

From: [Andrew Thomas](#)
To: [Marilyn Ezzy Ashcraft](#); [Tony Daysog](#); [John Knox White](#); [Malia Vella](#); [Trish Spencer](#)
Cc: [Lara Weisiger](#); [Erin Smith](#); [Yibin Shen](#); [Celena Chen](#); [Allen Tai](#)
Subject: Letter from Staff to City Council regard CEQA and Housing Element
Date: Monday, November 14, 2022 3:31:16 PM
Attachments: [ACT Response Letter -Final.pdf](#)

Dear Mayor and City Council,

On November 9, 2022, the City Council received a letter from Michael W. Graf on behalf of Alameda Citizens Task Force (ACT) regarding staff's recommendation for the CEQA determination for the Housing Element on tomorrow night's Agenda.

Staff prepared this memorandum in response for the City Council's consideration. Please let us know if you have any questions.

Sincerely,

Andrew Thomas,
Planning Building and Transportation Director

Date: November 14, 2022

To: Honorable Mayor and Members of the City Council

From: Andrew Thomas, Planning Building and Transportation Director

Subject: November 9, 2022 Letter from Michael Graf on behalf of Alameda Citizens Task Force

On November 9, 2022, the City Council received a letter from Michael W. Graf on behalf of Alameda Citizens Task Force (ACT) arguing that the City Council should not move forward with the adoption of the Housing Element and associated zoning amendments as required to comply with State Housing Element Law, because to do so would be a conflict with State environmental law (CEQA).

Staff respectfully disagrees.

CEQA Guidelines sections 15162 and 15163 establish when a supplemental or additional environmental review is required. ACT has not provided any evidence that the circumstances necessitating further CEQA review or preparation of a new EIR or supplemental review are present.

General Plan Update and EIR. California Land Use and Planning Law requires that the City of Alameda maintain an up-to-date General Plan, which includes an up-to-date Housing Element. Pursuant to CEQA, the City Council certified an environmental impact report (EIR) to evaluate the environmental impacts of adopting the Alameda General Plan 2040, which was a comprehensive update of the 1991 General Plan that included the 2015 Housing Element.

On November 30, 2021, the City Council adopted Resolution No. 15841 certifying a Final Environmental Impact Report for the Alameda General Plan 2040 (State Clearinghouse No. 2021030563) (General Plan EIR) in compliance with CEQA, and adopted written findings, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program. At that meeting, the City Council also approved the General Plan update for six of the seven State-required elements of the General Plan. Although the draft Housing Element of the General Plan had been prepared and was circulating for public review, due to State Housing Element Law requirements, the timing of City Council's approval of the Housing Element was delayed until November 2022.

The General Plan EIR analyzed the transportation, air quality, greenhouse gas, noise, population and housing, cultural resource, and other environmental impacts of adding up to 12,000 new housing units in Alameda between 2022 and 2040. The Housing Element is an 8-year plan to accommodate 5,353 new housing units between 2023 and 2031. There is no evidence that the environmental impacts of developing 5,353 units over the next 8 years would exceed the environmental impacts of developing 12,000 units over the next 20 years that were previously disclosed in the General Plan EIR.

The Alameda General Plan 2040 is designed to accommodate up to 12,000 housing units in specific locations: the city's two regionally and locally adopted Priority Development Areas (NAS

Alameda PDA and Northern Waterfront PDA), the Park Street and Webster Street commercial areas, on shopping center sites, and in existing residential areas. The General Plan EIR analyzed the environmental impacts of 12,000 units in those locations. The Housing Element allocates the 5,353 units in these very same locations. There is no evidence that developing 5,353 units in these same locations would exceed the environmental impacts of developing 12,000 units in these same locations.

As described in prior staff reports to the Planning Board and City Council, the Housing Element and zoning proposals are consistent with all adopted general plan policies. CEQA Guidelines section 15183 (a) states that:

“projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.”

Historical Resources. ACT argues that the Housing Element will result in impacts to historic resources that would not have been caused by the Alameda General Plan 2040. However, the General Plan includes specific policies and actions to protect architectural resources and the integrity of historic districts in Alameda. For example:

- Policy LU-25 Historic Preservation states: “Promote the preservation, protection and restoration of historically or architecturally significant sites, districts and buildings and archaeological resources.” Action f. Demolition Controls, states: “Maintain demolition controls for historic properties.” Action g. Alterations, states: “Require that exterior changes to historic buildings be compatible with the building’s existing or original architectural design and consistent with the Secretary of Interior Standards.”
- Policy LU-26 Architectural Design Excellence states: “Promote high quality architectural design in all new buildings and additions to complement Alameda’s existing architectural assets and its historic pedestrian and transit-oriented urban fabric.” Action c. Harmony, states: “Harmonize the architectural design of new buildings with the architectural character of the surrounding buildings to create a visually appealing architectural landscape.”
- Policy LU-27 Neighborhood Design states: “Protect, enhance and restore Alameda’s diverse neighborhood architecture and landscape design while encouraging design innovation and creativity in new residential buildings and landscapes.” Action a. Architectural and Landscape Design, states: “Require that neighborhood infill development and alterations to existing residential buildings respect and enhance the architectural and landscape design quality of the neighborhood.”

ACT does not recognize that Alameda Municipal Code (AMC) section 13-21 Preservation of Historical and Cultural Resources (preservation ordinance) requires issuance of a Certificate of Approval from the City’s Historical Advisory Board to demolish or significantly alter any historic resource, including contributing structures within any historic district, in Alameda. A Certificate of Approval is a discretionary permit, subject to CEQA. The preservation ordinance is a uniformly applied citywide development regulation to mitigate potential impacts to historic resources.

CEQA Guidelines section 15183(f) states:

*“An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if **uniformly applied development policies or standards have been previously adopted by the city or county** with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect.”*

The City of Alameda contains two National Register Historic Districts: the Alameda Point NAS Historic District and the Park Street Historic District. The Housing Element does not raise any height limits in the NAS Historic District. In the Park Street Historic District, the height limits for a portion of the properties on the side streets are increased by 15 feet to a maximum height of 60 feet. ACT claims that “tall” and “large” buildings would significantly impact historic buildings and neighborhoods when in fact, the Park Street Historic District has two contributing buildings that are approximately 60 feet in height. Therefore, a building of 60 feet in height is not by definition an impact to the integrity of the Historic District. Pursuant to AMC section 13-21, any alteration or demolition of a contributor to the district requires issuance of a Certificate of Approval. Moreover, all new development, whether or not it is subject to discretionary approval, must comply with the City’s adopted Objective Design Review Standards, which prescribe specific building form and architectural elements to ensure new buildings fit in with the existing neighborhood context.

The Housing Element raises height limits by between 5 feet and 10 feet for any residential parcel with a height limit less than 40 feet and within ¼ mile of a major transit route. Alameda has a number of designated historic monuments, contributing buildings in designated Historic Districts, and beautiful historic Victorians and other buildings which are 40 feet in height or more. Therefore it cannot be concluded that the Housing Element’s zoning proposals will automatically result in additional or more severe environmental impacts to historic resources of a new 40 foot building.

Finally, to the extent that ACT claims that changes to non-historic monuments or non-contributing structures within a historic district create historic resources impacts under CEQA, we respectfully disagree. There is no CEQA statute or guideline, nor any decisional authority, holding that any such change would create a significant historic resources impact under CEQA, regardless of how close in proximity such changes may be occurring in relation to a designated historic resource.

Displacement. ACT argues that the Housing Element and zoning amendments designed to accommodate 5,353 units will result in displacement impacts that would not occur with the 12,000 units anticipated by the Alameda General Plan 2040, the environmental impacts of which were disclosed in the General Plan EIR.

CEQA requires lead agencies to consider if the development project or proposed plan would result in the displacement of “*substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere*” (see CEQA Guidelines Appendix G Section XIV (Population and Housing)). If a project requires a substantial number of people to leave their

homes, which will then result in the need to build replacement housing elsewhere in places that have not been evaluated and may cause environmental damage, then the analysis of the project under CEQA should examine the environmental impacts of the construction of those new homes that are located “elsewhere”. In this case, the “project” is the Housing Element which is a very specific plan to build 5,353 units over 8 years on a variety of sites and in certain specific locations in Alameda. The General Plan EIR includes an extensive environmental review of the impacts of those locations.

The CEQA threshold emphasizes that to be a significant environmental impact, a “substantial number of existing people” would need to be displaced. The Housing Element only programs 70 units per year, or 560 units over 8 years in the residential areas of Alameda. The risks of displacement from Housing Element related construction are limited to the residential districts. Accessory dwelling units comprise 50 of the 70 annual units. Evidence from the past 5 years in Alameda shows that little to no displacement occurs as the result of building an ADU in the back yard or in the basement. There is no evidence in the record or in the ACT letter that supports the argument that the Housing Element will result in displacement of “substantial numbers of people” as the result of Alameda property owners adding additional housing units on their residentially zoned properties.

Further, AMC section 6-58.10 *et seq.*, Rent Control, Limitations on Evictions and Relocation Payments to Certain Displaced Tenants Ordinance provides protections and financial relief for Alameda renters forced by circumstances to relocate. The Housing Element and proposed zoning amendments do not interfere with the existing tenant protections.

For these reasons, the General Plan EIR concludes that adoption of housing supportive policies and increasing the supply of housing in Alameda will not result in displacement that would require construction of significant new replacement housing “elsewhere”. There is no evidence to support the argument that adoption of the Housing Element and the associated zoning amendments to enable construction of housing in residential districts will result in “substantial displacement” which would then result in the need to build housing “elsewhere” in locations in Alameda that have not already been evaluated under CEQA.

Conclusion. In conclusion, staff believes that the City Council’s reliance on the previously adopted General Plan EIR in compliance with CEQA, and that the City will be in compliance with State Housing Element Law if the City Council proceeds to adopt the Draft 2023-2031 Housing Element and proposed zoning amendments required to implement the housing element.

There are no substantial changes to the project that would result in new significant environmental impacts or a substantial increase in severity of significant impacts identified in the General Plan EIR. In addition, there are no substantial changes in circumstances that would result in new significant environmental impacts or substantial increase in severity of significant impacts identified in the General Plan EIR. As a separate and independent basis, adoption of the Housing Element and zoning code amendments are also exempt from CEQA pursuant to CEQA Guidelines section 15183, projects consistent with the General Plan.

If the City Council chooses to delay adoption of the Housing Element and Zoning Amendments to conduct an additional supplemental environmental review as suggested by ACT, the City Council will need to be prepared to be out of compliance with State Housing Element Law as of February 1, 2023. Due to State environmental noticing and procedural regulations, any supplemental environmental review cannot be completed in time to avoid placing the City in non-compliance with State Housing Element Law.