



Dear Mayor Ristow and Council Members,

Re: Housing Element and Public Comment Period

We are writing to provide our comments as part of the seven-day public review of the 6<sup>th</sup> cycle Housing Element that was adopted by the Town Council on January 30, 2023.

This is a challenging process for all involved, and we appreciate the work that has been put forth by many individuals over the past 18 months. The Los Gatos Community Alliance, like all residents, is highly desirous of the Town developing and adopting a 6<sup>th</sup> cycle Housing Element that is in substantial compliance with State Law and is certified by the California Housing and Community Development Department (HCD) within the state-mandated deadline. We believe this outcome is at risk because the Housing Element adopted by the Town Council does not meet State Law and – unless modified appropriately – will not be certified by HCD.

Having adopted the Housing Element on January 30, 2023, the Town must now be found in substantial compliance (meaning a letter from HCD affirming compliance with Housing Element Law) within 120 days of the January 31, 2023 statutory deadline. If the Town is not found to be in substantial compliance within 120-days of the statutory deadline, all rezoning required within the housing element must be completed within one year of the housing element due date (as opposed to three years) to maintain housing element compliance. Additionally, having a certified Housing Element will make the Town eligible for a variety of State grants, including funds for affordable housing, parks, and infrastructure. It cannot be stressed enough how critical it is to receive HCD certification by May 31, 2023.

With this understanding we offer the following comments and recommendations:

**Comment # 1 – The Planning Commission failed to meet any reasonable standard of objective review of the draft Housing Element.**

On January 11, 2023, the Planning Commission held a meeting to consider and make a recommendation to the Town Council on the draft of the Housing Element that the Town submitted to HCD on October 14, 2022. At that meeting there was considerable discussion regarding whether the draft was in substantial compliance with State Law as well as the expectation that the Town would receive HCD's comment letter the very next day - January 12, 2023. Also at that meeting, Staff did not present the HCD's "Housing Element Completeness Checklist" to ensure that every housing element at least "substantially complies" with the statutory requirements for housing elements.

Additionally, at that meeting the Chair of the Planning Commission stated after reviewing letters received by other jurisdictions from HCD that for the Town, "there are certainly some modifications that have to happen to make sure we're in compliance with State Law." Staff also testified that "the verbal comments we received were, that there is additional work to be done, but the term 'substantial

compliance' was never brought up or discussed." Why Staff would not raise the question directly to HCD regarding substantial compliance is baffling. This was the primary reason for submitting the draft Housing Element to HCD.

The Planning Commission after this discussion proceeded to find that the draft Housing Element submitted to HCD was in substantial compliance with State Law and voted unanimously to recommend to the Town Council to adopt the draft Housing Element that had been submitted to HCD with only slightly revised site inventory analysis and site inventory forms. The revisions to the site inventory added two additional sites and used minimum density for sites that accommodate affordable units. This resulted in the total units in the site inventory declining from 2,371 units to 2,312 units. The difference between the housing element and RHNA plus 15% buffer declined from 79 to 20 units. This was not discussed by the Planning Commission.

The very next day, on January 12, 2023, the Town received HCD's findings/comment letter on the Draft Housing Element. The letter, as anticipated by the Planning Commission, included the finding that "revisions will be necessary to comply with State Housing Element Law." The letter was 11 pages in length and contained numerous findings **that substantive changes were necessary** to bring the Town's housing element into compliance with Article 10.6 of the Government Code. The revisions were required to make the draft Housing Element compliant in respect to the substance essential to the objectives of State Law (as distinguished from mere technical imperfections.)

We are deeply troubled by the Planning Commission's actions. The Commission failed to meet any reasonable standard of objective review of the draft Housing element. The fact that the Planning Commission intentionally chose to proceed with a vote knowing the very next day HCD's letter would be received, and the likelihood that the letter would advise the Town that the draft Housing Element was not in substantial compliance, clearly shows the Planning Commission's analysis was pre-ordained, arbitrary, capricious, and entirely lacking in evidentiary support. If the Planning Commission had received and reviewed HCD's letter prior to taking their action, it is inconceivable that a finding of substantial compliance could have been made based on substantial evidence in the record.

**Recommendation #1 - The Planning Commission's findings must be based on substantial evidence in the Public Record and a reasonable standard of review. As part of a reasonable review process, The Planning Commission should complete the HCD's recommended "Housing Element Completeness Checklist" and review the HCD Comment Letter before making any finding of substantial compliance.**

**Comment #2 – Table 10-3 is not updated and does not provide the information necessary to summarize the site inventory analysis**

The Town Council adopted a site inventory that identified a total of 2,312 units, not the 2,371 shown in Table 10-3. Additionally, the table should show the affordability level of each component of the site inventory. The components of 2,312 units are:

Site Inventory 1,840 units

ADU 200

SB 9 units 96

Pipeline units 176

With a total of 2,312 units, there is an excess of only 20 units over the RHNA plus 15% buffer of 2,292. This was not disclosed.

**Recommendation #2 – In any subsequent Housing Element drafts, ensure that Table 10 is updated to (i) comport with the site inventory (ii) break out the total into the affordability level of each component and (iii) disclose the relationship between the site inventory and the RHNA requirements.**

**Comment #3 – There are substantial development constraints regarding the North 40 sites D1 – D7 which have not been considered and properly analyzed.**

HCD's comment letter specifically stated that the analysis of land use controls for the North Forty required additional analysis to evaluate the ability to achieve the maximum densities in the site inventory analysis. We agree.

The North Forty development is governed by a North Forty Specific Plan. Under the Specific Plan a total of 270 units are allowed to be developed. And, in accordance with the adopted EIR a maximum of 455 housing units was analyzed under the alternative #2 – increased residential/ reduced commercial.

Under Phase 1 of the North Forty Specific Plan, a total of 320 units was approved. This was composed of 237 baseline units plus 83 density bonus units. This means that under the Specific Plan only 33 additional units (270 units less 237 baseline units) are permitted to be developed.

The Specific Plan does allow for amendments either through a developer agreement or amendment to the Specific Plan. This will be a long and complicated process and potentially subject to legal challenges, as was the case for the Phase 1 development of the North 40.

The North Forty is the single largest and best area in the Town to make meaningful additions to low-income housing. Therefore, the focus of the North forty site inventory analysis is to make sure that the sites designated for lower income housing are adequate and have a reasonable chance of development during the 6<sup>th</sup> housing cycle. The Town is not required to ensure that housing will be built, but the Town's conclusions regarding the development of low-income housing must be supported by substantial evidence in the public record.

A major failing of the Town's 5<sup>th</sup> cycle Housing Element was due to the Town inappropriately proposing 270 units, of which 240 units were for low-income groups, on the North Forty toward the Town's 619 5<sup>th</sup> Cycle RHNA units. The 5<sup>th</sup> cycle Housing Element programmed 77% of the total low-income group housing for the North Forty. The subsequent history shows that this was not supported by any evidence and was simply a "paper planning" exercise for which there was no reasonable expectation of success.

The North Forty development that occurred during the 5<sup>th</sup> cycle completely failed to achieve the targeted low-income housing. There were 240 low-income units planned for development in the 5<sup>th</sup> cycle, yet only 50 units (21%) were developed. As a result, the Town failed to meet its 5<sup>th</sup> cycle low-income housing target.

On the other end of the spectrum, of the 30 moderate- and above-income units (all market rate housing) planned for development, a total of 270 units or 9x the planned amount, were developed. This clearly is proof that the prior planning exercise was deeply flawed and must not be repeated in the 6<sup>th</sup> cycle.

The Los Gatos Community Alliance for some time has been deeply concerned about the site inventory analysis for the North Forty. If the Town again fails to properly analyze the site and fails to identify development constraints, the Town will be facing the same outcome realized in the 5<sup>th</sup> RHNA cycle. It will again completely miss the required low-income housing target. This must be avoided.

The site inventory for parcels D1 – D7 show a total of 584 units planned for development. Adding these units to the 320 Phase 1 units, a total of 904 units would be planned (before any allowed bonus densities) for the entire North Forty site. This clearly exceeds the maximum 270 units under the North Forty Specific Plan.

The draft Housing Element Program D mentions the need to “increase the total number of dwelling units allowed in the Specific Plan” but fails to disclose the magnitude of this increase (more than 3x the current Specific Plan maximum units). It also does not analyze the complexity of completing this task. Additionally, Program D does not disclose that the 904 units would exceed the 455 maximum units studied by the EIR, and that even if it is possible to amend the Specific Plan to achieve this increase, it is likely that a new EIR would be required. This will create an additional constraint.

Based on this, we believe that the public record does not provide substantial evidence that Program D can be accomplished. This means that the site inventory for the North Forty has not been properly analyzed and adjustments are needed if the Town is to have any reasonable chance of developing the low-income housing assigned by RHNA (much less the higher number in the Town’s original General Plan).

**Recommendation #3 –For subsequent Housing Element drafts, perform the required detailed analysis of all development constraints, especially including any assumptions of development of the North 40 site that conflict with the current Specific Plan. Also perform a detailed analysis of why the 5<sup>th</sup> Cycle so badly missed its low-income housing targets and ensure that the 6<sup>th</sup> Cycle Housing Element does not contain similar flaws.**

**Comment #4 – Site D-1 has not been properly analyzed and adjustments are needed to the total units and low-income units to reflect realistic development potential.**

The site inventory has allocated a total of 461 units, with 299 units low-income, 69 units moderate income and 93 units above moderate. The site is governed by the Specific Plan and controlled by a developer who has not submitted a property owner interest form but has been active in providing public comment to the Housing Element Update. Additionally, the site was included in the prior 5<sup>th</sup> cycle RHNA, is non-vacant and subject to “by right with 20% affordable” development and is planned to be rezoned to 30 D/U per acre.

The developer has submitted a letter to the Town dated September 27, 2022, stating that due to market conditions, the site development is projected to be 200 units and not the 461 units in the site inventory. Furthermore, the developer has stated they will “meet the Town’s generally applicable affordability requirements” which is the Town’s BMP program. This is further supported by the development that has occurred on the Phase 1 property of the North Forty.

The only control the Town has to meet affordability levels in the Specific Plan is the requirement that a minimum 20 percent of residential units must be below market price (BMP) units. The Town’s BMP guidelines require for sale BMP units to be **equally split between the moderate and low affordability**

**categories.** If an applicant applies for a density bonus, then the affordability categories are typically low, very low and/or extremely low.

Based on the substantial evidence in the record, and mindful of the actual development on Phase 1 of the North Forty, it is difficult to understand how the Staff, Planning Commission and Town Council could conclude that there is substantial evidence in the record to support the allocation of 461 units in total and 299 low-income units to site D-1. To the contrary, there appear to be substantial development constraints that will prevent the development of D-1 as planned in the site inventory. Assuming the higher numbers currently in site D-1 appears to be another example of a paper planning exercise with no evidence to support it and for which there is no reasonable expectation of success.

**Recommendation #4 – Adjust the site inventory to be to reflect the realistic development potential of site D-1.**

**Comment #5 – Sites D2 – D7 have no evidence that they will be redeveloped during the 6<sup>th</sup> cycle**

Sites D-2 through D-7 have a total of 123 units allocated with 78 units for low-income groups. All sites are non-vacant, and no owner forms have been submitted. While the sites are part of the North Forty Specific Plan, they are separately owned and not controlled by the developer currently developing Phase 1.

The HCD letter discusses the need to include an analysis demonstrating the potential for additional development of nonvacant sites. Under Government Code section 65583.2 subsection (g) (2) the housing element must demonstrate existing uses are not an impediment to additional residential development and **will likely discontinue** in the planning period. Absent findings based on substantial evidence in the record, the existing uses will be presumed to impede additional residential development and must not be utilized to demonstrate adequate sites exist to accommodate the RHNA requirement.

A review of the record clearly shows there is no evidence supporting the Town Council findings outlined in paragraph 4 of the adopted resolution that sites D-2 through D-7 do not constitute an impediment to the planned residential development. The Town Council's findings were arbitrary and lacked any evidentiary support.

**Recommendation #5 – Exclude sites D-2 through D-7 from the site inventory. Alternatively, provide substantial evidence that the existing uses will be discontinued during the planning period and do not provide substantial constraints to the development anticipated by the Housing Element.**

**Comment #6 – Non-vacant sites accommodate 98% of lower-income units and there is no evidence in the record that supports a finding that all existing uses will likely discontinue during the planning period.**

If the Housing Element relies on nonvacant sites to accommodate more than 50% of the RHNA for lower-income households, the element must demonstrate existing uses are not an impediment to additional residential development and will likely discontinue in the planning period. Of the 972 lower-income units in the site inventory analysis, 951 units are on 38 non-vacant parcels. Of these 38 parcels, 20 parcels (with 321 planned low-income units) had no property owner interest form submitted. The resolution passed by the Town Council stated that substantial evidence in the record was solely based

on the submittal of property owner interest forms. Therefore, lacking this form, substantial evidence does not exist for these 20 parcels.

**Recommendation #6 – Adjust the site inventory analysis to reflect the impact of excluding these 20 parcels.**

**Concluding Comment**

As a concluding comment we feel it is important to highlight the public comment process regarding the recently adopted Housing Element. As discussed by HCD, public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. The HCD goes further in stating that during the revision process, the Town must continue to engage the community by making information regularly available.

Since receiving HCD's comment letter on January 12, 2023, and prior to the adoption of the draft Housing element on January 30, the Town hosted a booth at the Los Gatos Farmers Market (no results published) on January 15, and "attended" a Democracy Tent meeting on January 19. That is the total extent of the public engagement process after receiving the HCD letter.

Regrettably, there were no meetings with non-profit organizations that work in the community facing homelessness, nor any community-wide study sessions to discuss necessary revisions, nor any meetings with senior groups or even the Los Gatos Chamber of Commerce.

Worse, the housing element that was adopted was substantially identical to the housing element HCD found not to be in substantial compliance. There was no real effort to substantively address HCD's findings and to submit a revised Housing Element that would be compliant with State Law. Other than adding two parcels and adjusting for minimum densities for sites accommodating low-income groups on the site inventory, no other changes were made to the body of the draft Housing Element. Yet such changes are clearly required by the HCD letter.

As a result, we fully expect the adopted Housing Element will not be certified by HCD and numerous revisions will be required to obtain certification. The Los Gatos Community Alliance welcomes the opportunity to engage in ongoing discussions as the Housing Element moves through the certification process. We remained concerned about the Town's ability to meet the May 31, 2023 certification deadline. We share the goal of obtaining certification from HCD and addressing the Town's overall housing needs, with a strong focus on below market rate housing that historically has been underprovided.

Thank you for receiving our comments. For questions, Mr. Koen is our primary contact.

Jak Van Nada, On Behalf of the  
*Los Gatos Community Alliance*

February 10, 2023

**VIA E-MAIL: HEUPDATE@LOSGATOSCA.GOV**

Joel Paulson, Director  
Community Development Department  
Town of Los Gatos  
110 E Main Street,  
Los Gatos, CA 95030

Re: Comments on 2023-2031 Housing Element Update

Dear Mr. Paulson:

Our firm represents Grosvenor USA Limited (“Grosvenor”) in connection with housing and land use matters for development of the North Forty Specific Plan Area in the Town of Los Gatos (the “Town”). As you are aware, Grosvenor has expressed interest in developing the North Forty Phase II site included as Site D-1 in the Town’s recently adopted 2023-2031 Housing Element. We commend the Town on taking the first step towards achieving its housing goals, and the Grosvenor team looks forward to working with the Town to deliver much needed housing during the planning period.

Although the Town adopted its Housing Element, we understand that it will be reviewing HCD’s January 12, 2023 letter during the February 16, 2023 Housing Element Advisory Board meeting and considering further refinements to the adopted Housing Element in response. As HCD expressed in its letter, the Housing Element does not yet meet all of the requirements of State Housing Element Law (Government Code Article 10.6). We submit this comment letter to bring the Town’s attention to two particular governmental constraints and to suggest that the Town include programs to mitigate these constraints in future revisions of its Housing Element.

As HCD points out in its comment letter, the Housing Element must include an analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, 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(a)(5).) Additionally, the Housing Element must propose programs to

Joel Paulson, Director  
February 10, 2023  
Page 2

address and remove constraints to the maintenance, improvement, and development of housing. (Gov. Code, § 65583(c)(3).)

The Town has included an analysis of the governmental constraints to housing development in Appendix C of its adopted 2023-2031 Housing Element; however, it has not addressed all of the development standards, requirements, and fees that impose constraints on development in Los Gatos. Without an analysis of these constraints or implementation of programs to address and remove these constraints, Grosvenor and other developers will find it difficult to build in Los Gatos and the Town will be unlikely to meet its RHNA requirements.

Specifically, the Town's Housing Element should include an analysis of the constraints created by the requirement to install story poles before development begins and by the imposition of fees that are not tied to specific impact mitigation requirements such as the TDM Program Fee. In addition, the Town must include programs to remove these constraints in the Housing Element as high-priority implementation items.

## 1. Story Poles

Requiring installation of story poles on a site before any development can begin imposes a significant financial and political obstacle to housing development. The Town has stated that the primary purposes of this requirement are to help illustrate proposed building locations and heights for pending development applications and to help alert the community of development applications that are scheduled for consideration at a public hearing. There are significantly less burdensome ways to achieve these goals.

First, installing story poles is extremely expensive. Installing story poles for Phase 1 of the North 40 development cost hundreds of thousands of dollars and took weeks to install, only to be later uninstalled before development could begin. Modern tools such as 3D renderings could just as effectively illustrate the proposed building locations and heights for a fraction of the cost and time. Moreover, while members of the public must physically travel to the development site during a finite period to "see" the proposed development, 3D renderings could be made available online for members of the public to view from anywhere at any time, and would provide specific detail regarding the aesthetics of the proposed buildings rather than requiring viewer speculation.

Requiring story poles also creates unnecessary tension within the community and can create false expectations about the Town's ability to deny or modify design

Joel Paulson, Director  
February 10, 2023  
Page 3

elements such as height or massing that are consistent with the Town's development standards.

For example, during Phase 1 of the North 40 development, acres and acres of unsightly story poles stirred enough angst among community members to temporarily derail the approval process. However, given that the Phase 1 development (and many other housing developments) are protected by state laws that prevent the Town from denying or reducing the density of housing development projects, including the Housing Accountability Act and the State Density Bonus Law, the story poles do nothing more than create unnecessary opposition to projects that are legally entitled to move forward, which in turn can create an impediment for projects to achieve the full density ostensibly allowed by the Town's development standards.

Story poles are an ineffective way to put the community on notice of proposed developments, and the cost and time delays created by story poles pose significant hurdles to development in Los Gatos. The Town should consider allowing simpler, less burdensome ways of providing notice, such as through large informational signs posted onsite and using 3-D renderings, fly-through videos, and other technological methods that convey similar information without unreasonably burdening development projects.

## 2. Development Impact Fees and Program Exactions

As HCD's letter notes, the Town's Housing Element does not identify the full stack of fees that comprise the total amount of exactions applicable to housing projects, nor does the Housing Element evaluate those fees' impacts on development. The Town's multitude of fees disincentivizes development in Los Gatos and increases housing costs for renters and buyers. These additional development costs are then passed onto renters and buyers in the form of increased rents and purchase prices once development is complete, contributing to the high cost of housing in Los Gatos.

By way of illustration, the Town imposed a TDM Program Fee after discretionary entitlements were completed on Phase I of the North 40. This fee was in addition to the developer proposing to implement TDM measures that met or exceeded the Town's desired trip reductions, as well as paying significant traffic impact fees. This TDM Program Fee was imposed without a nexus study being completed. It is our understanding that a VMT Impact Fee Nexus Study has since been commissioned by the Town but has not yet been completed. Imposing a new fee -- in addition to requiring projects to implement a TDM plan that will meet the trip-reduction percentages recently established by the Town -- is superfluous and an example of the types of exactions that could impede housing development feasibility without further reducing impacts. Multiple

Joel Paulson, Director  
February 10, 2023  
Page 4

exactions and fees devoted to similar purposes serve to drive up the cost of development throughout the Town, and the Housing Element should include a program to ensure that fees remain at a level that is compatible with development feasibility and that Conditions of Approval imposed on discretionary approvals have a clear nexus to project impacts.

We hope that as the town works with HCD to achieve a fully certified housing element, it enhances its housing element with additional programs that reduce these constraints so that the Town is able to successfully meet its required housing obligations.

Sincerely,



Eric S. Phillips

cc: Jose Armando Jauregui, HCD  
Don Capobres, Harmonie Park  
Jennifer Renk, Sheppard Mullin  
Whitney Christopoulos, Grosvenor  
Louis Liss, Eden Housing

**From:** Jeffrey Barnett <[REDACTED]>  
**Sent:** Friday, February 3, 2023 2:57 PM  
**To:** Housing Element <HEUpdate@losgatosca.gov>  
**Subject:** Proposed Revisions to the Housing Element - HE-6.1

Dear Friends.

I previously suggested certain changes to Policy HE-6.1 in the Housing Element to make more complete the list of classes protected against discrimination. The modifications were presented to the Planning Commission as an Addendum Report for the January 11th Meeting. During the Planning Commission hearing I agreed to defer consideration of these proposed revisions to a date following the January 31st deadline for Council submission of the Element to HCD.

I propose consideration now of my suggestions as part of the current review.

A slightly modified version of the Desk Item is attached.

Thank you in advance.

Jeffrey A. Barnett

## **Proposed Changes to the Los Gatos Draft Housing Element 6th Cycle 2023-2031**

### **Policy HE-6.1 Fair Housing Page 10.38.**

Current Language:

Support and publicize housing programs that protect individuals' rights and enforce fair housing laws prohibiting arbitrary discrimination in the building, financing, selling or renting of housing on the basis of race, color, ancestry, religion, national origin, sex, sexual orientation, age, disability/medical condition, familial status, marital status, source of income or other such factors.

Proposed revisions:

1. After "sexual orientation" add "gender identification or expression".
2. Add "genetic information".
3. Add "primary language".
4. Add "citizenship".
5. Change disability/medical condition" to "disability, medical condition".
6. Add "immigration status"
7. Add "military or veteran status".
8. Change "other factors" to "other arbitrary factors". *Marina Point , Ltd. V. Wolfson (1982) 30 Cal3rd 721, 736.*

These recommendations are based on the following:

A. California Civil Code Section 51:

- (a) This section shall be known, and may be cited, as the Unruh Civil Rights Act.
- (b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.
- (c) This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation, citizenship, primary language, or immigration status, or to persons regardless of their genetic information.
- (d) Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

(e) For purposes of this section:

(1) "Disability" means any mental or physical disability as defined in Sections 12926 and 12926.1 of the Government Code.

(2) (A) "Genetic information" means, with respect to any individual, information about any of the following:

(i) The individual's genetic tests.

(ii) The genetic tests of family members of the individual.

(iii) The manifestation of a disease or disorder in family members of the individual.

(B) "Genetic information" includes any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, by an individual or any family member of the individual.

(C) "Genetic information" does not include information about the sex or age of any individual.

(3) "Medical condition" has the same meaning as defined in subdivision (i) of Section 12926 of the Government Code.

(4) "Religion" includes all aspects of religious belief, observance, and practice.

(5) "Sex" includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. "Sex" also includes, but is not limited to, a person's gender. "Gender" means sex and includes a person's gender identity and gender expression. "Gender expression" means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.

(6) "Sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status" includes a perception that the person has any particular characteristic or characteristics within the listed categories or that the person is associated with a person who has, or is perceived to have, any particular characteristic or characteristics within the listed categories.

(7) "Sexual orientation" has the same meaning as defined in subdivision (s) of Section 12926 of the Government Code.

(f) A violation of the right of any individual under the federal Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section.

(g) Verification of immigration status and any discrimination based upon verified immigration status, where required by federal law, shall not constitute a violation of this section.

B. Government Code Section 1139.8(a)(2): "California's robust nondiscrimination laws include protections on the basis of sexual orientation, gender identity and gender expression, among other characteristics".

C. Government Code 12920:

"Further, the practice of discrimination because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information in housing accommodations is declared to be against public policy.

D. AFFH Report, Appendix A at Page 65

A.6 Fair Housing Enforcement and Outreach Capacity

"This section discusses fair housing legal cases and inquiries, fair housing protections and enforcement, and outreach capacity. Fair housing legal cases and inquiries. California fair housing law extends beyond

the protections in the Federal Fair Housing Act (FHA). In addition to FHA protected classes—race, color, ancestry/national origin, religion, disability, sex, and familial status—California law offers protections for age, sexual orientation, gender identity or expression, genetic information, marital status, military or veteran status, and source of income (including Federal housing assistance vouchers).

E. <https://calcivilrights.ca.gov/housing/#whoBody>:

California law protects individuals from illegal discrimination by housing providers based on the following:

Race, color

Ancestry, national origin

Citizenship, immigration status

Primary language\*

Age

Religion

Disability, mental or physical

Sex, gender

Sexual orientation

Gender identity, gender expression

Genetic information

Marital status

Familial status

Source of income

Military or veteran status

F. Protection against discrimination on the basis of gender identification or expression is also present in laws found in the Education Code, Insurance Code, Welfare and Institutions Code and the Health and Safety Code.

**From:** Linda Swenberg <[REDACTED]>  
**Sent:** Friday, February 3, 2023 11:48 AM  
**To:** Housing Element <HEUpdate@losgatosca.gov>  
**Subject:** Error in Housing element

On page 10-6 above the table, the document states:

Figures 10-2 and 10-3 identify HCD Fair Housing Inquiries by bias for the period 2013 through 2021 and a list of Fair Housing Assistance organizations within Santa Clara County. Figure 10-2 shows that a total of eight fair housing inquiries for Los Gatos were submitted with two submittals citing race as a bias and six cases citing no specific bias.

This is an error and needs to be corrected. There were no cases citing race as a bias according to the table. There were two cases citing, familial status as a bias.

Linda Swenberg  
[REDACTED], Los Gatos, CA 95032  
[REDACTED]