: The Town claims a theoretical capacity of 144 units and realistic capacity of 120 low-income units. Current uses include a USPS, T.J. Maxx, the Moraga Chamber of Commerce, 8 small businesses (laundry, dry cleaning, 2 salons, and 2 restaurants) and a Dollar Tree.  
The Town says that they met with the primary landowner, but they did say whether the landowner expressed an interest in redeveloping the property. The site includes 12 thriving businesses, many of whom could possibly have leases extending for the next decade—we don’t know because the Town did not seek out this information.  
The Town plans to rezone the lot for 24 du/acre.  
Given that there is a very low likelihood of a site like this being redeveloped, we urge the Town to either remove it from the site inventory or include it with a likelihood of development of 5-10% (i.e. a realistic capacity of 7-14 units).  
We also think that such a site with so many thriving businesses is especially unlikely to develop with such a low zoned density. We suggest either increasing it from 24



du/acre to 80 du/acre or higher, or at least including many other commercial sites like this to account for the low likelihood of any one site being developed.

We look forward to continuing to engage with the Town of Moraga in this process.

John Minot  
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East Bay for Everyone

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