

Public Comments Received by the Town of Los Gatos
During the Seven-Day Public Review Period of the
Draft Revised 2023-2031 Housing Element

September 22, 2023 to September 29, 2023

From: Lee Quintana <[REDACTED]>
Sent: September 29, 2023
To: Housing Element <HEUpdate@losgatosca.gov>
Subject: Comments on revised Housing Element Draft.

While I am submitting comments on the Draft that expand on the comments I made at the September 8th HEAB Meeting because they are submitted after HAEBS recommendation to The Planning Commission, but before the deadline for comments on the Draft in a sense they are meaning less.

COMMENTS: On HCD Draft Revised 2023-2031 Housing Element and Appedicies

Public Comments: (Appendix I)

Make one master list for all comments and indicate the page at which they can be viewed.

Create a separate Appendix for 330 applications

Should address more than response to comments to Drafts - ie comments from pervious hearings of the HEAB

Table of Contents:

Add a list of Tables and Figures

If a table is more than one page long repeat the title and the heading at the top oa all pages

Modify order of appendices: Group related Appendix A, B and G together

Section 10 of the General Plan - Housing Element

Above Introduction of 10:

The sentence that was deleted or language close to it appears elsewhere in Housing Element and its Appendices. *Recommend:* Delete all similar language throughout the Housing Elements and its Appendices

10.1.5 Housing Element Public Participation:

Summarize the information in this section and move the details to Appendix F. Delete existing Appendix F and replace it with a new one. Any information not currently in the detailed information moved from the Housing Element should be added back in.

Note: While this is an impressive list; it does not accurately reflect the number of different individuals who participated in the process.

HE 10.2.2: Los Gatos Overview

Replace with the 12 Preliminary Finding of Appendix A, Section A.45

10.1.4 Overview of Planning and Legislative Efforts

E:ffectiveness of Previous Element:

The topic deserves more than one short paragraph buried under 10.1.e Overview of Planning and Legislative Efforts

Recommend: Create a separate section that expands and the di include a more detailed discussion of the effectiveness of the 5th Cycle Housing Element.. Include a Table with data through the end of the 5th cycle. (be consistent with Cycle 5

numbers throughout the Housing Element and its appendices.) and Include answers to the following questions:

- How many sites listed in the 5th cycle site inventory were developed?
- How many of the inventory sites were carried over to the 6th cycle?
- How many BMP units were built?
- Were any BMP in-lieu funds collected? Were any in-lieu funds utilized?
- How many units were developed under the Town's Density Bonus?
- How many units were developed under the State Density?
- How many "At Risk" Units were preserved? *
- How many units were rehabilitated?.*
- How were Special Housing Needs addressed?*
- What programs were completed during the cycle?
- What programs were being carried forward to the 6th cycle?
- What programs are not being carried forward and why not

There is also a short discussion in Appendix E

Table 10.3 RHNA Credits and Site Strategies

This Table is difficult to understand.

Recommend revising or split into several tables

I think The Site Inventory (table of), the HEOZ standards that apply to the site inventory are critical to the understanding of the Housing Element as a whole.

Recommend : Adding this information to the Housing Element, Element 10 of the General Plan

Appendix A

Page A-159:

A-169 to end Especially Summary "The Town's RHNAto the greatest extent possible given the overall character of Los Gato

Appendix C

Table C-1 Does not show a density for R-D. Is this an oversight or intentional?

Explain why. *Consider* combining Table C-1 and C-5

Appendix C (C-1) : HR, R-1 have multiple "associated" zoning districts; and R-M falls into two different General Plan Designations: Medium Density and High Density: confusing

Table C-1: deft out density for R-D: Density is not defined by number of units per lot - rather # units per minimum lot size: More useful is orientation changed and combined with Table C-2

D-2: Clarify if units in the overlap period are also counted to 5th cycle

Where more than 2 parcels in a site suggest indicating the parcel number on the figure

Figure 10-5 problematic: Elsewhere in document (iw appendices) are more specific information about vouchers. It indicates 107 vouchers in los gatos - which equals the number of units in the HUD assisted Villa Vasona. Yet figure 10-5 in HE (and in AFFH) indicates 0-5% in the eastern side of Los Gatos
Separate out 330 applications into a separate Appendix
Comment Letters and REsponses - make a master list of names for all responses and refer to location of letter and staff response

Appendix D

D-2: Clarify whether units that overlap in the 5th and 6th Cycle period are credited to both cycles.

Figures in Appendix D : Where more than 2 parcels in a site suggest indicating the parcel number on the figure

Appendix E

- Table E- may be useful for HUD's evaluation but not necessarily for the public's understanding.
- Include a more robust discussion of the effectiveness of the 5th cycle that provides answers to the following questions:
 - How many sites listed in the 5th cycle site inventory were developed?
 - How many of the inventory sites were carried over to the 6th cycle?
 - How many BMP units were built?
 - Were any BMP in-lieu funds collected? Were any in-lieu funds utilized?
 - How many units were developed under the Town's Density Bonus?
 - How many units were developed under the State Density?
 - How many "At Risk" Units were preserved? *
 - How many units were rehabilitated?.*
 - How were Special Housing Needs addressed?*
 - What programs were completed during the cycle?
 - What programs were being carried forward to the 6th cycle?
 - What programs are not being carried forward and why not

Include the above information in Chapter 10 Housing Element

Other Comments/questions

What town ordinances need to be updated to be consistent with State Housing Law and what changes need to be made to make them consistent. SB-9

Table 10-4 Quantified Objectives is completely revised but there is little to no explanation of why the changes were made. There is a table D-7 of new projects credited to the 6th (not in HE) cycle Nor is there a table of the RHNA sites! Which has a considerable number of changes on it. But no explanation of how or why changes were made

3. Given that the Housing Element at the bottom of page 10-1 states that a HE is considered to be out of compliance with State Housing Law if one of the following two applies: still puzzled by Towns stance

- It has not been revised and updated by the statutory deadline; or
- Its contents do not substantially comply with the statutory requirements.

From: Phil Koen <[REDACTED]>

Sent: Friday, September 29, 2023 4:08:55 PM

To: Joel Paulson <jpaulson@losgatosca.gov>; Laurel Prevetti <LPrevetti@losgatosca.gov>; Gabrielle Whelan <GWhelan@losgatosca.gov>

Subject: Public Comment on the draft Housing Element

Mr. Paulson,

You might find this FAQ produced by the City of Del Mar helpful. I would draw your attention to questions 16 and 17.

Thank you,

Phil Koen

Sent from my iPhone

Frequently Asked Questions (FAQ)

Revised 10/2/2020

1. What is the Housing Element?
2. What is the Regional Housing Needs Assessment (RHNA)?
3. Why is the City updating its Housing Element?
4. Does an updated Housing Element require a Community Plan amendment?
5. Where can I find more information about the Housing Element process?
6. Is there an Environmental Impact Report (EIR) being prepared?
7. Where can I find the data from the online Community Housing Survey?
8. What is the 6th Cycle Housing Element Update Ad-Hoc Citizens Task Force?
9. Are all of the “High Priority” recommendations from the Citizens’ Task Force Housing Production and Preservation Subcommittee Report analyzed in the Final Program EIR?
10. Are all of the “Medium Priority” recommendations from the Task Force Housing Production and Preservation Subcommittee Report analyzed in the Final Program EIR?
11. Why are some of the “Extremely Low” options from the Task Force Housing Production and Preservation Subcommittee report included in the Final Program EIR?
12. Why isn’t there a greater focus on Accessory Dwelling Units (ADUs) in the Final Program EIR?
13. The City has had success in applications for ADUs. Does the Pilot Program and the ADU program count toward the RHNA numbers in the 5th Cycle? Have these been permitted yet to count? Would the new ADUs count towards the 6th Cycle?
14. In the City’s current 5th Cycle Housing Element, was the City’s goal for the eight-year planning period (2013-2021) to allow an accommodation for 55 affordable housing units?
15. During the current 5th Cycle Housing Element, what is the exact number of affordable units that were "produced" over the eight-year planning period (2013-2021) that will count towards this goal? Where are they located?
16. What date does the 5th Cycle actually end?
17. If the units that were to be produced in the 5th Cycle are actually produced at the start of the 6th Cycle, will these units count towards the City’s 163 unit requirement plus carryover units required in the 6th Cycle?
18. How many affordable units will carryover from the 5th Cycle into the 6th Cycle?
19. Would units built as of June 30, 2020 count toward 5th Cycle fulfillment?
20. Would all units built after June 30, 2020 count toward 6th Cycle fulfillment?
21. How many RHNA affordable units were to come from the proposed “Watermark” project, which is related to Program 2-G in the 5th Cycle Housing Element? City staff

- has stated 19 in one of the Citizens' Task Force meetings when discussing the estimated 41 to 46 carryover included in the Draft PEIR. Is this correct? If not, what is the correct number? What exactly is the estimated 41 to 46 unit carryover made up of?
22. I was told that the developer of the proposed "Watermark" development disclosed that the City of Del Mar's representative actually approached the developer for development. I did not realize the City's scope was to source development. Is this standard practice?
23. What happened to the proposed "Watermark" project? The developer was supposed to come back with a plan and it has been a couple of years and nothing has happened. If and when this project happens, will the number of units built count in the housing cycle when units are built? In other words, if the date completed is after the 5th Cycle is over, which seems likely, will these units count to either lower the carryover for the 6th Cycle or count towards the 6th Cycle number which is 163 plus carryover?
24. If Program 2-G is one of the programs the City is expecting to complete, what will be the completion date?
25. The proposed "Watermark" project requires a rezone of two contiguous parcels. How many votes are required by the City Council to approve a rezone – three or four? What happens if the rezone does not pass?
26. With regard to Programs 2-E (North Commercial) and 2-F (Professional Commercial) from the 5th Cycle Housing Element, what happens if the City does not complete these two programs, specifically the ramifications?
27. When these amendments were questioned in one of the Citizens' Task Force meetings, it was explained that the previous City Council in 2012 had approved the Housing Element and, therefore, the Community Plan was changed. However, given that these amendments require an EIR in order to be approved by the current City Council, how could a City Council, based on the process City staff has shared with the prior Citizens' Task Force, make such a decision without knowing the EIR impact to the proposal and then expected it will be completed if in fact the EIR does not support the recommendation?
28. When is the next Housing and Community Development (HCD) meeting? Do the two City Council Housing Liaison's (Gaasterland/Worden) attend these meetings with staff as they do for the Fairgrounds and with other agencies? My thought is that when a case is made on pending issues or negotiations, our elected officials may carry more weight with HCD.
29. I note after reading an article recently published that in the State of California, only 26 jurisdictions completed their Housing Elements and were certified. Most all did not and it was stated HCD is working with them. So, if we are not certified because we did not complete, say, all programs for the 5th Cycle, what are those ramifications for our City, and are there any for our City's Planning staff performance and careers?
30. What are the proposed changes to development standards in the North Commercial (NC), Professional Commercial (PC), and Central Commercial (CC) zones for the 6th Cycle Housing Element?
31. What is the current Floor Area Ratio (FAR), lot coverage limit, and height limit in the North Commercial (NC) Zone?

32. What is the current FAR, lot coverage limit, and height limit in the PC Zone?
33. What are the current FAR, lot coverage, and height limit in the downtown CC zone?
34. If the “Watermark” property is developed under the 2-E/2-F/2-G up-zone, and if they submit a plan for 46 units and thus meet the “by right” conditions, they could ask for and get from the State an increase in FAR and/or coverage and/or density and/or height and/or what else? Formulas in the State code will kick in to specify the “by right” details. Would the development not go through the Design Review Board (DRB), Planning Commission, or Council?
35. Regardless of a “Watermark” development being “by-right” or subject to the City’s discretionary process, would it still be subject to the Coastal Commission’s review?
36. The 5th Cycle Housing Element depended on Programs 2-E and 2-F to create capacity to fulfill the City’s RHNA allocation. If Programs 2-E and 2-F are not accomplished, there may be consequences including losing certification of the 5th Cycle Housing Element, which in turn opens up possible enforcement by the State. Is that correct?
37. Separately from “Watermark”, Del Mar will be penalized for some of all of the 19 (of 22) assigned 5th Cycle affordable housing units that were not built. 22 were assigned. Three received discretionary permits and are underway, leaving 19 unbuilt.
38. The draft 6th Cycle Housing Element Update refers to a NC zone amendment at 20 du/ac. Program 2-G in the current 5th Cycle Housing Element calls for 20-25 du/ac “by right” on the “Watermark” parcels which is also part of the NC zone. How are these two reconciled?
39. Does the State have to abide by the City’s zoning regulations on the State-owned Fairgrounds property?
40. If residential becomes an allowed primary use in a commercial zone, does this mean short-term rentals (STRs) could also be allowed and operated?
41. Why does the draft 6th Cycle Housing Element plan for 113 affordable units when the City’s RHNA allocation was 101 affordable units?
42. Is the penalty for the private Watermark property not being developed during the 5th Cycle 9 affordable units?
43. Is it correct that the City’s 6th Cycle RHNA requirement for moderate and above moderate units can be achieved without rezoning? How many of these units can be achieved by ADUs?
44. How many moderate and above moderate units could be achieved in the 6th Cycle with the preservation of existing duplexes and possible creation of new duplexes in the R1-5B zone?
45. Where and why is it required that the City would have to up-zone for 50% (not 100%) of the City’s 6th Cycle RHNA requirement of 101 affordable units?
46. Is it true that at most 20% of an up-zoned parcel can be affordable units? Is that a cap imposed by the State or by the City of Del Mar?
47. Is there a way for an up-zoned parcel in Del Mar to be given a cap of 30% affordable units or even more (e.g., 40% or 50% has been done elsewhere - Los Gatos has 50% and Corte Madera has 30%)?

48. Is there a new density bonus law that was recently signed by the Governor and, if so, does it allow density bonus increases up to 50%?
49. Assuming zoning that allows residential at 20 du/ac under the new AB2345 law (50% density bonus), what would the new maximum number of units be on sites zoned at 20 dwelling unit per acre for the following areas considered in the 6th Cycle Housing Element Update: NC Zone, PC Zone, the North Bluff, and the South Stratford properties?
50. A letter was submitted to the Planning Commission for their September 19, 2020 meeting from the owners of the South Stratford properties. Does this correspondence impact how HCD would view the potential for that property?
51. How long does an affordable unit need to be deed restricted as affordable?
52. Of the potential candidate sites considered, specifically vacant sites, why were the vacant sites on San Dieguito Road not included in the proposed 6th Cycle Housing Element Update?
53. Was sufficient noticing provided to the public for the housing related items on the October 5, 2020 City Council meeting (6th Cycle Housing Element Update and NC Amendments)?
54. Can an amendment to the Community Plan be brought to a public hearing without fully noticing the community? Is an ad in the Del Mar Times sufficient to let people know?
55. Did the ad that the City placed in the Del Mar Times appear last week (September 24), or this week (October 1), or both?
56. Could consideration of the two items on October 5, 2020 be delayed to the next hearing to allow for additional mailed noticing?

1. What is the Housing Element?

The Housing Element is a State-mandated policy document within the Del Mar Community Plan (General Plan) that provides direction for the implementation of various programs to meet existing and projected future housing needs for all income levels within the Del Mar community. The Housing Element provides policies, programs, and actions that accommodate growth, produce opportunity for the development of new housing units, preserve existing housing stock, and assist the existing population.

The City's stated housing goal is to: *"Inspire a more diverse, sustainable, and balanced community through implementation of strategies and programs that will result in economically and socially diversified housing choices that preserve and enhance the special character of Del Mar."*

2. What is the Regional Housing Needs Assessment (RHNA)?

The Regional Housing Needs Assessment (RHNA) is mandated by State law to quantify the need for housing throughout the State and each city in the San Diego region. This will inform Del Mar's local planning process to address existing and future housing need resulting from the San Diego region's projected growth in population, employment, and households.

The San Diego Association of Governments (SANDAG) is responsible for overseeing the RHNA process for the San Diego region. SANDAG is currently overseeing the 6th Cycle RHNA, which covers the 2021-2029 planning period.

For the 2021-2029 planning period, the City of Del Mar was allocated 163 units at various income levels that the City must create adequate sites and accommodate capacity for. The Housing Element must identify the City's ability to accommodate the assigned RHNA through available sites and appropriate zoning. The 6th Cycle RHNA for Del Mar is as follows:

6 th Cycle RHNA Allocation by Income Category			
Income Category	Income Range*		RHNA Allocation
	Min	Max	Housing Units
Very Low (31% to 50%)	\$26,753	\$43,150	37 units
Low (51% to 80%)	\$43,151	\$69,040	64 units
Moderate (81% to 120%)	\$69,041	\$103,560	31 units
Above Moderate (120% or more)	\$103,560	> \$103,560	31 units
TOTAL			163 units

* Income range is based on the 2019 San Diego County Area Median Income of \$86,300

3. Why is the City updating its Housing Element?

The City is required by State Housing law to update its Housing Element every eight years. The Housing Element is part of the City's Community Plan (General Plan). The current certified 5th Cycle Housing Element is for the 2013-2021 planning period. The City is in the process of preparing its 6th Cycle Housing Element for the 2021-2029 planning period.

4. Does an updated Housing Element require a Community Plan amendment?

The Housing Element is a part of the City's General Plan (Community Plan). When the City updates its Housing Element every eight years to meet State law, a Community Plan amendment

is required. Per State law, a Community Plan amendment requires that the Planning Commission hold a hearing to provide a recommendation to the City Council. The City's local Ordinance that adopted the Community Plan stipulated that amendments to the Community Plan shall require approval by a supermajority of the Council (4/5 vote for approval). That approval requirement is more restrictive than what is required by the State, which by comparison only requires a simple majority (3/5 vote for approval). If the City's more restrictive local approval process for Community Plan amendments ends up being a governmental constraint to fair housing in violation of State mandates, then the State can impose enforcement penalties per Govt Code section 65585.

5. Where can I find more information about the Housing Element process?

The City has a dedicated webpage for the 6th Cycle Housing Element Update that can be viewed at the following link: www.delmar.ca./HousingElement

6. Is there an Environmental Impact Report (EIR) being prepared?

Pursuant to the California Environmental Quality Act (CEQA), the City of Del Mar is considered the "lead agency" for the proposed 6th Cycle Housing Element Update and, therefore, is subject to environmental review under CEQA. CEQA Guidelines §15063 provides that if a lead agency determines that an EIR will clearly be required for a project, an Initial Study is not required. Pursuant to CEQA, the Housing Element Update is considered a "project" because it is a program characterized by a series of actions. The City has already determined that an EIR will need to be prepared based on the Project's potential to create short-term, long-term, and cumulative impacts associated with other development. Therefore, a draft and final "Program-level" EIR (PEIR) was prepared and can be viewed at the following link: www.delmar.ca.us/HousingElement. The draft PEIR was circulated for public review and comment for 60 days (July 2, 2020 through August 31, 2020). The Final PEIR will be considered by the City Council at their meeting on October 5, 2020. A copy of the agenda and related information for that meeting is available here: www.delmar.ca.us/AgendaCenter

7. Where can I find the data from the online Community Housing Survey?

One of the tools used during development of the Housing Element Update was an online Community Survey that took place from March 16 to April 20, 2020. The Survey was designed to gather feedback and preferences for a variety of topics related to housing production, candidate housing sites, impediments to housing production, and community assistance programs. The data from the Survey is available in excel format via the links below (click underlined titles to access Excel sheets) or at www.delmar.ca.us/HousingElement (scroll to bottom and click on tab "Reports & More"):

Priority Program Data (Excel) In this section of the survey, participants were asked to click through three individual slides and provide various program areas with a 1 to 5-star rating (1 being least appealing, 5 being most appealing). Each slide consisted of five potential programs targeted at a specific goal. The slides covered the topic areas of preservation of existing housing stock, production of housing stock, and community assistance programs. See: www.delmar.ca.us/DocumentCenter/View/6768/1---Priority-Programs

Potential Housing Location Data (Excel) In this section of the survey, eight different areas of the City were listed where future housing could be located. Participants were asked to select at least three areas where they would like to see housing be

developed. Of the three selected, participants were also asked to rank them in order: #1 being most desirable location, #2 being the second most desirable, and #3 being the third most desirable. See: www.delmar.ca.us/DocumentCenter/View/6769/2---Potential-Housing-Locations

Removing Constraints Data (Excel) In this section of the survey, eight different incentives were listed with the goal of addressing potential constraints to developing housing. Participants were given a total of 45 stars or “chips”, and asked to distribute the chips amongst the potential incentives that interested them the most. See: www.delmar.ca.us/DocumentCenter/View/6770/3---Removing-Constraints

Wrap-up Slide Comments and Inputs (Excel) See: www.delmar.ca.us/DocumentCenter/View/6771/Wrap-Up-Slide-Comments-and-Inputs

8. What is the 6th Cycle Housing Element Update Ad-Hoc Citizens Task Force?

A Citizens’ Task Force was appointed by the City Council on January 13, 2020. The mission of the 6th Cycle Housing Element Ad-Hoc Citizens’ Task Force (Task Force) was to:

- Aid the City in preparation of the associated environmental document for the 6th Cycle Housing Element Update in compliance with CEQA;
- Provide a public forum to help inform and encourage Housing Element participation amongst fellow Del Mar citizens; and
- Discuss and provide feedback on potential goals, policies, programs, and objectives to be included within the 6th Cycle Housing Element.

As part of their overall work effort, the Task Force divided themselves into three separate subcommittees: Communications; Community Assistance; and Housing Production and Preservation. Each subcommittee produced a report that can be viewed at: www.delmar.ca.us/HousingElement (scroll to bottom and click on tab “Reports & More”).

The Task Force held nine meetings that were open to the public generally every other week for approximately four months; and held a Community Workshop on Saturday, February 29, 2020. The Citizens’ Task Force completed its scope in May 2020 and presented a final summary of its work to the City Council at their June 15, 2020 meeting. The Citizens’ Task Force is no longer an active committee. You can view past meetings of the Task Force and their meeting minutes here: www.delmar.ca.us/AgendaCenter

9. Are all of the “High Priority” recommendations from the Citizens’ Task Force Housing Production and Preservation Subcommittee Report analyzed in the Final PEIR?

Yes, all nine High Priority recommendations (ten including Accessory Dwelling Units or ADUs) are sufficiently analyzed in the Program EIR (PEIR) at the program-level. The nine priorities consist of five City properties; three Fairgrounds properties; and the Central Commercial (CC) zone, all of which are listed below:

1. Zuni Water Tank / 12th Street and Luneta Drive Vacant Lot – see Public Facilities/City owned land Focus Area
 - a. The Zuni water tank site is sufficiently covered under both the North Commercial (NC)/Professional Commercial (PC) Final PEIR certified by the City Council on September 8, 2020 as well as the Final PEIR at a program-level prepared for the 6th Cycle Housing Element Update

- b. However, the 12th Street and Luneta Vacant Parcel that was added by the Subcommittee in the final iteration of their report under #1 is listed as a “Park” in the Recreation Element of the City’s Community Plan. This parcel was purchased/accepted by the City with a deed restriction reserving it as passive use open space; therefore, it cannot be relied upon for future housing
- 2. City Owned 28th Street Property – see Public Facilities/City owned land Focus Area
 - a. The 28th Street site is sufficiently covered under both the NC/PC Final PEIR as well as the Final PEIR prepared for the 6th Cycle Housing Element Update
 - b. Site is located in the Floodplain Overlay Zone
- 3. City Hall Expansion Site – see Public Facilities/City owned land Focus Area
 - a. The City Hall expansion site is sufficiently covered under both the NC/PC PEIR as well as the Final PEIR at a program-level prepared for the 6th Cycle Housing Element Update
- 4. Surf and Turf R.V. Park – see Fairgrounds Focus Area
 - a. The Site is located within the City of San Diego and FEMA floodplain and is sufficiently analyzed in the Final PEIR at a program-level for residential use
 - b. Fairgrounds makes up 78% of total candidate site acreage (266 out of 304 acres)
 - c. Concept for the City to provide all housing at fairgrounds is addressed in the Final PEIR Alternatives
- 5. Residential in CC zone – see Downtown Village Focus Area
 - a. CC Zone is sufficiently covered in the Final PEIR at a program-level for residential development up to 20 dwelling units per acre (DU/AC) (one acre is equivalent to 43,560 square feet)
 - b. The Downtown Village Focus area also includes the Del Mar Hotel Specific Plan (HSP) and Del Mar Plaza Specific Plan (PSP)
 - c. The draft Housing Element Update set for City Council’s review on October 5, 2020 includes a program to explore potential for future partnerships/agreements to locate small affordable units on sites with existing hotels, retail, and multiple-dwelling units
- 6. Pine Needles Water Tank – see Public Facilities/City owned land Focus Area
 - a. The site is sufficiently covered under both the NC/PC Final PEIR as well as the Final PEIR at a program-level prepared for the 6th Cycle Housing Element Update
 - b. Is located in the Wildland Urban Interface (WUI) area
- 7. 10th Street / Highland Water Tank – see Public Facilities/City owned land Focus Area
 - a. The site is sufficiently covered under both the NC/PC Final PEIR as well as the Final PEIR at a program-level prepared for the 6th Cycle Housing Element Update
- 8. Convert Del Mar Fairgrounds track housing to affordable units – see Fairgrounds Focus Area
 - a. The Site is sufficiently analyzed in the Final PEIR at a program-level for residential use
 - b. Fairgrounds makes up 78% of the City’s total candidate site acreage (266 out of 304 acres)
 - a. Concept for the City to provide all housing obligations at Fairgrounds is considered in the Alternatives Section of the Final PEIR
- 9. Convert an existing Fairgrounds livestock / horse barn to housing – see Fairgrounds Focus Area
 - a. The Site is sufficiently analyzed in the Final PEIR at a program-level for residential use

- b. Fairgrounds makes up 78% of the City's total candidate site acreage (266 out of 304 acres)
 - a. Concept for the City to provide all housing obligations at Fairgrounds is considered in the Alternatives Section of the Final PEIR
10. Accessory Dwelling Units (ADUs) in General – ADUs are a required component of the Housing Element per State Housing law
- a. ADUs are currently required to be allowed via a ministerial process (exempt from CEQA and City discretionary review, such as Design Review) in all zones where residential is allowed
 - b. ADUs are not more detailed in the Final PEIR because they are currently allowed by-right under City ordinance and are considered a “Baseline” condition for the housing analysis per CEQA
 - c. Housing Element Update includes multiple ADU-related programs relating to an amnesty program and to extend/enhance the existing Pilot Incentive Program to produce deed restricted affordable ADUs

The referenced Subcommittee report is available here:

www.delmar.ca.us/DocumentCenter/View/6921/Housing-Production-and-Preservation-Subcommittee-Report

10. Are all of the “Medium Priority” recommendations from the Task Force Housing Production and Preservation Subcommittee Report analyzed in the Final PEIR?

Yes, all of the Medium Priority recommendations from the Subcommittee are sufficiently analyzed in the Final PEIR at a program-level. The Medium Priorities from the Report are listed below:

- 1. The northeast corner of Shores Park that includes the Del Mar Community Connections (DMCC) and Del Mar Foundation (DMF) offices on 9th Street
- 2. Jimmy Durante / Via de la Valle Right-of-Way – This option could not happen without the incorporation of State-owned Fairgrounds property which is sufficiently analyzed in the Final PEIR at a program-level
- 3. Site that includes the water tower on Crest Road

11. Why are some of the “Extremely Low” options from the Task Force Housing Production and Preservation Subcommittee report included in the Final PEIR?

The larger “park” portion of Shores Park and the City Hall's northeast corner on 11th Street were excluded from the PEIR analysis. However, to meet the requirements of State Housing law, the City must show capacity for a minimum of 50% of the City's lower income RHNA (101 units) on vacant land over 0.5 acres and under 10 acres in size. The sites which meet this criteria are the North Bluff and South Stratford Focus Areas described in the Final PEIR. The only way for the City to exclude these sites as a potential rezone program at 20 dwelling units per acre (du/ac) per State Housing law is if there is a clear path for production of all required affordable units that is identified with agreements already secured. To date, the City does not have these types of agreements in place. The City can gain Housing Element certification if it includes this required rezone program, but does not necessarily need to follow through with implementation of the program if the City is able to successfully produce agreements for affordable units on alternative sites such as the Fairgrounds.

12. Why isn't there a greater focus on Accessory Dwelling Units (ADUs) in the Final Program EIR?

ADUs are not addressed in more detail in the Final PEIR because they are considered a Baseline condition (i.e., already incorporated in the City's codes at the time the Notice of Preparation of the Draft EIR was published in February 2020). That said it is important to remember that the Final PEIR (i.e., environmental analysis pursuant to CEQA) and the Housing Element Update (i.e., Community Plan policy document for 6th Cycle planning period) are two different documents. ADUs are a required component of the Housing Element Update and will be a key strategy to accommodate a portion of the City's RHNA. Future actions relating to an amnesty program and extension/enhancement of the Pilot Incentive Program were identified in the Final PEIR together with other potential action programs. The absence of other creative ADU-related program ideas put forth by the Task Force Housing Production and Preservation Subcommittee within the Final PEIR did not mean that they would not be considered or included in the Housing Element Update. It just meant that they did not need further environmental analysis or classification as capacity-related action programs.

13. The City has had success in applications for ADUs. Does the Pilot Program and the ADU program count toward the RHNA numbers in the 5th Cycle? Have these been permitted yet to count? Would the new ADUs count towards the 6th Cycle?

This statement incorrectly assumes that the City has had success with Accessory Dwelling Units (ADUs) overall. The low production of ADUs over a 20+ year period since the applicable second unit and ADU laws have been in effect is not considered to be a success by the State. The City has only produced two ADUs to date. One ADU was produced in 2018 and the other was an existing unpermitted unit that was legalized as a Junior ADU (JrADU) in 2020. The City does not have confirmation from either property owner as to how either of these ADUs are being used, or if they are even being used as housing units.

Any ADUs or JrADUs produced (i.e., been issued building permits) since June 30, 2020 will be reported to HCD for credit towards the 6th Cycle progress reports. The most critical point that HCD cares about is whether or not the units will be deed restricted affordable (i.e., to be counted towards the City's obligation for the 6th Cycle allocation of 101 assigned lower income RHNA units + 12 estimated carryover affordable units). To date, the City has only one permit approval for a deed restricted affordable ADU; and that one affordable ADU unit has not yet been constructed. This unit is credited toward the City's 5th Cycle RHNA and is the only affordable unit (of 22 required) credited to that cycle. The City can try to obtain data via a survey of property owners with ADUs; however the State made it clear that the City cannot require a response to those surveys from the property owners or residents, and there is no guarantee that ADUs or JrADUs without a recorded deed restriction can be counted as affordable units towards the City's RHNA obligation.

14. In the City's current 5th Cycle Housing Element, was the City's goal for the eight-year planning period (2013-2021) to allow an accommodation for 55 affordable housing units?

No, the City's goal and obligation per State Housing law was to create adequate sites to accommodate production of 22 affordable units, which included the 12 lower income units (7 Very Low and 5 Low) assigned to the City through the 5th Cycle Regional Housing Needs Assessment

(RHNA) process and an additional 10 Low income penalty units that were assessed because the City failed to comply with its 4th Cycle housing obligations.

15. During the current 5th Cycle Housing Element, what is the exact number of affordable units that were "produced" over the eight-year planning period (2013-2021) that will count towards this goal? Where are they located?

The City did not meet its obligations for creation of adequate sites or production of RHNA affordable units in its 5th Cycle (production period ended on June 29, 2020). Of the 22 affordable units required, the City produced 0 of 7 Very Low income units and 1 of 15 Low income units. During the 5th Cycle production period, a building permit was approved for the one affordable ADU (that will be deed restricted for rent to a low-income household for 30 years.) The approved low income unit is approved for construction and will be located in the North Hills community plan district. HCD will confirm how approval of the one affordable ADU will be counted towards the City's overall housing obligation, which includes the assigned 6th Cycle RHNA plus carryover obligations and penalties anticipated for the deficit associated with the 5th Cycle.

16. What date does the 5th Cycle actually end?

The production period for the 5th Cycle ended on June 29, 2020, meaning that any unit which obtains building permits from June 30, 2020 forward would be credited toward the City's 6th Cycle housing cycle.

17. If the units that were to be produced in the 5th Cycle are actually produced at the start of the 6th Cycle, will these units count towards the City's 163 unit requirement plus carryover units required in the 6th Cycle?

Units are considered "produced" when building permits are issued. Production toward the 6th Cycle started on June 30, 2020.

18. How many affordable units will carryover from the 5th Cycle into the 6th Cycle?

As noted in prior responses, City staff has been diligently trying to obtain confirmation from HCD staff as to the exact number of carryover units for the 6th Cycle. It is City staff's understanding that 12 carryover affordable units from the City's 5th Cycle RHNA will be required by HCD. As such, the Housing Element Update to be considered by the City Council on October 5, 2020 is referencing a requirement of 113 affordable units (i.e., 101 affordable units from 6th Cycle RHNA + 12 carryover affordable units).

19. Would units built as of June 30, 2020 count toward 5th Cycle fulfillment?

Units produced (i.e., issued building permits) starting June 30, 2020 through April 15, 2021 count towards the 6th Cycle, so units produced June 29, 2020 and earlier count toward the 5th Cycle.

20. Would all units built after June 30, 2020 count toward 6th Cycle fulfillment?

Yes, at the time building permits are issued.

21. How many RHNA affordable units were to come from the proposed “Watermark” project, which is related to Program 2-G in the 5th Cycle Housing Element? City staff has stated 19 in one of the Citizens’ Task Force meetings when discussing the estimated 41 to 46 carryover included in the Draft PEIR. Is this correct? If not, what is the correct number? What exactly is the estimated 41 to 46 unit carryover made up of?

The confusion has to do with the number of required “adequate sites” for affordable units versus the deficit of adequate sites and total units produced that would be required by HCD as a carryover into the 6th Cycle. City staff has been diligently trying to confirm the number of total units required for the carryover of 5th Cycle Housing Program 2-G into the 6th Cycle Housing Element; however, Program 2-G is a program mandated by the State in the City’s 5th Cycle Housing Element to account for 10 affordable units from the City’s 4th Cycle Housing Element that did not get accommodated. Though related, these 10 affordable units are separate from the City’s 5th Cycle RHNA of 12 affordable units. For the sake of the draft environmental analysis in the 6th Cycle Draft PEIR, City staff assumed an estimated carryover of adequate sites for 46 total units, which is based on the calculation of 2.3 acres and 20 du/ac (totals 46 units, which includes affordable units) due to the City’s failure to rezone the two vacant lots owned by Watermark LP for 5th Cycle Housing Element pursuant to Program 2-G. The total affordable units required from the 5th Cycle was 22 units. It is City staff’s understanding that 12 carryover affordable units will be required by HCD for its 5th Cycle RHNA, but that the City is still obligated to implement Program 2-G to account for its 4th Cycle carryover. As such, the Housing Element Update to be considered by the City Council on October 5, 2020 is referencing a requirement of 113 affordable units (i.e., 101 affordable units from 6th Cycle RHNA + 12 5th Cycle carryover affordable units).

22. I was told that the developer of the proposed “Watermark” development disclosed that the City of Del Mar’s representative actually approached the developer for development. I did not realize the City’s scope was to source development. Is this standard practice?

This question relates to the 5th Cycle Housing Element Update process that occurred prior to the later proposed “Watermark” project that had been submitted via a Specific Plan. It also occurred at a time when the City’s current housing team was not involved. City staff is not sure of the alleged events, but can confirm that the City had failed to meet its obligations for the 4th Cycle Housing Element and was in need of solutions for its 5th Cycle to minimize risk and avoid additional penalties beyond the 10 low income penalty units that were assessed at the time. Also, it is important to note that Program 2-G and the “Watermark” project are not the same project or required action even though they involve the same two parcels. Program 2-G requires a rezone action to create capacity for adequate sites on two parcels for “by-right” (or “ministerial” meaning no discretionary processing such as Design Review) residential development with an affordable housing component; whereas the “Watermark” project that was submitted later was for approval of a Specific Plan and the development of dwelling units through a discretionary approval process.

23. What happened to the proposed “Watermark” project? The developer was supposed to come back with a plan and it has been a couple of years and nothing has happened. If and when this project happens, will the number of units built count in the housing cycle when units are built? In other words, if the date completed is after the 5th Cycle is over, which seems likely, will these units count to either lower the carryover for the 6th Cycle or count towards the 6th Cycle number which is 163 plus carryover?

The Watermark Del Mar Specific Plan is a private development application intended to implement the rezone required by 5th Cycle Housing Element Program 2-G. This has been an active development application for several years; however, staff is not certain of the applicant's intentions for continuing to process the application. City staff understands that the project applicant has been working with Coastal Commission staff to address their comments submitted on that project's earlier Draft EIR that was initially circulated since the project would require an amendment to the City's certified Local Coastal Program (LCP). If 5th Cycle Housing Element Program 2-G is not completed, it will trigger the “no net loss” provision per State Housing law. This has associated penalties that will be assessed to the City if not completed. See Govt Code Sec. 65585.

24. If Program 2-G is one of the programs the City is expecting to complete, what will be the completion date?

The proposed “Watermark” project is a private development application to implement a required Housing Element rezone program (Program 2-G) that was necessary to meet the City's obligation for adequate sites with the 5th Cycle Housing Element and to meet the assigned RHNA obligation for affordable housing. The City is still obligated to implement Program 2-G to account for its 4th Cycle carryover. If not completed, that result would have associated penalties for the City. See Govt Code Sec. 65585.

25. The proposed “Watermark” project requires a rezone of two contiguous parcels. How many votes are required by the City Council to approve a rezone – three or four? What happens if the rezone does not pass?

Rezone actions that amend the City's Zoning Ordinance (Title 30 of the Del Mar Municipal Code) and certified LCP require a simple majority vote (3 of 5) of the City Council to pass, which is consistent with State law. The proposed “Watermark” project involves two contiguous parcels. As explained above, a decision to not implement Program 2-G would result in associated penalties for the City. See Govt Code Sec. 65585. Note that a super-majority vote (4 of 5) is only required for amendments to the City's Community Plan (General Plan), not amendments to the Zoning Ordinance or LCP.

26. With regard to Programs 2-E (North Commercial) and 2-F (Professional Commercial) from the 5th Cycle Housing Element, what happens if the City does not complete these two programs, specifically the ramifications?

The agenda report for the September 8, 2020 City Council meeting summarizes the ramifications for not completing these programs (view the report at www.delmar.ca.us/AgendaCenter). On September 8, 2020, the City Council approved amendments to the Community Plan, Zoning Code, and LCP for Program 2-F (Professional Commercial), but did not approve the amendments

required for Program 2-E (North Commercial) that would have amended the NC land use designation and zone to allow residential as a primary use up to a maximum density of 20 du/ac. This action resulted in the City not implementing a required program of its current Housing Element, thereby limiting the number of zones that would sufficiently allow for multiple dwelling unit housing in the purview of the State. Without capacity for housing in the NC zone, the City is unable to demonstrate to the State how it will accommodate enough adequate sites to meet its 5th Cycle (and continuing into its 6th Cycle) affordable housing obligation. Further, this means the City is in violation of State Housing law until action is taken to implement the required housing program or replace it with an equivalent program that is acceptable to HCD.

27. When these amendments were questioned in one of the Citizens' Task Force meetings, it was explained that the previous City Council in 2012 had approved the Housing Element and, therefore, the Community Plan was changed. However, given that these amendments require an EIR in order to be approved by the current City Council, how could a City Council, based on the process City staff has shared with the prior Citizens' Task Force, make such a decision without knowing the EIR impact to the proposal and then expected it will be completed if in fact the EIR does not support the recommendation?

It is correct that the 5th Cycle actions amended the City's Community Plan when the 5th Cycle Housing Element was adopted because the Housing Element is a required component of the City's Community Plan. However, formal implementation of Programs 2-E and 2-F did not occur as part of the earlier City Council's adoption of the 5th Cycle Housing Element – that was a later step to follow once the Housing Element had been certified by HCD. This is similar to the process the City is currently in with its 6th Cycle. The City Council will consider various programs and strategies at the "program-level" with timeframes for formal implementation during the next eight-year planning period (2021-2029). As those actions are then proposed for implementation during the next eight-year planning period, as was the recent case now with Programs 2-E and 2-F for our current eight year planning period (2013-2021), evaluation under CEQA is required based on the most recent information known at that time. The outcome of what level of environmental review is required is not always known at the time a Housing Element is first adopted by a local agency. As such, several years following HCD certification of the City's 5th Cycle Housing Element, an EIR was determined to be the appropriate level of environmental review necessary for consideration of Program 2-E and 2-F implementation for reasons described in that NC/PC Final EIR. Note that the City's current housing team was not part of the 5th Cycle process.

28. When is the next HCD meeting? Do the two City Council Housing Liaison's (Gaasterland/Worden) attend these meetings with staff as they do for the Fairgrounds and with other agencies? My thought is that when a case is made on pending issues or negotiations, our elected officials may carry more weight with HCD.

City staff has the opportunity to request a half-hour, staff-level meeting with HCD staff each month following the joint SANDAG-HCD monthly trainings related to the Housing Element Update process. These are not meetings with elected officials of any of the participating state or local agencies. These meetings do not involve negotiations. They are staff coordination meetings to help reach understanding on what the various State mandates mean in the context of the local jurisdiction. Meanwhile, the City Council Housing Liaisons are appropriately investigating options

with elected officials of the State and other local agencies on a separate, but parallel track, to try and meet the housing objectives of the City.

29. I note after reading an article recently published that in the State of California, only 26 jurisdictions completed their Housing Elements and were certified. Most all did not and it was stated HCD is working with them. So, if we are not certified because we did not complete, say, all programs for the 5th Cycle, what are those ramifications for our City, and are there any for our City's Planning staff performance and careers?

The agenda report for the September 8, 2020 City Council meeting summarizes the ramifications for not completing these programs (view the report at www.delmar.ca.us/AgendaCenter). Compliance with Housing Element law is a stated priority of the State to address the State's declaration of a statewide housing crisis. This is best exhibited by the package of Housing-related laws that went into effect January 2020 and again on September 29, 2020. As such, the 6th Cycle process is already shaping out to be more involved and complex than earlier cycles – not to mention that HCD has been further empowered with enforcement capabilities. HCD staff has explained that the ramifications and State enforcement authority is set forth in Govt Code section 65585. To date, City staff has observed that the State initiates enforcement actions on jurisdictions when local actions are taken in conflict with State law. For further research, the State recently made examples of Huntington Beach and the City of Encinitas. As previously mentioned, HCD staff has indicated to City staff that the State is aware that the City did not fulfill its obligations for the 4th Cycle or 5th Cycle Housing Elements.

As part of the Planning Department's current directive from City Council, City staff was tasked with obtaining certification of the 6th Cycle Housing Element Update to meet the State mandate. City staff understands that by the City not approving Program 2-G (a "rezone program" that obligated the City, within 12 months of City Council adoption of the 5th Cycle Housing Element, to rezone the two adjacent/vacant Watermark parcels in the NC zone to allow "by right" residential development of the properties at a density of 20-25 du/ac) or Program 2-E (a program to allow residential as a primary use in the NC zone at a density of 20 du/ac), the City now risks decertification of its Housing Element and/or other penalties that could reduce local control (e.g., fines, requirements for more "by-right" development that could conflict with the existing Community Plan, four-year Housing Element cycles in lieu of eight-year cycles)

30. What are the proposed changes to development standards in the North Commercial (NC), Professional Commercial (PC), and Central Commercial (CC) zones for the 6th Cycle Housing Element?

None as proposed and recommended by City staff and the Planning Commission (September 15, 2020 hearing). There are no proposed changes to development standards (e.g., setbacks, height, lot coverage, etc.) other than the required density of 20 du/ac to meet the State mandate. Consistent with the Community Plan, the ongoing application of the City's development standards would continue to preserve the special residential character and small-town atmosphere of Del Mar. The intent of proposed programs is to maintain local control over all future housing development, including application of the City's Design Review process, to the maximum extent feasible and allowed by State Housing law.

31. What is the current Floor Area Ratio (FAR), lot coverage limit, and height limit in the North Commercial (NC) Zone?

1. Setbacks: None, except that no development shall be located closer than 25 feet from a floodway zone, and that a minimum ten-foot wide landscaped setback shall be required on any NC zoned property along any common boundary or residentially zoned property
2. Height: 26 feet
3. Floor area ratio: 30 percent
4. Maximum lot coverage: 40 percent

Code reference:

https://library.municode.com/ca/del_mar/codes/municipal_code?nodeId=TIT30ZO_CH30.24NO_COZONC_30.24.070DEST

32. What is the current FAR, lot coverage limit, and height limit in the Professional Commercial (PC) Zone?

1. Setbacks: None, except that a minimum ten-foot wide landscape setback shall be required on PC zoned property along any common boundary of residentially zoned property
2. Height: 26 feet, except all structures fronting on the west side of Camino del Mar shall not exceed fourteen feet in height above the curb level adjacent to the site on Camino del Mar
3. Floor area ratio: 60 percent
4. Maximum lot coverage: 75 percent

Code reference:

https://library.municode.com/ca/del_mar/codes/municipal_code?nodeId=TIT30ZO_CH30.25PR_COZOPC_30.25.070DEST

33. What are the current FAR, lot coverage, and height limit in the downtown Central Commercial (CC) zone?

1. Setbacks: Every lot having a common boundary with property zoned R1, RM, R2 shall have a minimum ten-foot wide landscaped setback from such common boundary
2. Height: No structure shall exceed a height of 26 feet. Except, structures fronting the west side of Camino del Mar shall not exceed a height of 14 feet measured from the elevation of the curb level adjacent to the structure on Camino del Mar
3. Floor Area: No development shall exceed a floor area-to-lot area ratio of 45 percent or 2,000 square feet, whichever is greater
4. Lot Coverage: No development shall exceed a lot coverage of more than 60 percent or 2,500 square feet, whichever is greater

Code reference:

https://library.municode.com/ca/del_mar/codes/municipal_code?nodeId=TIT30ZO_CH30.22CE_COZO_30.22.080BUDEST

34. If the “Watermark” property is developed under the 2-E/2-F/2-G up-zone, and if they submit a plan for 46 units and thus meet the "by right" conditions, they could ask for and get from the State an increase in FAR and/or coverage and/or density and/or height and/or what else? Formulas in the State code will kick in to specify the "by right" details. Would the development not go through the DRB, Planning Commission, or Council?

The ramifications for the City not completing Program 2-G will be formally determined by HCD. On September 30, 2020, HCD sent an enforcement letter to the City with written findings outlining

the City's failure to implement Program 2-G as well as Program 2-E. This enforcement letter is included as an attachment to the October 5, 2020 City Council report. . At this point, the City is still obligated to complete Program 2-G or else it risks associated penalties by the State. See Govt Code Sec. 65585. As discussed in earlier questions, the City Council approved Program 2-F (PC) on September 8, 2020, but did not approve Program 2-E (NC) to allow residential as a primary use at a density of 20 du/ac in the NC zone, which is the zone that applies to the Watermark parcels. Programs 2-E and 2-F do not change the City's permit process. Assuming Program 2-F is certified by the Coastal Commission (next step after local approval), any future development projects would still be subject to the City's discretionary process including Design Review. Any development that is considered "by-right" in Del Mar, including Accessory Dwelling Units (ADUs), is exempt from the City's discretionary processes as it is classified as "ministerial" development. Discretionary review includes Design Review. By-right or ministerial development is still subject to the City's Zoning requirements (i.e., development standards), except as modified by Density Bonus, and also subject to the City's Building and Fire Codes.

That being said, if a permit application meets the eligibility requirements for a State law density bonus, the City is required to apply the State's density bonus provisions in DMMC Chapter 30.90. As noted in DMMC Section 30.90.110, *"It is the purpose of this Chapter to increase the production of housing for a wide range of residential needs in the community, including housing for very-low, low- and moderate-income households and for seniors. It is also the purpose of this Chapter to accommodate a wide range of housing consistent with the goals, objectives, and policies expressed by the City in the Del Mar Community Plan, including its Housing Element component. Finally, it is also the purpose of this Chapter is to establish procedures for implementing State density bonus requirements, as set forth in California Government Code §§ 65915—65918, as amended."* DMMC Section 30.90.050 provides the concessions/incentives available for applicants to request when processing a density bonus application.

35. Regardless of a "Watermark" development being "by-right" or subject to the City's discretionary process, would it still be subject to the Coastal Commission's review?

Given that 5th Cycle Housing Program 2-E was not approved by the City Council on September 8, 2020, the City will be subject to enforcement penalties for non-compliance with the 5th Cycle Housing Element; and per HCD, the City would still be obligated to implement Program 2-G that requires by-right approval of residential development (20-25 du/ac) for projects with an affordable housing component. If the State ends up imposing this by-right requirement on the City, confirmation from the California Coastal Commission (CCC) and HCD will be needed to understand what if anything needs to be processed and submitted to CCC (relating to housing development projects and/or Housing Element Program 2-G). If the private applicant for the Watermark Specific Plan application continues processing, an approved Specific Plan by the City would require an amendment to the City's Local Coastal Program and certification approval from CCC. Staff understands that a density bonus application, if submitted, would also require CCC review and approval.

36. The 5th Cycle Housing Element depended on Programs 2-E and 2-F to create capacity to fulfill the City's RHNA allocation. If Programs 2-E and 2-F are not accomplished, there may be consequences including losing certification of the 5th Cycle Housing Element, which in turn opens up possible enforcement by the State. Is that correct?

The 5th Cycle Housing Element was adopted by City Council on May 20, 2013 and covers the planning period 2013-2021. As HCD staff has explained to City staff to-date, implementation of Program 2-E (NC) and Program 2-G (two "Watermark" parcels) are still outstanding 5th Cycle commitments that the State expects the City to complete. On September 30, 2020, HCD sent an enforcement letter to the City with this respect. City staff understands that the City's failure to not implement Program 2-G and the City Council's decision on September 8, 2020 to not implement Program 2-E (NC) has rendered the City out of compliance with its 5th Cycle Housing Element and the City now risks decertification of its Housing Element and/or other penalties that could reduce local control (e.g., fines, requirements for more "by-right" development that could conflict with the existing Community Plan, four-year Housing Element cycles in lieu of eight-year cycles).

37. Separately from "Watermark", Del Mar will be penalized for some of all of the 19 (of 22) assigned 5th Cycle affordable housing units that were not built. 22 were assigned. Three received discretionary permits and are underway, leaving 19 unbuilt.

The City did not meet its RHNA affordable units in its 5th Cycle (production period ended on June 29, 2020). Of the 22 affordable units required, the City produced 0 of 7 Very Low income units and 1 of 15 Low income units, for a total of 1 of 22 completed. The three units in question (resulting in 19) is assumed to be credited from the one deed restricted ADU on Luzon Avenue and two units from the 941 CDM project recently approved by the City. However, only the ADU has received building permits so only one is reported in the 5th Cycle, not three.

The City is responsible for meeting the obligations in its Housing Element. The private development application in process for the "Watermark" sites would have helped the City had it been timely implemented, but it will not be completed before the City takes action on the 6th Cycle Housing Element Update. The City did not meet its RHNA units in the 4th Cycle or the 5th Cycle, which will have implications for the 6th Cycle.

38. The draft 6th Cycle Housing Element Update refers to a North Commercial (NC) zone amendment at 20 du/ac. Program 2-G in the current 5th Cycle Housing Element calls for 20-25 du/ac "by right" on the "Watermark" parcels which is also part of the NC zone. How are these two reconciled?

On October 5, 2020, the City Council will be considering an amendment to 20 du/ac to the NC zone to satisfy 5th Cycle Program 2-E. Watermark is located in the NC zone and would be subject to any changes applicable to the NC zone. The City did not implement the required rezone on the Watermark properties per 5th Cycle Program 2-G. Staff's understanding is that because the City has not implemented Program 2-G and per the City Council's action on September 8, 2020 that resulted in a decision to not amend the NC zone to allow 20 du/ac, it triggered "no net loss" provisions under State Housing law and penalties related to the fact that the City did not create or maintain any adequate sites to accommodate affordable housing during the 5th Cycle. City staff understands that Watermark LP as the affected owner of the properties in the Housing Element rezone Program 2-G has a right to develop per that rezone program even though the City did not process the rezone.

39. Does the State have to abide by the City's zoning regulations on the State-owned Fairgrounds property?

No, the State-owned property which makes up the Fairgrounds is State property that is referred to as being "white-holed". This means that the City does not have any zoning development standards that apply to the property; and the City has no land use control over the development of the respective parcels.

40. If residential becomes an allowed primary use in a commercial zone, does this mean short-term rentals (STRs) could also be allowed and operated?

Yes, STR is a commercial use that would be considered an allowed use in commercial zones, which is consistent with the City Council's interpretation for the existing code's allowance for STRs in commercial zones, specifically including the Residential-Commercial (RC) commercial zone. STRs are a visitor accommodations/commercial use type, in most commercial zones where similar uses are allowed. This is also consistent with the previous Short Term Rental Ordinance that, as adopted by the City Council but not in effect, would have allowed STRs in commercial zones with no limitations. Amendments to allow residential as a primary use in a commercial zone would require certification by the Coastal Commission and this change is consistent with the policies in the Coastal Act and certified LCP related to this use type allowed to be operated in commercial zones, regardless of whether or not these amendments occur because of the provisions in the DMMC related to commercial zones (e.g., that the allowed uses in the respective zones include "any similar enterprise or business which conforms to the description and purpose of the Zone, and is not detrimental to the welfare of the community").

41. Why does the draft 6th Cycle Housing Element plan for 113 affordable units when the City's RHNA allocation was 101 affordable units?

113 affordable units is correct. In the 5th Cycle, the City was required to produce a total of 22 affordable units (12 low income assigned by RHNA and 10 low income units as a penalty for failure to produce any affordable units in the 4th Cycle). HCD staff provided explanation to this in a letter to the City dated July 31, 2020. Based on our discussions with HCD staff, City staff estimates that 12 RHNA units from the 5th Cycle are required to "carry over" into the 6th Cycle.

42. Is the penalty for the private Watermark property not being developed during the 5th Cycle 9 affordable units?

See discussion above. The City was responsible for processing a rezone of the Watermark properties to create adequate sites for affordable housing. No penalty has been assessed from HCD to the City at this point; however, the City risks enforcement by the State for not implementing Program 2-G. City staff understands that the uncompleted 5th Cycle programs and 12 RHNA units from the 5th Cycle are required to "carry over" into the 6th Cycle.

43. Is it correct that the City's 6th Cycle RHNA requirement for moderate and above moderate units can be achieved without rezoning? How many of these units can be achieved by Accessory Dwelling Units (ADUs)?

The 6th Cycle RHNA requirement for moderate and above moderate is 62 units (31 units for each category). It is correct that no rezoning is required to accomplish this. The City can accommodate the 31 above moderate units via existing zones and the 31 moderate units via the allowances for

ADUs. The draft 6th Cycle Housing Element Update projects at least 77 ADUs during the 6th Cycle, which is well over the 31 moderate requirement.

44. How many moderate and above moderate units could be achieved in the 6th Cycle with the preservation of existing duplexes and possible creation of new duplexes in the R1-5B zone?

As mentioned above, the City does not need any additional programs or strategies (such as these types of programs in the R1-5 or R1-5B zone) to accommodate the City's 6th Cycle RHNA requirements for above moderate and moderate units. Also note, if the goal is to credit units toward the City's RHNA obligation, the addition of "preservation" strategies to the HEU would provide any RHNA credit. The proposed HEU already includes preservation strategies; however, additional preservation strategies in these zones could be included as a matter of local policy. This is an example of a program that would be an additional special project that the City Council could consider adding to the Housing Element or later as a special project if desired.

45. Where and why is it required that the City would have to up-zone for 50% (not 100%) of the City's 6th Cycle RHNA requirement of 101 affordable units?

This is not an accurate statement. State Housing law requires that all jurisdictions create and maintain a sufficient capacity of "adequate sites" available throughout the Housing Cycle to meet the jurisdiction's assigned RHNA. It is important to note that "adequate sites" is a critical term in understanding how the State's Housing laws impact Del Mar. Currently, the City does not have adequate sites to produce affordable housing in the eyes of the State as implemented by State Housing law because the City does not have any parcels with a minimum of 20 dwelling units/acre (du/ac). As such, the State considers this as an impediment to affordable housing production. "Impediment" is also a critical term in understanding how the State's Housing laws impact Del Mar. It is City staff's understanding from the State that this is the reason why HCD has considered the City to have been out of compliance since March 2015 during the 5th Cycle (March 2015 was the deadline for completing the North Commercial/Program 2-E and Professional Commercial/Program 2-F housing programs so that the City would have adequate sites, thereby removing a key impediment to affordable housing production). In addition, as a result of State Housing law (including those most recently implemented January 2020), the City currently lacks vacant land between 0.5 acre and 10 acres in a zone that allows at least 20 du/ac. As a result, the State requires the City's Housing Element to contain a rezone program that allows for residential at least 20-25 dwelling units per acre for development of housing with an affordable housing component by-right. This is a requirement of a January 2020 State law – Assembly Bill AB1397. The rezone program (or multiple rezone programs) must accommodate at least half (minimum of 50%) of each jurisdiction's assigned RHNA for lower income households. For Del Mar, 50% is 51 units. This is why the City has to have a rezone program or programs on North Bluff and South Stratford (vacant land between 0.5 acre and 10 acre) in the 6th Cycle in order to gain Housing Element certification. In addition, a jurisdiction like Del Mar that does not have a sufficient capacity of adequate sites must also take action to up-zone or rezone as needed to create sites that allow the State's minimum density. In the case of Del Mar, the State requires that the zones allow at least 20 du/ac. This is the minimum, in the eyes of the State, for what may be considered an adequate site(s) for affordable housing production as required by State Housing law. This is why the North Commercial/Program 2-E and Professional Commercial/Program 2-F housing programs were required to be included in the 5th Cycle Housing Element for it to gain State certification, and also why the Central Commercial (CC) zone is an additional program that

must be considered for the 6th Cycle to gain certification. The applicable Government Code Sections are all cited and referenced in the letter that was submitted to the City by HCD on July 31, 2020. A copy of the letter is attached to the October 5, 2020 City Council Agenda Report available at: www.delmar.ca.us/AgendaCenter.

46. Is it true that at most 20% of an up-zoned parcel can be affordable units? Is that a cap imposed by the State or by the City of Del Mar?

Not true. This question refers to a discussion City staff has had in public meetings about what types of assumptions were considered when determining the number of affordable units in the 6th Cycle Housing Element Update. The City's "inclusionary housing" requirement is set forth in DMMC Chapter 24.21 (inclusionary housing), which specifies the City's minimum requirements for how many affordable units must be set aside as part of a multiple dwelling unit project. The number of affordable units required varies depending on how many total units are proposed in a development project. In summary, projects proposing 2-9 units require one affordable unit; projects with 10 or more units require a set aside of 20% of the units for rent as affordable units. There is no maximum number of affordable units that a project can propose. A project could be 100 percent affordable. However, the point is that the City's code only requires either the one affordable unit for small projects of 2-9 units or 20% affordable for projects with 10 or more units. Therefore, City staff's assumptions of affordable units are based on what is required of proposed development. It should not be interpreted as a "cap". As far as assumptions, HCD is not likely to accept any assumptions from Del Mar of a greater affordable unit yield per project unless the City can also provide supporting documentation to show what permit or contract/agreement supports such assumptions. As mentioned above, the City has regulatory impediments in place that do not support the production of affordable housing because the City does not have any zones that allow 20 du/ac and the City does not have sufficient vacant land in a zone that allows at least 20 du/ac. The State is expecting the City to address these impediments as part of its 6th Cycle proposal to the State.

47. Is there a way for an up-zoned parcel in Del Mar to be given a cap of 30% affordable units or even more (e.g., 40% or 50% has been done elsewhere - Los Gatos has 50% and Corte Madera has 30%)?

This would be a question for the City Attorney as to whether or not it is a legal option. From a policy perspective, it would seem that if the City were to add a "cap" on affordable units, this would be considered a new impediment to affordable housing in the eyes of the State. As such, this would be in the opposite direction of where the City needs to go to show the State progress on affordable unit production. City staff is not clear why it would be a benefit to Del Mar to preclude the option of a project developed with 100 percent affordable units. From a practical perspective, the City including an action to further limit affordable housing would not be supported by HCD since the City cannot demonstrate the production of affordable units at this point in Del Mar. City staff is unaware of the referenced cities noted above – Los Gatos or Corte Madera – and how they obtained a higher affordable percentage.

48. Is there a new density bonus law that was recently signed by the Governor and, if so, does it allow density bonus increases up to 50%?

On September 29, 2020, Governor Newsom signed a package of housing-related bills into law, of which AB2345 was included. This new law modifies the State's density bonus law and now allows a 50% density bonus when 24% of a project's total units are reserved as low income

affordable units. Currently, the City's code requires a 20% inclusionary requirement as the minimum set aside, so a project complying with this minimum could still be eligible for a 35% density bonus. However, if an applicant chose to increase their set aside to 24%, that project could be eligible for a 50% density bonus. Note that density bonus law still only applies to projects with 5 or more units (does not apply to projects with 2 to 4 units total).

49. Assuming zoning that allows residential at 20 du/ac under the new AB2345 law (50% density bonus), what would the new maximum number of units be on sites zoned at 20 dwelling unit per acre for the following areas considered in the 6th Cycle Housing Element Update: North Commercial Zone, Professional Commercial Zone, the North Bluff, and the South Stratford properties?

Assuming 20 du/ac, the following is what City staff understands to be a potential breakdown of units in context to AB2345:

North Commercial Zone:

- Lots with an 8 unit maximum due to their lot size could be eligible for a 3 unit density bonus at 35% if the 11 unit project reserves 20% (2 units) as low income affordable units; or could be eligible for a 4 unit density bonus at 50% if the 12 unit project reserves 24% (3 units) as low income affordable units. This would apply to the following sites: 2148 JDB (Matthews) and 2236 JDB (Marten vacant lot) – these sites have been included as adequate sites in the draft Housing Element Update (HEU).
- Lots with a 10 unit maximum due to their lot size could be eligible for a 4 unit density bonus at 35% if the 14 unit project reserves 20% (3 units) as low income affordable units; or could be eligible for a 5 unit density bonus at 50% if the 15 unit project reserves 24% (4 units) as low income affordable units. This would apply to the following site: 2126 JDB (Read Family LLC) – this site has been included as an adequate site in the draft HEU.
- Lots with an 18 unit maximum due to their lot size could be eligible for a 6 unit density bonus at 35% if the 24 unit project reserves 20% (5 units) as low income affordable units; or could be eligible for a 9 unit density bonus at 50% if the 27 unit project reserves 24% (6 units) as low income affordable units. This would apply to the following site: 2120 JDB (Knorr Trust) – if needed, this site is an alternative option available to the Council to identify as an adequate site.
- Lots with a 28 unit maximum due to their lot size could be eligible for a 10 unit density bonus at 35% if the 38 unit project reserves 20% (8 units) as low income affordable units; or could be eligible for a 14 unit density bonus at 50% if the 42 unit project reserves 24% (10 units) as low income affordable units. This would apply to the following site: 2002 JDB (Westech Realty) – this site has been included as an adequate site in the draft HEU.
- Lots with a 42 unit maximum due to their lot size could be eligible for a 15 unit density bonus at 35% if the 57 unit project reserves 20% (11 units) as low income affordable units; or could be eligible for a 21 unit density bonus at 50% if the 63 unit project reserves 24% (15 units) as low income affordable units. This would apply to the following site: 2010 JDB (Bungalows LLC) – if needed, this site is an alternative option available to the Council to identify as an adequate site.

Professional Commercial Zone:

- Lots with a 5 unit maximum due to their lot size could be eligible for a 2 unit density bonus at 35% if the 7 unit project reserves 20% (1 unit) as low income affordable units; or could

be eligible for a 3 unit density bonus at 50% if the 8 unit project reserves 24% (2 units) as low income affordable units. This would apply to the following site: 322 8th Street.

- Lots with a 6 unit maximum due to their lot size could be eligible for a 2 unit density bonus at 35% if the 8 unit project reserves 20% (2 units) as low income affordable units; or could be eligible for a 3 unit density bonus at 50% if the 9 unit project reserves 24% (2 units) as low income affordable units. This would apply to the following site: 807 CDM.
- Lots with an 11 unit maximum due to their lot size could be eligible for a 4 unit density bonus at 35% if the 15 unit project reserves 20% (3 units) as low income affordable units; or could be eligible for a 6 unit density bonus at 50% if the 17 unit project reserves 24% (4 units) as low income affordable units. This would apply to the following site: 853 CDM.

North Bluff sites:

- Total units at 20 du/ac is 248 units for a zone compliant “project” (it’s important to note that this breakdown shows the extreme because, particularly, the lots on North Bluff have or could have different ownerships and may not be submitted as one “project”. If submitted as smaller projects, a project would end up yielding fewer units overall even with a density bonus). As such, 248 units could be eligible for an 87 unit density bonus at 35% if the 335 unit “project” reserves 20% (67 units) as low income affordable; or could be eligible for a 124 unit density bonus at 50% if the 372 unit “project” reserves 24% (89 units) as low income affordable.

South Stratford sites:

- Total units at 20 du/ac is 99 units for a zone compliant project. As such, 99 units could be eligible for a 35 unit density bonus at 35% if the 134 unit project reserves 20% (27 units) as low income affordable units; or could be eligible for a 50 unit density bonus at 50% if the 149 unit project reserves 24% (36 units) as low income affordable units.

50. A letter was submitted to the Planning Commission for their September 19, 2020 meeting from the owners of the South Stratford properties. Does this correspondence impact how HCD would view the potential for that property?

The submitted letter raises an objection to a potential increase in the City’s inclusionary housing requirement from 20% (under current code) to 25% (to be considered by City Council). Note that both North Bluff and the South Bluff properties are needed to cover the number of affordable units to meet the City’s RHNA obligation and carryover units totaling 113 affordable units. The correspondence submitted by the property owners of South Stratford is included as an attachment to the October 5, 2020 City Council report available here: www.delmar.ca.us/AgendaCenter

51. How long does an affordable unit need to be deed restricted as affordable?

DMMC Section 24.21.045 stipulates that each affordable unit set aside for rental at below-market rates pursuant to the requirements of DMMC Chapter 24.21 shall be no less than 55 years, commencing from the date of the City’s written authorization for occupancy of the unit.

52. Of the potential candidate sites considered, specifically vacant sites, why were the vacant sites on San Dieguito Road not included in the proposed 6th Cycle Housing Element Update?

These sites were not included as adequate sites in the 6th Cycle Housing Element Update because they are located on a steep slope with biological resources in a low density area without existing direct access.

53. Was sufficient noticing provided to the public for the housing related items on the October 5, 2020 City Council meeting (6th Cycle HEU and NC Amendments)?

The noticing conducted by the City for the two upcoming items for the City Council is consistent with the City's standard practice, and has been done in accordance with what is legally required for noticing these types of Council actions. The public notice provided included additional notification above what is legally required – both in printed form and through electronic communications. To satisfy the legal requirement, the City follows State noticing requirements for amendments to the Community Plan (General Plan), Zoning Code, and Local Coastal Program (Citations: Government Code Sections 65350-65362, specifically 65353; and Government Code Sections 65090-65096, specifically 65090 and 65091).

On the NC item, this item was placed on the City Council's agenda for October 5 by Mayor Haviland and Councilmember Worden under City Council Policy 301; the item was not scheduled by City staff. Noticing was provided through the same procedure provided for the September 8 City Council meeting. Mailed notices were provided (again) to all property owners in the NC zone and vicinity, in addition to interested parties that have requested to be notified, public agencies, and tribal groups. Further, legal ads were published in the Del Mar Times, which has long been considered the City's "newspaper of general circulation" per State law. The Del Mar Times is the same newspaper the public is used to seeing for all City notices, including City Council items, Design Review Board items, Planning Commission items, and CEQA, etc. Specifically, because this NC item includes an amendment to the Local Coastal Program, the City also published a legal ad in the San Diego Union-Tribune in advance of the Del Mar Times published notice. Similar to the September 8 meeting, the City did not provide mailed notice to the entire City for consideration of the NC and Professional Commercial (PC) items. Noticing the entire City has a significant cost implication and the City has not budgeted for this type of voluntary expanded mailed noticing.

On the 6th Cycle Housing Element, the October 5 City Council date has been sufficiently advertised, disclosed, and promoted since the original work program timing was laid out in January 2020 through many means. This has always been one of the significant milestone dates for this important work effort and mentioned repeatedly in various City meetings including City Council, Planning Commission, and prior Task Force meetings. Aside from the required legal noticing in preparation for October 5, additional notification has been provided in print form and electronic through City notifications, articles, Weekly Update, agenda postings, etc., not to mention a dedicated City webpage for this work effort with a schedule on that home page that has laid out the upcoming hearing dates (www.delmar.ca.us/HousingElement) and a mailer sent citywide to all owners with the mailing of utility bills. As for additional mailed noticing to the entire City, this has a significant cost implication and the City's 6th Cycle work effort is running on an already reduced budget resulting City budget reductions on June 1, 2020 which removed \$38,000 from the 6th Cycle Housing Element special project budget.

54. Can an amendment to the Community Plan be brought to a public hearing without fully noticing the community? Is an ad in the Del Mar Times sufficient to let people know?

The noticing conducted for the October 5, 2020 City Council hearing is consistent with the City's standard practice for noticing and meets the legal requirement for these types of actions. See further explanation above. The City has satisfied legal noticing requirements as well as provided additional notification of the proposed Community Plan amendments through various means – printed and electronic.

55. Did the ad that the City placed in the Del Mar Times appear last week (September 24), or this week (October 1), or both?

The legal ad has been published two times in the Del Mar Times prior to the meeting on October 5 (September 24 and October 1). Further, due to the LCP amendment component related to the NC item, a legal ad was also published in the San Diego Union-Tribune on September 21, 2020.

56. Could consideration of the two items on October 5, 2020 be delayed to the next hearing to allow for additional mailed noticing?

These items are time sensitive, and the standard and legal requirements for noticing have been met. The City has also provided further notification through various means – printed and electronic. The item related to the NC Zone has been placed on the Council Agenda for October 5 by Mayor Haviland and Councilmember Worden under City Council Policy 301, not City staff. As such, all noticing requirements were met and notices were mailed to the same individuals that received noticing earlier for the September 8 City Council meeting. City staff does not have the discretion to pull these items from the agenda to undertake additional courtesy noticing. The direction to hold off on considering either of these items would need to be provided by the City Council at the meeting on October 5.

From: Phil Koen <[REDACTED]>
Sent: Friday, September 29, 2023 1:45 PM
To: Joel Paulson <jpaulson@losgatosca.gov>; Laurel Prevetti <LPrevetti@losgatosca.gov>;
paul.mcdougall@hcd.ca.gov <paul.mcdougall@hcd.ca.gov>; jose.jauregui@hca.ca.gov
<jose.jauregui@hca.ca.gov>; Gabrielle Whelan <GWhelan@losgatosca.gov>
Cc: [REDACTED] <[REDACTED]>; Rick Van Hoesen ([REDACTED])
<[REDACTED]>
Subject: 7 day comment period - draft Housing Element

Dear Mr. Paulson,

At last night's HEAB meeting, Staff made the statement that it was appropriate to credit the 6th cycle RHNA with units that are made available during the RHNA projection period (June 30, 2022, through January 31, 2031). The Staff referenced page 5 of the HCD Site Selection Guidebook as the authority for doing this. In reviewing page 5 (which is attached), the referenced language appears under the heading "Pending, approved, or permitted development".

On Table 10-3 (attached) there is a line item which is labeled "pipeline projects" which is described as "residential development applications that have either been approved or are currently under review and are expected to be built during the 2023-2031 planning period". This totals 191 housing units. Comparing this language to the HCD Site Selection Guidebook, it appears the line item fits with the Guidebook's description for "pending, approved, or permitted development".

There is another line item in Table 10-3 which is labeled "entitled/permitted/under construction/finaled since June 30, 2022, to January 31, 2023". This totals 227 units, which included 49 very low-income units. All these units appear to have been permitted **before** the current RHNA production period, which commenced on June 30, 2022. This is substantiated by the 2022 Annual Element Progress Report (which is attached) which shows in addition to the 49 low-income units recorded in 2020, 75 above moderate units were recorded in 2021, 185 above moderate units were recorded in 2021 and 145 above moderate units were recorded in 2022. Many of these units are attributed to parcel APN 424-07-100 which is the North 40 Phase 1 (refer to Table D-7 and the 20220, 2021 and 2022 Annual Element Progress Reports). The date of production is triggered by the permitting date, not the completion date.

As such, it does not appear that any of these 227 units qualify as a credit toward the 6th cycle RHNA because they were permitted prior to the June 30, 2022, commencement date. Additionally, all these units have been recorded against the 5th cycle RHNA, and are being double counted.

In closing I have attached a memorandum from HCD to ABAG dated January 12, 2022 (also attached) which substantiates the above statement. This memo makes it clear that RHNA credits toward the 6th cycle only apply for "new units approved, permitted and/or built **beginning from** the start date of the RHNA projection period June 30, 2022".

We would recommend that Table 10-3 be amended by eliminating all 227 units identified as "entitled/permitted/under construction/finaled" and thus avoid doubling counting these units in both the 5th and 6th cycles.

Thank you,
Phil Koen

PART A: IDENTIFICATION OF SITES

Step 1: Identification of Developable Sites

Government Code section 65583.2(a)

Generally, a site is a parcel or a group of parcels that can accommodate a portion of the jurisdictions RHNA. A jurisdiction must identify, as part of an inventory, sites within its boundaries (i.e., city limits or a county's unincorporated area)² that could have the potential for new residential development within the eight- or five-year timeframe of the housing element planning period.

Types of sites include:

- Vacant sites zoned for residential use.
- Vacant sites zoned for nonresidential use that allow residential development.
- Residentially zoned sites that are capable of being developed at a higher density (nonvacant sites, including underutilized sites).
- Sites owned or leased by a city, county, or city and county.
- Sites zoned for nonresidential use that can be redeveloped for residential use and a program is included to rezone the site to permit residential use.

Pending, approved, or permitted development:

Projects that have been approved, permitted, or received a certificate of occupancy since the beginning of the RHNA projected period may be credited toward meeting the RHNA allocation based on the affordability and unit count of the development. For these projects, affordability is based on the actual or projected sale prices, rent levels, or other mechanisms establishing affordability in the planning period of the units within the project (See Part E). For projects yet to receive their certificate of occupancy or final permit, the element must demonstrate that the project is expected to be built within the planning period.

Definition of Planning Period: The "Planning period" is the time period between the due date for one housing element and the due date for the next housing element (Government Code section 65588(f)(1).) For example, the San Diego Association of Governments' 6th Cycle Planning Period is April 15, 2021 to April 15, 2029.

Definition of Projection Period: "Projection period" is the time period for which the regional housing need is calculated (Government Code section 65588(f)(2).) For example, the San Diego Association of Governments' 6th Cycle Projection Period is June 30, 2020 to April 15, 2029.

Please note, sites with development projects where completed entitlements have been issued are no longer available for prospective development and must be credited towards the RHNA based on the affordability and unit count of the development. "Completed entitlements" means a housing development or project which has received all the required land use approvals or entitlements necessary for the issuance of a building permit. This

² In some cases, jurisdictions may want to include sites anticipated to be annexed in the planning period. Annexation is considered a rezoning effort to accommodate a shortfall of sites. For more information on annexation please see Part E, Step 3.

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

2020 W. El Camino Ave
Sacramento, CA 95833-1829
(916) 263-2911 FAX: (916) 263-7453
www.hcd.ca.gov



January 12, 2022

Therese W. McMillan, Executive Director
Association of Bay Area Governments
375 Beale Street, Suite 700
San Francisco, CA 94105

Dear Executive Director Therese W. McMillan:

RE: Review of Adopted 2023-2031 Regional Housing Need Allocation Plan

Thank you for submitting the adopted Association of Bay Area Government's (ABAG) Sixth Cycle Regional Housing Need Allocation (RHNA) Plan. Pursuant to Government Code Section 65584.05(h), the California Department of Housing and Community Development (HCD) is required to review RHNA plans for consistency with statutory requirements.

HCD has completed its review and is pleased to approve ABAG's adopted RHNA Plan, upon finding it consistent with HCD's June 9, 2020 regional housing need determination of 441,176 housing units. Please distribute the RHNA Plan to inform all local governments of their share of new housing need to address their sixth cycle Housing Element by January 31, 2023. In updating their Housing Elements, local governments may take RHNA credit for new units approved, permitted, and/or built beginning from the start date of the RHNA projection period, June 30, 2022.

HCD is committed to assisting ABAG's local governments in preparing and implementing updated Housing Elements to effectively address the region's housing need. Local governments are encouraged to develop local land use strategies to maximize land resources and encourage affordable housing and a variety of housing types, thus furthering the state's economic, fair housing, and environmental objectives.

We appreciate ABAG's efforts in completing the RHNA process. If HCD can provide any additional assistance, or if you, or your staff, have any questions please contact Tom Brinkhuis, Housing Policy Senior Specialist, by email at tom.brinkhuis@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyrone Buckley".

Tyrone Buckley
Assistant Deputy Director

Jurisdiction	Los Gatos	
Reporting Year	2022	(Jan. 1 - Dec. 31)
Planning Period	5th Cycle	01/31/2015 - 01/31/2023

ANNUAL ELEMENT PROGRESS REPORT Housing Element Implementation

This table is auto-populated once you enter your jurisdiction name and current year data. Past year information comes from previous APRs.
Please contact HCD if your data is different than the material supplied here

Table B														
Regional Housing Needs Allocation Progress														
Permitted Units Issued by Affordability														
		1		2									3	4
Income Level		RHNA Allocation by Income Level		2015	2016	2017	2018	2019	2020	2021	2022	2023	Total Units to Date (all years)	Total Remaining RHNA by Income Level
Very Low	Deed Restricted	201	-	-	-	-	-	-	49	-	-	-	-	-
	Non-Deed Restricted		-	-	-	-	-	-	-	-	-	-	49	152
Low	Deed Restricted	112	-	-	2	-	-	-	1	-	-	-	-	-
	Non-Deed Restricted		-	-	-	-	-	-	-	-	-	-	3	109
Moderate	Deed Restricted	132	-	-	-	-	-	-	1	2	-	-	-	-
	Non-Deed Restricted		-	-	2	3	4	16	28	36	36	-	156	-
Above Moderate		174	-	13	38	9	7	3	75	185	145	-	475	-
Total RHNA		619												
Total Units			-	15	43	13	23	31	154	223	181	-	683	261
Progress toward extremely low-income housing need, as determined pursuant to Government Code 65583(a)(1).														
		5											6	7
		Extremely low-income Need		2015	2016	2017	2018	2019	2020	2021	2022	2023	Total Units to Date	Total Units Remaining
Extremely Low-Income Units*		101	-	-	-	-	-	-	-	-	-	-	-	101

*Extremely low-income housing need determined pursuant to Government Code 65583(a)(1). Value in Section 5 is default value, assumed to be half of the very low-income RHNA. May be overwritten.

Note: units serving extremely low-income households are included in the very low-income RHNA progress and must be reported as very low-income units in section 7 of Table A2. They must also be reported in the extremely low-income category (section 13) in Table A2 to be counted as progress toward meeting the extremely low-income housing need determined pursuant to Government Code 65583(a)(1).

Please note: For the last year of the 5th cycle, Table B will only include units that were permitted during the portion of the year that was in the 5th cycle. For the first year of the 6th cycle, Table B will only include units that were permitted since the start of the planning period. Projection Period units are in a separate column.

Please note: The APR form can only display data for one planning period. To view progress for a different planning period, you may login to HCD's online APR system, or contact HCD staff at apr@hcd.ca.gov.

10. Housing Element

Table 10-3 RHNA Credits and Sites Strategies

RHNA Credit	Affordability Credit				
	Very Low-Income	Low-Income	Moderate-Income	Above-Moderate Income	Total
Entitled/Permitted/Under Construction/Finaled (June 30, 2022, to January 31, 2023)					
- Single-Family Units and Housing Projects	49	0	2	176	227
- ADUs	0	3	11	9	23
Pipeline Projects	0	1	0	190	191
Projected ADUs (1/1/2023-1/31/2031)	60	60	60	20	200
SB 9 Units	0	0	0	96	96
Total	109	64	73	491	737
RHNA	537	310	320	826	1,993
Remaining RHNA	428	246	247	335	1,256
Housing Element Overlay Zone (HEOZ) Sites	634	357	340	640	1,971
- Owner Interest/Conceptual Development Plans	480	283	264	320	1,347
- Additional Sites	154	74	76	320	624
Surplus above Remaining RHNA	206	111	93	305	715
% Surplus	48%	45%	38%	91%	57%

Source: Town of Los Gatos

10.3.3 Summary of Quantified Objectives

While the Town cannot control the amount of housing that is built during any specific period of time, the Town does intend to make an effort to achieve housing production at a level that is consistent with its RHNA.

Many programs and policies reduce barriers and create opportunities for a balanced community. These goals are essential to meeting the Town's housing needs, but are more qualitative in nature. The sites, calculated at their net, minimum density, in addition to Accessory Dwelling Unit (ADU) Projections, Senate Bill (SB) 9 Projections, Pipeline Projects, and RHNA credits for housing units that were finalized, permitted, or approved after this date, or were under construction as of June 30, 2022, have a total, net capacity of 2,708 units and are sufficient to meet the Town's RHNA of 1,993 units. Between Implementation Programs I, AI, and AJ, it is assumed that 48 housing units will be rehabilitated, and all existing affordable units will be conserved or preserved. Los Gatos reasonably expects that a net capacity total of 2,708 units will be developed, as described in the tables below:

Table 10-4 2023-2031 Quantified Objectives

Income Category	New Construction	Rehabilitation	Conservation/Preservation
Very Low Income	743	24	49
Low Income	421	24	136
Moderate Income	413	0	179
Above Moderate Income	1,131	0	114
Totals	2,708	48	478

Source: Town of Los Gatos

- **New Construction Objective:** Reflects the Town's 2023-2031 RHNA.
- **Rehabilitation Objective:** Reflects goal to assist a total of 48 very low-income and low-income households through Implementation Programs I, AI, and AJ.

From: Anne Paulson <[REDACTED]>
Sent: Friday, September 29, 2023 1:40 PM
To: HousingElements@hcd.ca.gov; Housing Element <HEUpdate@losgatosca.gov>
Subject:

29 September 2023

Dear Town of Los Gatos and HCD reviewers,

I've reviewed the Town of Los Gatos' latest revision of their Housing Element. Its Site Inventory is strong: it is composed of properties where the site owner has expressed interest in building, and those sites are to be upzoned. Unfortunately, the Programs section and the plans to Affirmatively Further Fair Housing are underpowered, and the Below Market Priced Housing Program seems to be far underfunded for the actions that are proposed.

Programs

In general, the Programs section of the Los Gatos draft Housing Element is weak. Instead of committing to actual reforms with listed timelines, the document merely says Los Gatos might do something, employing words like "consider," "study," "pursue opportunities."

Program E, Affordable Development on Town-Owned Property. The Town says it will make an "ongoing effort" to "pursue opportunities" for affordable housing on Town-owned properties. This is a commitment to nothing. If the Town wants to build housing on its own property, it merely has to commit to a date where the Town will release the RFP for affordable developers, and it should do so.

Program G, Study Detached Single-Family Condominium Option. The Town commits to "study[ing]" a new floor area ratio (FAR) standard for multifamily development for detached condos by December 2024, but not actually changing anything. It's not clear what problem this is supposed to solve. Apparently the FAR is thought to be too small for these units. If that is so, instead of studying the issue with no promise about doing anything, the Town should commit, right in the housing element, to increasing the FAR, by a specified amount, by a date certain. The time for study is over; that's what the planning period was for. Housing Elements should have actions, with deadlines.

Program J, Small Multi-Unit Housing. The Town commits to updating the Zoning Code to facilitate low rise multi-family structures in a certain zone, but what the update might be, and why it would facilitate more housing, is absent from the document. The Town needs to commit to specific actions by specific dates.

Program O, Affordable Housing Development. The Town commits to providing incentives for affordable housing, but doesn't commit to any particular incentives. This program needs more details, and deadlines. The Town commits to reviewing impact fees, by January 2026, but doesn't commit to lowering them. The deadline is too far away, and the commitment to action is missing.

Program R, Density Bonus. The Town commits to amending their local Density Bonus Ordinance to conform with state law. Then the Town will “conduct a study,” which will recommend some improvements, and the Town will adopt those unspecified improvements by December 2029, at the end of the planning period. So, the Town will do nothing beyond following state law during the 6th Cycle, and then at the end of the cycle might do something unspecified.

Program T, Nonprofit Affordable Housing Providers. The Town commits to doing nothing in specific to support nonprofit affordable housing providers, beyond meeting with them once a year.

Program Y, Supportive Services for the Homeless. Again, a program that commits to nothing.

Program Z, Increased Range of Housing Opportunities for the Homeless. The Town commits to “continu[ing] to support” the County in its homeless efforts. Not with money, though, or with any other specified support. It’s unclear what the “support” is supposed to be. This is a commitment to nothing.

Program AA, Reduce Parking Standards. The town will “initiate a study to determine specific updates.” The time for study is over. The Town should list the new parking standards and the date they will be changed.

Program AQ, Zoning Code Amendments. The code revisions are specific. The text should be amended to make clear that that the rapidly approaching deadline for rezoning, January 2024, also applies to its commitment to eliminate the currently-required reviews by the Historic Preservation Committee, the Environmental Consultant, the Consulting Architect, the Consulting Arborist, the Consulting Landscape Architect, the Geotechnical Peer Reviewer, and the Consulting Traffic Consultant. The applicant currently must undergo and pay for all of these reviews.

Program AV, Senate Bill 9 Monitoring. Los Gatos’ RHNA plan calls for 96 permits for units on lots using SB 9. On page D-66 of the Housing Element, the Town writes, “Since the adoption of the Town’s SB 9 Ordinance, the Town has received a total of four Two-Unit Housing Development applications and seven Urban Lot Split applications (between January 2022 and January 2023). The applications result in a total of 13 net new housing units a year.”

But housing permits are the relevant metric, not applications. A look at Table D-7, which would contain the housing recently entitled, permitted, under construction or finalized using SB 9, shows one lot with a completed entitlement of an SB 9 subdivision, and one lot where an SB 9 subdivision is being reviewed. That's all. There are no issued permits using SB 9. The town didn't issue its projected 13 new housing unit permits last year under SB 9. It issued none. Already, the Town is far behind.

For that reason, the Town should have a prompt and robust plan to replace those potentially missing SB 9 units with other RHNA units. Instead, the Town offers, “Evaluate effectiveness of SB 9 approvals every year beginning in 2023; and identify additional incentives and/or site capacity, if needed by 2025” and “consider additional efforts to incentivize SB 9 applications and reassess and revise the overall sites strategy for the RHNA within one year through adjusting SB 9 capacity assumptions with actual permitted units, and/or identifying additional sites to expand

site capacity to the extent necessary to accommodate the RHNA.” This is not a plan; it is a notion to wait until the middle of the cycle, and then possibly make a plan, and then possibly implement the plan some time before the end of the cycle. Or maybe after the cycle ends. It’s remarkably non-committal.

The Town needs a plan now for replacing planned-for SB 9 units, to be implemented at the end of 2024 or any following year if SB 9 permits are not coming through at 12 permits per year.

Below Market Program in-lieu funding

Los Gatos has an inclusionary zoning program for multifamily homes, and in cases where the developer can’t build the inclusionary units on site, the developer instead pays in-lieu fees, which are restricted to use by the Below Market Priced Housing Program (BMP Fund). The most recently available [statement](#) for the account shows a balance of \$3,698,538 as of June 30, 2022, and both it and [the previous year’s statement](#) show no revenue from fees. Evidently most developers build their inclusionary units rather than paying an in-lieu fee. Further, these fees appear to be the only source of revenue for the Below Market Priced Housing Program.

Meanwhile, the Housing Element shows the BMP Fund funding the following programs. New or expanded programs are denoted by an asterisk.

Program I, assist low income seniors with money for home repairs

Program N*, subsidize extremely low income housing

Program O*, reduce fees for affordable housing development

Program P*, purchase affordability covenants to create affordable units or make already affordable units more deeply affordable

Program Q, waive building fees for low income ADUs

Program AI, fund county efforts for home repairs and accessibility improvements

Program AJ*, assist lower income homeowners with funding for home repairs and improvements (expansion of existing Program I?)

* = new or expanded program

The BMP Fund does not appear to be getting much ongoing funding, and several of the programs, notably N and P, would be expensive if done at a meaningful level. Program N, for example, promises to subsidize three developments which include extremely low income housing. A single unit of subsidized housing costs over a million dollars to build in the Los Gatos area; a meaningful subsidy for three different developments will cost millions of dollars. Program P promises to purchase affordability covenants for three housing units; again, this is an expensive undertaking. And the Town is also committing to continue existing programs using the BMP Fund. The \$3.7 million appears inadequate to cover what the Town says it’s going to do. The Town needs to identify an alternative source of funding for these programs, for example by charging affordable housing fees to builders of single family homes. Moreover the Town needs to be specific about how much money will go towards Program N; otherwise the Town could give a dollar each to three different developments and claim it had satisfied its obligation.

Affirmatively Furthering Fair Housing

As is documented in the Housing Element, Los Gatos is a majority white, high income town. Affirmatively Furthering Fair Housing (AFFH) is therefore particularly important for the Town. The listed strategies are inadequate to the task. For AFFH, Los Gatos commits to all the strategies in the BMP program, plus:

Program A: Establish an annual meeting between staff and developers.

Program U: Continue to support the County of Santa Clara's Continuum of Care plan. This "support" doesn't include any money; the funding source is listed as "County CDBG."

Program V: Make some zoning changes for people with disabilities. Most of the changes are required by state law.

Program W: Rental dispute resolution program

Program X: Work with the local and regional partners to provide rental assistance for people with developmental challenges. This assistance doesn't include money; the funding source is listed as "none required."

Program Y: Supportive Services for the Homeless: Support (in some unspecified way that doesn't seem to include money or transfer of property) community and nonprofit organizations, continue to fund local nonprofits with an annual grant

Program Z: Stabilize rents: The Town commits to nothing specific, merely "study[ing] and implement[ing] recommendations."

This is not nearly enough. The Town needs substantial programs to deal with a substantial issue, and they haven't provided them.

In the Sites Inventory, the Sites for the biggest amounts of low income housing are all located on arterials and near freeways (15500 & 16151 Los Gatos Boulevard) or near highway interchanges where two major freeways meet (14917 & 14925 Los Gatos Boulevard, 110 Knowles, 50 Los Gatos-Saratoga Road). The pleasant neighborhoods not near loud, polluted freeways and arterials do not allow denser buildings; people who are not extremely wealthy cannot live in those neighborhoods. Los Gatos has a minimum lot size, in the flatter, lower fire risk areas, of 8000 square feet, a constraint that the document doesn't mention. Allowing denser housing on some of these lots, by for example allowing duplexes everywhere without the SB 9 restrictions, or reducing the minimum lot size, would be a way to affirmatively further fair housing.

In the Programs section, the Below Market funding programs, and Affirmatively Furthering Fair Housing, the scale of Los Gatos' solution does not approach the scale of the problem. To get approval, the Town needs to offer more.

Sincerely,

Anne Paulson

From: Phil Koen [REDACTED]
Sent: Thursday, September 28, 2023 9:28 AM
To: Joel Paulson <jpaulson@losgatosca.gov>; Laurel Prevetti <LPrevetti@losgatosca.gov>; Gabrielle Whelan <GWhelan@losgatosca.gov>; Wendy Wood <WWood@losgatosca.gov>
Cc: [REDACTED] Rick Van Hoesen [REDACTED]
Maria Ristow <MRistow@losgatosca.gov>; Mary Badame <MBadame@losgatosca.gov>; Matthew Hudes <MHudes@losgatosca.gov>; Rob Rennie <RRennie@losgatosca.gov>; Rob Moore <RMoore@losgatosca.gov>
Subject: Public Comment on the draft Housing Element 2023-2031 and Agenda Item 2 HEAB Meeting September 28th

[EXTERNAL SENDER]

Dear Mr. Paulson,

Attached please find a comment letter from the Los Gatos Community Alliance regarding the Los Gatos 2023-2031 draft Housing Element. Would you please include it in the HEAB meeting package so that it can be discussed at tonight's meeting. This is also a public comment on the draft Housing Element.

Thank you for allowing us to provide our comments for your consideration.

Phil Koen

September 28, 2023

Dear Mr. Paulson and Members of the Housing Element Advisory Board,

The Los Gatos Community Alliance is writing to you as a group of concerned residents regarding the draft 2023-2031 Housing Element which was recently released for the 7-day public comment period. We understand Staff is aggressively pushing to file a fourth submittal as quickly as possible to begin HCD's next 60-day review cycle.

This has led to commencing the 7-day public comment this past Friday, 6 days before a HEAB meeting which is scheduled to review and discuss the draft Housing Element. We believe this is not in the spirit of maximizing public participation because it departs from the Town's prior approach where the mandatory public review period **commenced after** the Town Council or the HEAB had publicly reviewed the drafts.

For many residents, being able to listen to the Town Council's or HEAB's discussion will lead to valuable comments and recommendations. The members of the public become better informed about a document they have largely not been involved with, by listening to the deliberative process of the Town Council or HEAB.

Under the current timing, after listening to the HEAB's discussion, the public will have less than 24 hours to submit their comments before the closing of the public review period. We find this to be a barrier to public involvement and runs counter to the goal of maximizing public participation. The 7-day public comment period should commence after the HEAB meeting, just like it was done for all prior HCD submissions. We would request that a new 7-day public comment period commence after the HEAB meeting to allow concerned residents the opportunity to knowledgeable comment on the proposed draft.

Additionally, we have several comments that we would urge you to seriously consider and take all necessary actions to ensure the Housing Element conforms to State Housing Element Law. Below are our comments for your review.

Comment One – Review and consider the letter previously sent by Rutan and Tucker

On August 22, 2023 our legal advisor, Matthew Francois of the firm Rutan and Tucker, LLP sent you and Paul McDougal and Jose Armando Jauregui of the State HCD, a very thoughtful 7-page letter with numerous exhibits, which outlined serious concerns the Los Gatos Community Alliance had regarding the Housing Element Site Inventory and the Housing Element compliance with State Housing Element Law. We note that in the current draft, on page 1-115 there is a one paragraph response to this letter.

Frankly, this is not a serious response to the numerous legal issues that were identified and furthermore, fails to explain how the Town has taken the comments into consideration in preparing the current draft.

We do not intend here to cover these points again, but rather are resubmitting the letter (attachment 1) as part of the current public comment period with the hope the Town will undertake a serious review and completely address the numerous legal issues that are discussed.

Comment Two – Make all required revisions to Table 10-3 – RHNA Credits and Site Strategies and ensure there are sufficient parcels to make up the shortfall in very low and moderate units to meet the 6th cycle RHNA by income category.

The Los Gatos Community Alliance has specific comments regarding Table 10-3. We have taken the liberty to rearrange Table 10-3 in a format (see attachment 2) more easily understood than the one presented.

The current draft of the Housing Element makes the claim that “Los Gatos **reasonably expects** that a net capacity total of 2,708 units will be developed”(reference page 10-33). This is shown in Part A of the schedule on the row marked “total credits and HEOZ sites”. We disagree with this, and address this in more detail below.

The Table also shows the distribution by income category of these “reasonably developed “ units as 743 units (27.4%) Very Low, 421 units (15.5%) Low, 413 units (15.3%) Moderate and 1,131 units (41.8%) Above Moderate. Furthermore, on page I-39 in response to Harmonie Park’s comment letter (the developer of site D-1 - North 40 Phase II), the Town states “the distribution of affordability levels in the Site Inventory is an **estimate** prepared based on a combination of factors including lot size, vacancy, **property owner interest**, minimum and maximum density and **other development regulations**”.

Unfortunately, there is no evidence in the draft Housing Element which supports the “reasonable expectation” that 1,164 units, representing 75% (1,164/1,544) of the estimated market rate units, will be below market rate housing. The SB 330 filings associated with parcels B-1 and D-1 reflect substantially less below market units (e.g. property owner interest), and the Town’s own Below Market Program (e.g. development regulations) which mandates a developer of more than 101 units **to provide a minimum of below market rate units equal to 20% of the number of market rate units** provide substantial evidence that the site inventory estimate of 1,164 below market rate units is wildly unreasonable and not supported by any objective evidence in the record.

Developers will not voluntarily exceed the minimum 20% requirement because there is little economic incentive to produce below market rate units above this threshold. This is confirmed by all SB 330 applications and the inclusion of Program L – Below Market Price Program whose goal is to evaluate the existing BMP Program to increase the number of BMP units constructed.

And yet the draft Housing Element ignores this economic reality and unexplainably “reasonably expects” the number of below market rate units developed will be 75% of the number of market rate units. This is not a reasonable assumption and is not supported by any evidence in the record. The site inventory must be corrected to reflect a reasonable distribution of development by income category.

In addition to the problem of realistic income distribution of the developed units, Table 10-3 also contains specific errors which must be corrected. Unfortunately, the sum of the errors results in an

overstatement of the estimated development of below market rate units. Once corrected, the Town does not meet the 6th cycle RHNA by income category. We will now address each error.

1 – Single Family and Housing units entitled – June 30, 2022 to January 31, 2023

On D-64 of the Housing Element it is stated that “units that are made available during the RHNA projection period (June 30, 2022 through January 31, 2031) can be credited toward the RHNA”. Table 10-3 reflects 227 housing units that the Town claims were “finalized, permitted, or approved after June 30, 2022 or were under construction as of June 30, 2022”. Unfortunately, this does not conform to the instructions in the comment letter HCD issued to ABAG on January 12, 2022 (see attachment 3).

According to the comment letter, “local governments may take RHNA credit for new units approved, permitted, and/or built **beginning from the start date** of the RHNA projection period, June 30, 2022”. Of the 227 units 194 units were permitted prior to the start date of the projection period. This includes the 49 below market rate units on the North 40 Phase 1 parcel (APN 424-07-100). In addition, all 194 units have been included in the 5th cycle results (refer to page E-12) and reported in either the 2020, 2021 or 2022 Annual Progress Reports to HCD. Based on this, all 194 units need to be excluded from Table 10-3 and need to be deducted from the total credits.

2. Projected ADU Affordability

On D-60 of the Housing Element it is disclosed that the income distribution for ADU’s is 30% very low, 30% low, 30% moderate and 10% above moderate income. This distribution was based on “ABAG’s pre-approved ADU Affordability Survey”.

We have attached (attachment 4) the referenced survey which in fact was released as a “draft” survey prepared by ABAG dated September 8, 2021. While the draft report was reviewed by HCD, HCD did not formally accept it and did not raise objections to the conclusions. HCD believed the conclusions were generally accurate and added that jurisdictions should ensure the information reflects local conditions. To that end, HCD stated jurisdictions should provide opportunity for stakeholders to comment on any assumptions, including affordability assumptions based on the draft report. ABAG did not expect to receive any additional guidance from HCD.

The survey does include a recommendation for ADU’s income distribution as discussed in the Housing Element. However, the survey also recommends a more conservative distribution for jurisdictions with fair housing concerns, which Los Gatos clearly has. This distribution is 5% very low, 30% low, 50% moderate and 15% above. This distribution more accurately reflects open market rentals, excluding units made available to family and friends. This distribution is validated by data in the survey which shows the following distribution of ADU market rate units on the Peninsula – 6% very low, 31% low, 48% moderate and 15% above.

Lastly, the Town’s actual experience for ADUs permitted between June 30, 2022 and January 30, 2023 shows the following income distribution – 0% very low, 12% low, 48% moderate and 40% above. Based on this we believe a more reasonable income distribution for ADUs would be 5% very low, 30% low, 50% moderate and 15% above, which was the recommendation for jurisdictions with fair housing concerns.

Adopting this distribution would result in 50 units deducted from the very low category and 40 units added to the moderate category and 10 units added to the above category. We made this adjustment to Table 10-3.

3. Site B-1 adjustment to reflect SB 330 application

On page D-21 there is a description of site B-1, the Los Gatos Lodge. The site inventory programmed this 8.81-acre site for 262 units at a planned development density of 30 DU per acre. The income distribution of these units is 86 units very low, 86 units low, 62 units moderate and 28 units above.

The property owner has filed a preliminary SB 330 application which vests the development rights of the parcel and a final application is expected to be received by January 2, 2024. The SB 330 application calls for the development of 158 units at a development density of 17.9 DU per acre. It should be pointed out this development density is materially below the 30 DU minimum density programmed by the HEOZ zoning. The Housing Element does not discuss the difference in development densities and raises questions regarding Program AQ – Zoning Code Amendments since there is no mention as to a minimum allowable development density and appears to be inconsistent with Table C-3 - Proposed HEOZ Densities by underlying Land Use and Zoning Designation.

Based on the SB 330 application, it appears that a reasonable development assumption should be 0 units very low, 32 units low, 0 units moderate and 126 above for a total of 158 units. This would result in 86 units being deducted from very low units, 54 units being deducted from low units, 62 units being deducted from moderate, and 98 units being added to above. We made this adjustment to Table 10-3.

4. Site D-1 adjustment to reflect SB 330 application

On page D-35 there is a description of site D-1, North 40 Phase II. The site inventory programmed this 15.6-acre site for 452 net units at a planned development density of approximately 30 DU per acre. The income distribution of these units is 184 units very low, 89 units low, 92 units moderate and 87 units above.

The property owner has filed a final SB 330 application which vests the development rights of the parcel. The SB 330 final application calls for the development of 451 units at a development density of 28.6 DU per acre. It should be pointed out this development density is below the 30 DU minimum density programmed by the HEOZ zoning. The Housing Element does not address the difference in development densities and raises a question regarding Program D – Additional Housing Capacity for the North 40 Specific Plan, Program AQ – Zoning Code Amendment and appears to be inconsistent with Table C-3 - Proposed HEOZ Densities by underlying Land Use and Zoning Designation.

Based on the SB 330 application, it appears that a reasonable development assumption should be 0 units very low, 91 units low, 1 unit moderate and 359 above for a total of 451 units. This would result in 184 units being deducted from very low units, 2 units being added to low, 91 units being deducted from moderate, and 272 units being added to above. We made this adjustment to Table 10-3.

5. Site I-1 adjustment to reflect SB 330 application

On page D-59 there is a description of site I-1, Alberto Way. The site inventory programmed this 2.15-acre site for 60 units at a planned development density of approximately 27.9 DU per acre. The income distribution of these units is 0 units very low, 4 units low, 4 units moderate and 52 units above. The site inventory reflects the preliminary SB 330 application development plan. This is inconsistent with how the site inventory planned site B-1, which ignored the SB 330 preliminary application.

The property owner has filed a final SB 330 application which vests the development rights of the parcel. The SB 330 application calls for the development of 52 units at a development density of 24.1 DU per acre. It should be pointed out this development density is below the 30 DU minimum density programmed by the HEOZ zoning. The Housing Element does not address the difference in development densities and appears to be inconsistent with Table C-3 - Proposed HEOZ Densities by underlying Land Use and Zoning Designation.

Based on the SB 330 application, it appears that a reasonable development assumption should be 0 units very low, 8 units low, 0 unit moderate and 44 above for a total of 52 units. This would result in 4 units being added to low, 4 units being deducted from moderate, and 8 units being deducted from above. We made this adjustment to Table 10-3.

Summary and Conclusion

Summing all the adjustments noted above, materially reduces the total credits and HEOZ sites shown in Table 10-3. On an adjusted basis it is reasonably expected that there will be 2,401 units developed during the 6th cycle. In addition, reflecting the above adjustments the income distribution will be 374 very low units, 373 low units, 295 moderate units and 1,359 above units.

Given this level of development, the Town will fail to meet the 6th cycle RHNA of 537 very low units and 320 moderate units. The adjusted Table 10-3 shows the surplus and deficit for each income category compared to the 6th cycle RHNA. This result clearly does not meet the desired outcome of Program AS, which was to provide adequate sites for housing, RHNA rezoning and lower income households on nonvacant and vacant sites, while providing a 25% buffer. Only the above moderate-income group meets this program's goals.

The Housing Elements concluding comment that "the sites identified in this report are sufficient to accommodate Los Gatos' Regional Housing Needs Allocation for the 6th cycle planning period" is clearly incorrect. The current draft as constructed contains numerous errors, which incorrectly inflated the "reasonable development" estimate for very low-, low- and moderate-income categories. The sites inventory does not accommodate a net capacity of 1,971 units but rather a net capacity based on the developers SB 330 applications of 1,858. Furthermore, the sites inventory does not accommodate a net capacity of 634 very low income, 357 low income and 340 moderate income units but rather a capacity of 364 very low, 309 low and 183 moderate income units.

The unmistakable conclusion is the Town must identify more parcels to be included in the site inventory and rezoned as part of the HEOZ to meet the 6th cycle RHNA by income category. If this is not done, it is unlikely the HCD will certify this fourth submission.

Thank you for allowing us to provide our comments. At the end of the day, we all want the same thing – a Housing Element that fully complies with State Housing Law and is certified by HCD as quickly as possible.

Los Gatos Community Alliance

August 22, 2023

VIA E-MAIL - jpaulson@losgatosca.gov

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

Re: Los Gatos 2023-2031 Housing Element

Dear Mr. Paulson:

We write on behalf of the Los Gatos Community Alliance (“LGCA”), a group of concerned citizens, in regard to the Los Gatos 2023-2031 Housing Element (the “Housing Element”). In previous correspondence to the Town of Los Gatos (the “Town”), LGCA expressed concern that the Housing Element Sites Inventory overstated the development potential on two key sites—Los Gatos Lodge and North 40 Phase II—in light of SB 330 Preliminary Applications submitted for both sites which vest development rights at overall lower densities with far fewer affordable units than assumed by the Sites Inventory. LGCA also expressed concerns with the reasonableness of development capacity on North 40 Phase II given that the site is more than 10 acres and a comparable development (the adjacent North 40 Phase I) was developed at an overall lower density with less affordable units than assumed by the prior housing element. The reductions are significant enough that the Town would not meet its Regional Housing Needs Allocation (“RHNA”) for very low and moderate income units. As the Town prepares its fourth revision to the Housing Element, LGCA writes to request that the Town update the Sites Inventory and make other changes to the Housing Element so as to comply with State Housing Element Law.

1. Background

Faced with a January 31, 2023 deadline to adopt a compliant Housing Element, the Town submitted its first draft Housing Element to the State Department of Housing & Community Development (“HCD”) on October 14, 2022. In its January 12, 2023 comment letter HCD found that this first submittal was not compliant with State Housing Element Law. The Town Council nonetheless proceeded to adopt a slightly revised version of the Housing Element and submitted it to HCD on February 13, 2023. HCD responded to this second submittal on April 14, 2023 indicating that it too was not compliant with State Housing Element Law. On March 31, 2023, the Town sent its third submittal to HCD on March 31, 2023.

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After the third submittal had been sent to HCD, the Town received two SB 330 Preliminary Applications for two key sites on the Sites Inventory—Los Gatos Lodge (Site B1) and North 40 Phase II (Site D1)—on which the Housing Element proposes to accommodate more than 50 percent of the Town’s low and very low RHNA.¹ As illustrated by the chart below, the SB 330 Preliminary Applications include a greatly reduced number of affordable housing units from that assumed in the Sites Inventory. The reductions are significant enough that the Town would not meet its RHNA for very low and moderate income units. The Town’s RHNA for very low units is 537 units and for moderate units is 320. With the reductions associated with the SB 330 Preliminary Applications, the Town only has 396 very low units and 253 moderate units.

Project	Housing Element Sites Inventory	SB 330 Preliminary Applications Submitted
Los Gatos Lodge (Site B-1)	Very Low: 86 Low: 86 Moderate: 62 Above-Moderate: 30 Total: 264	Very Low: 0 Low: 32 Moderate: 0 Above-Moderate: 126 Total: 158
North 40-Phase II (Site D-1)	Very Low: 184 Low: 89 Moderate: 92 Above-Moderate: 96 Total: 461	Very Low: 0 Low: 88 Moderate: 0 Above-Moderate: 349 Total: 437

In its May 30, 2023 letter, HCD again found that the Town’s third submittal of the Housing Element to be non-compliant with State Housing Element Law. In pertinent part, HCD stated that the Housing Element needed to be revised to, among others, contain an accurate Sites Inventory accounting for: (1) the likelihood of 100 percent nonresidential development in zones allowing 100 percent nonresidential uses and (2) the realistic potential for additional development on non-vacant sites. As to the first point, HCD indicated that the Town should consider the development activity of 100 percent nonresidential uses, stating the element should analyze all development activity in these nonresidential zones, how often residential development occurs and adjust residential capacity calculations, policies, and programs accordingly. As to the second point, HCD stated that the element should address “the extent to which existing uses may constitute an impediment to additional residential development, the Town’s past experience with converting existing uses to higher density residential development,

¹ True and correct copies of these applications for Site B1 and Site D1 are attached hereto as Exhibit A and Exhibit B, respectively.

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the current market demand for the existing use, an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites.”

2. Housing Element Law Requires A Sites Inventory That Reflects Realistic Capacity And Properly Accounts For Large And Nonvacant Sites.

Government Code Section 65583 requires that a housing element “identify adequate sites for housing” and “make adequate provision for the existing and projected needs of all economic segments of the community.” Specifically, a housing element must contain “[a]n inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality’s housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites, and an analysis of the relationship of the sites identified in the land inventory to the jurisdiction’s duty to affirmatively further fair housing.” (Gov. Code § 65583(a)(3).)

The sites inventory shall be used to identify sites throughout the community that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction’s share of the regional housing need for all income levels. (Gov. Code § 65583.2(a).) An agency is required to determine whether each site in its inventory can accommodate the development of some portion of its share of the regional housing need by income level during the planning period. (Gov. Code § 65583.2(c).) A local agency must demonstrate how the number of units determined for a particular site in the inventory will be accommodated. (Gov. Code § 65583.2(c)(1).) The number of units shall be adjusted as necessary based on land use controls and site improvements, the realistic development capacity for the site, typical densities of existing or approved residential developments at a similar affordability level in the jurisdiction, and the current and planned availability and accessibility of sufficient water, sewer, and dry utilities. (Gov. Code § 65583.2(c)(2).)

Parcels larger than 10 acres are considered inadequate to accommodate housing affordable to lower income households, unless the local agency demonstrates that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower income housing units as projected for the site, or there is other evidence that the site is realistic and feasible for lower income housing.² (Gov. Code § 65583.2(c)(2)(B).) “A site

² Such evidence may include developer interest, proposed specific-plan development, potential for subdivision, the jurisdiction’s role or track record in facilitating lot splits, or other information that can demonstrate to HCD the feasibility of the site for development. (HCD’s Housing Element Site Inventory Guidebook (May 2020), p. 17.)

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may be presumed to be realistic for development to accommodate lower income housing need if, at the time of the adoption of the housing element, a development affordable to lower income households has been proposed and approved for development on the site.” (Gov. Code § 65583.2(c)(2)(C).)

When a housing element relies on nonvacant sites to accommodate more than 50 percent of the RHNA for lower income households, it must demonstrate that existing uses are not an impediment to additional residential development and will likely discontinue in the planning period. (Gov. Code § 65583.2(g)(2).) Absent findings based on substantial evidence, the existing uses will be presumed to impede additional residential development and cannot be used to demonstrate adequate sites to accommodate the agency’s RHNA. (*Id.*)

3. The Housing Element Does Not Comply with State Housing Element Law.

The Sites Inventory has not been revised to reflect the SB 330 Preliminary Applications for Los Gatos Lodge and North Forty Phase II. The inventory assumes that these two sites will provide more than 50 percent of the RHNA for low and very low income units. But since these two sites can legally be developed in accordance with their SB 330 Preliminary Applications, the Town would have a shortfall of 141 very low units and 67 moderate units.³ The Sites Inventory does not meet the Town’s RHNA obligations and the capacity assumed for Sites B-1 and D-1 is not realistic.

Los Gatos Lodge (Site B-1) is comprised of three parcels totaling 8.81 acres and identified as having a realistic capacity of 264 units. Of these 264 units, 86 are identified as very low, 86 as low, 62 as moderate, and 30 as above-moderate. The Los Gatos Lodge site is occupied by an existing motel and thus nonvacant. It has a proposed General Plan designation of Mixed Use Commercial and a proposed Zoning designation of CH-PD HEOZ, which would allow minimum densities of 30 units per acre. The Housing Element incorrectly refers to this site as already containing these designations. (Housing Element, Appendix D, p. D-15.)⁴

A SB 330 Preliminary Application was submitted for Los Gatos Lodge on June 30, 2023. Because the Town does not have a certified Housing Element, the project is subject to the “builder’s remedy” and can proceed irrespective of its non-conformity with current planning and zoning designations. (Gov. Code § 65589.5(d).) Any subsequently enacted planning or zoning

³ Where there would still be a nominal surplus of 58 low income units, this would only be 8 percent above the Town’s RHNA allocation, falling far short of HCD’s recommended 15-30 percent buffer. (HCD’s Housing Element Site Inventory Guidebook (May 2020), p. 22.)

⁴ References herein to the Housing Element are to the Interim Working Draft Revised Housing Element dated July 2023.

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changes would not legally apply to the project proposed on Site B-1.⁵ The Preliminary Application includes a total of 158 units. Of these 158 units, 126 are identified as market rate (or above-moderate) units and 32 are identified as low income units. Thus, Site B-1 is subject to a vested development application for 106 overall fewer units and 86 less very low, 54 less low, and 62 less moderate units than assumed by the Sites Inventory.

North 40 Phase II (Site D-1) is comprised of seven parcels totaling 15.39 acres and identified as having a realistic capacity of 461 units. Of these 461 units, 184 are identified as very low, 89 as low, 92 as moderate, and 96 as above-moderate. The North 40 Phase II site is occupied by single-family residences and agricultural uses and thus nonvacant. It is planned and zoned North Forty Specific Plan. The Specific Plan currently allows for a maximum of 270 units. (Specific Plan, Table 2-2 and Section 2.7.3.) Phase I was developed with 270 above-moderate units, 1 moderate unit, and 49 very low units.

A SB 330 Preliminary Application was submitted for North 40 Phase II on April 17, 2023. Because the Town does not have a certified Housing Element, the project is subject to the “builder’s remedy” and can proceed irrespective of its non-conformity with current planning and zoning designations. (Gov. Code § 65589.5(d).) Any subsequently enacted planning or zoning changes would not legally apply to the project proposed on Site D-1. The Preliminary Application includes a total of 437 units. Of these 437 units, 349 are identified as market rate (or above-moderate) units and 88 are identified as low income units. Thus, Site B-1 is subject to a vested development application for 24 overall fewer units and 184 less very low, 1 less low, and 92 less moderate units than assumed by the Sites Inventory.

Town Staff has indicated that these are just preliminary applications and do not need to be factored into the analysis as to whether the capacity is realistic. Such a response significantly downplays the legal significance of the SB 330 Preliminary Applications submitted. Moreover, the Town itself used such an application for Site I-1 (405 Alberto Way) as the basis for the overall density and number of affordable units in its Sites Inventory. Also, other agencies with certified Housing Elements, such as the City of Campbell, considered SB 330 Preliminary Applications when preparing their Housing Sites Inventory.⁶

In addition, Site D-1 is 15.39 acres. Per State Housing Element Law, such a large site is considered inadequate to accommodate housing affordable to lower income households, unless

⁵ A Preliminary Application allows a developer to “freeze” the applicable ordinances, policies, and standards in place at the time of submittal thus preventing later changes to development requirements that could impact the project. (Gov. Code §§ 65589.5(o), 65941.1.)

⁶ Specifically, Campbell’s Housing Element included a discussion of requests to develop housing below identified densities as a non-government constraint to housing. (Campbell Housing Element, p. H.II-172.)

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the Town demonstrates that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower income housing units as projected for the site. (Gov. Code § 65583.2(c)(2)(B).) The Housing Element contains no such supporting analysis. The reality is that there is no such supporting evidence. For instance, while North 40 Phase I was planned for 270 units (156 very low, 84 low, 30 moderate, and 0 above-moderate), what was actually built was 270 above-moderate units, 49 very low units, and 1 moderate unit.

Further, the Town's Housing Element relies almost exclusively on nonvacant sites to accommodate its RHNA for lower income households.⁷ By law, the existing uses on these sites are deemed to be an impediment to residential development absent substantial evidence to the contrary. (Gov. Code § 65583.2(g)(2).) Most of the projects the Town relies on to support its claim that the existing uses are not an impediment are in other jurisdictions. The Housing Element states that development in those other jurisdictions provide examples of "the type of development that could be projected to be developed in the Town based on the proposed Housing Element Overlay Zone." (Housing Element, Appendix D, p. D-3.) But there is no evidence to support this statement nor is there any indication that the proposed overlay zone would pass legal muster.⁸ As to the few sites in Los Gatos, most appear to be lower density, single-family developments. (*Id.* at pp. D-3 to D-4.) Further, the Housing Element cites to property interest forms without including or detailing the information on those forms, as HCD previously requested. (*Id.* at pp. D-4 to D-5.) Absent findings based on substantial evidence, the existing uses will be presumed to impede additional residential development and cannot be used to demonstrate adequate sites to accommodate the RHNA. (*Id.*)

Finally, it is unclear whether the Housing Element complies with Government Code Section 65583.2(h). That section requires that at least 50 percent of the very low income and low income housing be located on sites designated for residential use only except that an agency may accommodate all of its very low and low income housing need on sites designated for mixed use if those sites allow 100 percent residential use and require that residential use occupy 50 percent of the total floor area of a mixed use project. Of the 50 housing opportunity sites, only 11 are designated to allow residential units only; the remaining 39 are designed to allow for commercial and mixed-use opportunities. (Housing Element, Appendix D, p. D-5.) Citing a mere two previously entitled commercial development projects for which residential development projects have since been proposed, the Housing Element state that the likelihood that commercial or mixed-use sites would redevelop without some residential component is "clearly low." (*Id.* at p. D-6.) The law requires more than this. The planning and zoning

⁷ The only exception appears to be for two very low income units on one vacant parcel: APN 424-06-116.

⁸ (*See Martinez v. City of Clovis* (2023) 90 Cal. App.5th 193 [housing element's reliance on a regional housing need overlay zone district failed to comply with State Housing Element Law because the base zoning allowed development at a density lower than the statutory minimum].)

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designations for those sites must allow 100 percent residential use and require at least 50 percent residential floor area in a mixed-use development.

We understand that the Town is in the process of preparing its fourth submittal to HCD and plans to do so by early October 2023. We also understand that a meeting between HCD Staff and Town Staff is scheduled for early September 2023 on the fourth submittal. We wish to see the fourth submittal be successful and along those lines provide what we hope are constructive comments on the Housing Element. Given that state funding, rezoning deadlines, and/or development approval authority are at stake, we urge the Town to take these comments seriously and undertake all necessary actions to ensure that its Housing Element conforms with State Housing Element law.

Thank you for your consideration of LGCA's views on these important matters. Please do not hesitate to contact me with any questions concerning this correspondence.

Very truly yours,

RUTAN & TUCKER, LLP



Matthew D. Francois

MDF:mtr

cc: Phil Koen

Laurel Prevetti, Town Manager

Gabrielle Whelan, Town Attorney

Paul McDougall, Senior Program Manager, State HCD

Jose Armando Jauregui, Housing Policy Analyst, State HCD

EXHIBIT A

SB 330 PRELIMINARY APPLICATION SUBMITTAL CHECKLIST

California Government Code Section §65941.1 (a): An applicant for a housing development project, as defined in paragraph (2) of subdivision (h) of Section §65589.5, shall be deemed to have submitted a Preliminary Application upon providing all of the following information about the proposed project to the city, county, or city and county from which approval for the project is being sought and upon payment of the permit processing fee:

- ✓ The specific location, including parcel numbers, a legal description, and site address.
- ✓ The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located.
- ✓ A site plan showing the building location(s) on the property; elevations of each building showing design, color, and material; and the massing, height, and approximate square footage, of each building that is to be occupied.
- ✓ The proposed land uses by number of units and square feet of residential and nonresidential development using the categories in the applicable zoning ordinance.
- ✓ The proposed number of parking spaces.
- ✓ Any proposed point sources of air or water pollutants.
- ✓ Any species of special concern known to occur on the property.
- ✓ Any historic or cultural resources known to exist on the property.
- ✓ The number of proposed below market price units and their affordability levels.
- ✓ The number of bonus units and any incentives, concessions, waivers, or parking reductions requested pursuant to Section §65915.
- ✓ Whether any approvals under the Subdivision Map Act, including, but not limited to, a parcel map, a tentative map, or a condominium map, are being requested.
- ✓ The applicant's contact information and, if the applicant does not own the property, consent from the property owner to submit the application.
- ✓ The number of existing residential units on the project site that will be demolished and whether each existing unit is occupied or unoccupied.
- ✓ A site plan showing a stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section §1600) of Division 2 of the Fish and Game Code and an aerial photograph showing existing site conditions of environmental site features that would be subject to regulations by a public agency, including creeks and wetlands.

SB 330 PRELIMINARY APPLICATION SUBMITTAL CHECKLIST

- ☒ The location of any recorded public easement, such as easements for utilities, storm drains, water lines, and other public rights-of-way.

- ☒ Whether a portion of the property is located within any of the following:

Yes No

- ☐ ☒ A very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section §51178.
- ☐ ☒ Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
- ☐ ☒ A hazardous waste site that is listed pursuant to Section §65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section §25356 of the Health and Safety Code.
- ☐ ☒ A special flood hazard area subject to inundation by the one (1) percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency.
- ☐ ☒ A delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law [Part 2.5 (commencing with Section §18901) of Division 13 of the Health and Safety Code], and by any local building department under Chapter 12.2 (commencing with Section §8875) of Division 1 of Title 2.
- ☐ ☒ A stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section §1600) of Division 2 of the Fish and Game Code.

SENATE BILL 330 PRELIMINARY APPLICATION

PURPOSE

This form serves as the Preliminary Application for housing development projects seeking vesting rights pursuant to SB 330, the Housing Crisis Act of 2019.

GENERAL INFORMATION

An applicant for a housing development project that includes (1) residential units (2) a mix of commercial and residential uses with two-thirds of the project's square footage used for residential purposes; or (3) transitional or supportive housing, shall be deemed to have submitted a Preliminary Application upon provision of all of the information listed in this Preliminary Application form and payment of the permit processing fee to the agency from which approval for the project is being sought.

After submitting this Preliminary Application to the local agency, an applicant has 180 days to submit a full application or the Preliminary Application will expire.

Notes:

1. California Environmental Quality Act (CEQA) and Coastal Act standards apply.
2. After submittal of all of the information required, if the development proponent revises the project to change the number of residential units or square footage of construction changes by 20 percent or more, excluding any increase resulting from Density Bonus Law, the development proponent must resubmit the required information so that it reflects the revisions.
3. Submittal of all the information listed and payment of the permit processing fee freezes fees and development standards as of the date that the Preliminary Application is "deemed submitted," unless exceptions per Government Code § 65889.5(o) are triggered.
4. Record keeping pertaining to which standards and fees apply at date of submittal is imperative, as penalties may apply for imposing incorrect standards.

SITE INFORMATION

1. **PROJECT LOCATION** – The specific location, including parcel numbers, a legal description, and site address, if applicable.

Street Address 50 Los Gatos-Saratoga Road, Los Gatos, et al. Unit/Space Number _____

Legal Description (Lot, Block, Tract)

Attached? YES ☒ NO ☐

See Attachment 2, Exhibit A.

Assessor Parcel Number(s) 529-24-001, 529-24-003, 529-24-032

2. **EXISTING USES** – The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located (if you have attached a site plan that clearly depicts all existing uses and proposed physical alterations, please enter "See Attached Plan" below).

The Project site is currently occupied by Los Gatos Lodge, a hotel/motel. Onsite operations consist of temporary (less than 30 days) lodging of hotel guests, meeting and event rooms, recreational areas, dining areas, routine facility maintenance, accessory office uses and a duplex dwelling unit for hotel staff. In addition to the buildings and other structures, the Project site is improved with asphalt-paved parking/drive areas, concrete-paved patios and walkways, a swimming pool, and landscaped areas. (See also Attachment 3.) With the exception of the duplex dwelling unit, all existing structures and improvements will be removed for the Project.

3. **SITE PLAN** – A site plan showing the building(s) location on the property and approximate square footage of each building that is to be occupied.

Attached? YES ☒ NO ☐

4. **ELEVATIONS** – All elevations of all buildings showing design, color, material, and the massing and height of each building that is to be occupied.

Attached? YES ☒ NO ☐

5. **PROPOSED USES** – The proposed land uses by number of units and square feet of residential and nonresidential development using the categories in the Zoning Ordinance.

SummerHill proposes to develop 158 new three-story for-sale attached townhouses in 28 buildings (multiple-family dwellings) on a portion of an approximately 8.81-acre tract of land, with associated amenities, landscaping, private streets, utilities and other infrastructure improvements. The living area of the townhouses will range from approximately 1,270 to 2,230 square feet, with a total living area of approximately 282,931 square feet and a total gross floor area of approximately 352,919 square feet. Each townhome will have assigned parking, either in an attached garage or in a shared parking area. The boundaries of the individual townhomes will be established through a condominium plan, and the community will be governed by a professionally managed homeowners association.

a. RESIDENTIAL DWELLING UNIT COUNT:

Please indicate the number of dwelling units proposed, including a breakdown of levels by affordability, set by each income category.

	Number of Units
Market Rate	126 Units
Manager Unit(s) - Market Rate	0
Extremely Low Income (%)	0
Very Low Income (%)	0
Low Income (%)	32 Units (20.3%)
Moderate Income (%)	0
Total Number of Units	158 Units
Total Number of Affordable Units	32 Units
Total Number of Density Bonus Units	5 Units

Other notes on units:

SummerHill will use a density bonus to achieve 158 units, if necessary. The existing duplex dwelling unit is not included in the unit counts listed above.

6. **FLOOR AREA** – Provide the proposed floor area and square footage of residential and nonresidential development, by building. (Attach relevant information by building and totals here. If more space is needed, enter "See Attached," and attach a modified table.):

	Residential	Nonresidential	Total
Floor Area (Zoning)	352,919 SF	0	352,919 SF
Square Footage of Construction	352,919 SF	0	352,919 SF

7. **PARKING** – The proposed number of automobile parking spaces:

Residential	Nonresidential	Total Automobile Parking
351 spaces	0	351 spaces

8. **AFFORDABLE HOUSING INCENTIVES, WAIVERS, CONCESSIONS AND PARKING REDUCTIONS** – Will the project proponent seek Density Bonus incentives, waivers, concessions, or parking reductions pursuant to California Government Code Section 65915?

YES ☒ NO ☐

If "YES," please describe:

SummerHill may utilize: (1) a density bonus, if necessary to achieve 158 units; (2) a concession or waiver to eliminate mixed-use requirements, if necessary; (3) parking reductions; and/or (4) waivers or reductions of development standards necessary for the development of the project, potentially including, without limitation: an increase in the height limit to 45 feet, a reduction of the required private open space and community recreation open space, a modification of set-to requirements, and/or a waiver of the requirement to provide a primary entrance for each building. SummerHill reserves the right to request additional concessions, waivers or reductions pursuant to Gov. Code section 65915.

9. **SUBDIVISION** – Will the project proponent seek any approvals under the Subdivision Map Act, including, but not limited to, a parcel map, a vesting or tentative map, a condominium map?

YES ☒ NO ☐

If "YES," please describe:

SummerHill will seek approval of a vesting tentative map and a final map and will record a condominium map.

10. **POLLUTANTS** – Are there any proposed point sources of air or water pollutants?

YES ☐ NO ☒

If "YES," please describe:

--

11. **EXISTING SITE CONDITIONS** – Provide the number of existing residential units on the project site that will be demolished and whether each existing unit is occupied or unoccupied. Provide attachment, if needed.

	Occupied Residential Units	Unoccupied Residential Units	Total Residential Units
Existing	2 Units	0	2 Units
To Be Demolished	0	0	0

12. ADDITIONAL SITE CONDITIONS –

a. Whether a portion of the property is located within any of the following:

- i. A very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection, pursuant to Section 51178?

YES ☐ NO ☒

- ii. Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993)?

YES ☐ NO ☒

- iii. A hazardous waste site that is listed pursuant to Section 65962.5, or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code?

YES ☐ NO ☒

- iv. A special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by any official maps published by the Federal Emergency Management Agency?

YES ☐ NO ☒

- v. A delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2?

YES ☐ NO ☒

- vi. A stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code?

YES ☐ NO ☒

IF YOU CHECKED "YES" FOR ITEM (vi), ATTACH A SITE MAP SHOWING THE LOCATION OF ANY SUCH STREAM OR OTHER RESOURCE. REGARDLESS OF WHETHER YOU CHECKED "YES," PROVIDE AN AERIAL PHOTOGRAPH SHOWING EXISTING ENVIRONMENTAL SITE FEATURES SUBJECT TO REGULATIONS BY A PUBLIC AGENCY, INCLUDING CREEKS AND WETLANDS.

Check here to indicate you have read this statement and have attached the required materials ☒

If "YES" to any, please describe:

None known at this time.

b. Does the project site contain historic and/or cultural resources?

YES ☐ NO ☒

If "YES," please describe:

None known at this time. Some of the existing structures are more than 50 years old but none have been identified as historically or culturally significant.

c. Does the project site contain any species of special concern, such as special status flora or fauna, protected trees, or wildlife?

YES ☐ NO ☒

If "YES," please describe:

None known at this time.

d. Does the project site contain any recorded public easement, such as easements for storm drains, water lines, electricity, and other public rights-of-way?

YES ☐ NO ☒

If "YES," please describe:

The Project site does not contain any recorded public easements such as easements for storm drains, water lines, electricity and other public rights-of-way. However, the Project site contains public restrictions and private and/or utility easements for water, road and sewer purposes. See Attachments 2 & 5.

IF "YES," PROVIDE A SITE PLAN SHOWING THE LOCATION OF ANY SUCH EASEMENTS. Check here to indicate you have read this statement and, if applicable, have attached the required materials ☒

13. **PROJECT TEAM INFORMATION** – The applicant's contact information and, if the applicant does not own the property, consent from the property owner to submit the application.

APPLICANT:

Name John Hickey, Vice President of Development Company/Firm SummerHill Homes LLC

Address 777 S. California Ave. Unit/Space Number _____

City Palo Alto State CA Zip Code 94304

Telephone 650-842-2360 Email jhickey@shhomes.com

Are you in Escrow To Purchase The Property? YES ☐ NO ☒

PROPERTY OWNER: ☐ Same as applicant ☒ Different from applicant

Name Keet Nerhan

Company/Firm Los Gatos Lodge, LLC

Address 210 San Mateo Road Unit/Space Number 201

City Half Moon Bay State CA Zip Code 94019

Telephone 650-726-4457 Email _____

OPTIONAL: Agent/Representative

Name _____ Company/Firm _____

Address _____ Unit/Space Number _____

City _____ State _____ Zip Code _____

Telephone _____ Email _____

OPTIONAL: Other

Name David J. Bugatto Company/Firm The Bugatto Group, Inc.

Address 300 University Avenue Unit/Space Number Suite 230

City Sacramento State CA Zip Code 95825

Telephone 916-648-7718 Email david@thebugattogroup.com

Primary Contact for Project: ☐ Owner ☒ Applicant ☐ Agent/Representative ☐ Other

PROPERTY OWNER AFFIDAVIT

Before the application can be accepted, the owner of each property involved must provide a signature to verify the Preliminary Application is being filed with their knowledge. Staff will confirm ownership based on the records of the County Assessor. In the case of partnerships, corporations, LLCs or trusts, the agent for service of process or an officer of the ownership entity so authorized may sign as stipulated below.

- **Ownership Disclosure.** If the property is owned by a partnership, corporation, LLC or trust, a disclosure identifying the agent for service of process or an officer of the ownership entity must be submitted. The disclosure must list the names and addresses of the principal owners (25 percent interest or greater). The signatory must appear in this list of names. A letter of authorization, as described below, may be submitted provided the signatory of the letter is included in the Ownership Disclosure. Include a copy of the current partnership agreement, corporate articles, or trust document as applicable.
 - **Letter of Authorization (LOA).** A LOA from a property owner granting someone else permission to sign the Preliminary Application form may be provided if the property is owned by a partnership, corporation, LLC or trust, or in rare circumstances when an individual property owner is unable to sign the Preliminary Application form. To be considered for acceptance, the LOA must indicate the name of the person being authorized to file, their relationship to the owner or project, the site address, a general description of the type of application being filed and must also include the language in items 1-3 below. In the case of partnerships, corporations, LLCs or trusts, the LOA must be signed by the authorized signatory as shown on the Ownership Disclosure or in the case of private ownership by the property owner. Proof of Ownership for the signatory of the LOA must be submitted with said letter.
 - **Grant Deed.** Provide Copy of the Grant Deed if the ownership of the property does not match local records. The Deed must correspond exactly with the ownership listed on the application.
 - **Multiple Owners.** If the property is owned by more than one individual (e.g., John and Jane Doe, or Mary Smith and Mark Jones) signatures are required of all owners.
1. I hereby certify that I am the owner of record of the herein previously described property located in the Town of Los Gatos which is involved in this Preliminary Application, or have been empowered to sign as the owner on behalf of a partnership, corporation, LLC, or trust as evidenced by the documents attached hereto.
 2. I hereby consent to the filing of this Preliminary Application on my property for processing by the Town of Los Gatos Community Development Department for the sole purpose of vesting the proposed housing project subject to the Planning and Zoning ordinances, policies, and standards adopted and in effect on the date that this Preliminary Application is deemed submitted.
 3. Further, I understand that this Preliminary Application will be terminated and vesting will be forfeited if the housing development project is revised such that the number of residential units or square footage of construction increases or decreases by 20 percent or more, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision, and/or an application requesting approval of an entitlement is not filed with Town of Los Gatos Community Development Department within 180 days of the date that the Preliminary Application is deemed complete.
 4. By my signature below, I certify that the foregoing statements are true and correct.

Signature _____ Signature _____

Printed Name _____ Printed Name _____

Date _____ Date _____

SIGNATURES ON FOLLOWING PAGE

PROPERTY OWNER AFFIDAVIT

SIGNATURE PAGE

PROPERTY: Parcel One of Tract One, as more particularly described in Exhibit A to Attachment 2.

PROPERTY OWNER: KEET NERHAN

By: X 

Name: Keet Nerhan

Date: X 6-27-23

PROPERTY: Parcels Two, Three and Four of Tract One, as more particularly described in Exhibit A to Attachment 2.

PROPERTY OWNER: LOS GATOS LODGE, LLC

By: X 

Name: Keet Nerhan, its Managing Member

Date: X 6-27-23

PROPERTY: Tract Two, as more particularly described in Exhibit A to Attachment 2.

PROPERTY OWNER: KEET S. NERHAN

By: X 

Name: Keet S. Nerhan

Date: X 6-27-23

Attachment 1 to SB 330 Preliminary Application

50 Los Gatos-Saratoga Road, Los Gatos

PROPERTY LOCATION: Parcel One of Tract One, as more particularly described in Exhibit A to Attachment 2.

PROPERTY OWNER: Keet Nerhan, a married man as his sole and separate property

Street Address: 210 San Mateo Road #201

City: Half Moon Bay State: CA Zip Code: 94019

Phone Number: (650) 726-4457

I hereby certify that I am the owner of record of the property described in "Property Location" above, and that I approve of the action requested in the Preliminary Application to which this Attachment 1 is attached.

x  _____

Keet Nerhan

Date: x 6-27-23

PROPERTY LOCATION: Parcels Two, Three and Four of Tract One, as more particularly described in Exhibit A to Attachment 2.

PROPERTY OWNER: Los Gatos Lodge, LLC

Street Address: 210 San Mateo Road #201

City: Half Moon Bay State: CA Zip Code: 94019

Phone Number: (650) 726-4457

I hereby certify that I am the owner of record of the property described in "Property Location" above, and that I approve of the action requested in the Preliminary Application to which this Attachment 1 is attached.

LOS GATOS LODGE, LLC

By: x  _____

Keet Nerhan, its Managing Member

Date: x 6-27-23

PROPERTY LOCATION: Tract Two, as more particularly described in Exhibit A to Attachment 2.

PROPERTY OWNER: Keet S. Nerhan, a married man, as his sole and separate property

Street Address: 210 San Mateo Road #201

City: Half Moon Bay State: CA Zip Code: 94019

Phone Number: (650) 726-4457

I hereby certify that I am the owner of record of the property described in "Property Location" above, and that I approve of the action requested in the Preliminary Application to which this Attachment 1 is attached.

x 

Keet S. Nerhan

Date: x 

Attachment 2 to SB 330 Preliminary Application

50 Los Gatos-Saratoga Road, Los Gatos

SUPPLEMENTAL RESPONSES

- 1. Project Location** – The specific location of the Project, including parcel numbers, a legal description, and site address:

Primary Address: 50 Los Gatos-Saratoga Road, Los Gatos, California

Other Addresses:

- 92 Los Gatos-Saratoga Road¹
- 96 Los Gatos-Saratoga Road²
- 225 Bella Vista Avenue
- 227 Bella Vista Avenue

APNs:

- 529-24-001
- 529-24-003
- 529-24-032

Legal Description:

- See Exhibit A (Legal Description of Project Site).

- 2. Existing Uses** – The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located:

The Project site is currently occupied by Los Gatos Lodge, a hotel/motel. Onsite operations consist of temporary (less than 30 days) lodging of hotel guests, meeting and event rooms, recreational areas, dining areas, routine facility maintenance, accessory office uses and a duplex dwelling unit for hotel staff. In addition to the buildings and other structures, the Project site is improved with asphalt-paved parking/drive areas, concrete-paved patios and walkways, a swimming pool, and landscaped areas. With the exception of the duplex dwelling unit, all existing structures and improvements will be removed for the Project. See also Attachment 3 (ALTA/ACSM Land Title Survey).

- 3. Site Plan** – A site plan showing the building location(s) on the property and approximate square footage of each building that is to be occupied:

See Attachment 4 (Site Plan & Elevations).

¹ See <https://tlggis.losgatosca.gov/>. Address not used.

² See <https://tlggis.losgatosca.gov/>. Address not used.

4. Elevations – Elevations of each building showing design, color, material, and the massing and height of each building that is to be occupied:

See Attachment 4 (Site Plan & Elevations). SummerHill welcomes comments from the Town of Los Gatos regarding the proposed architectural style. SummerHill is open to the possibility of a more traditional architectural style if that would be preferred.

12.a.iv. Special Flood Hazard Area – Is the site in a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by any official maps published by the Federal Emergency Management Agency?

No, the site is not in a Special Flood Hazard Area. However, as with a substantial portion of Los Gatos between Los Gatos Boulevard and N. Santa Cruz Avenue, the site is in an area of potential flooding due to dam failure.

12.a.v. Earthquake Fault Zone – Is the site in a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist?

No, the site is not in a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist.

According to the Geology Chapter of the General Plan Background Report, fault traces belonging to numerous faults, including the Shannon and Monte Vista Faults, are located in the vicinity of Los Gatos. As a result, significant bands of both high and moderate fault rupture hazard cover most of the Town of Los Gatos. These zones are generally northwest/southeast running, in conformance with the direction of the surrounding San Andreas and Monte Vista Fault systems. Nearly the entire southern portion of the Town is an area of high fault rupture hazard. Smaller portions of central Los Gatos are of moderate rupture hazard, while a large zone of high rupture hazard intersects the northern portion of Town. The Public Record indicates only small portions of northern, central and southern Los Gatos lie outside of fault rupture areas.

The project will comply with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law and by the Town of Los Gatos under Chapter 12.2 of Division 1 of Title 2 of the Government Code.

12.a.vi. Aerial Photograph – Provide an aerial photograph showing existing environmental site features subject to regulation by a public agency, including creeks and wetlands.

See Attachment 5 (Record Boundary Exhibit & Aerial Photograph). The Project site does not contain any creeks, wetlands or other environmental site features subject to regulation by a public agency.

12.d. Recorded Public Easements – Does the project site contain any recorded public easements, such as easements for storm drains, water lines, electricity, and other public rights-of-way?

The Project site does not contain any recorded public easements such as easements for storm drains, water lines, electricity and other public rights-of-way. However, the Project site contains the following public restrictions and private easements for water, road and sewer purposes:

1. An easement for water pipe lines and aqueducts and incidental purposes, recorded May 25, 1870 in Book 18 of Deeds, Page 88, between John Goldsworthy et al. and San Jose Water Company.
2. The fact that the ownership of said land does not include any right of ingress or egress to or from the highway contiguous thereto, said rights have been condemned by final decree of condemnation, a certified copy of which was recorded March 08, 1955 in Book 3108, Page 322, of Official Records.
3. A waiver of any claims for damages by reason of the location, construction, landscaping or maintenance of a contiguous freeway, highway, roadway or transit facility as contained in the document recorded March 17, 1955 as Book 3117, Page 135 of Official Records.
4. The terms and provisions contained in the document entitled "Agreement" for road and sewer purposes, recorded November 05, 1957 as Book 3930, Page 579 of Official Records, between Joseph Moucressey et al. and Milton K. Lepetich et al.
5. The fact that the land lies within the boundaries of the Central Los Gatos Redevelopment Project Area, as disclosed by the document recorded December 05, 1991 as Book L955, Page 1734 in Instrument No. 11155292 of Official Records.
6. The terms, provisions and easement(s) contained in the document entitled "Grant of Easement" recorded November 07, 2012 as Document No. 21942580 of Official Records, by and between Los Gatos Lodge LLC and San Jose Water Company.

For further detail, please see Attachment 5 (Record Boundary Exhibit and Aerial Photograph).

SUMMERHILL HOMES

COMMUNITIES OF DISTINCTION

June 30, 2023

VIA ELECTRONIC MAIL

Joel Paulson
Community Development Director
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030
jpaulson@losgatosca.gov

Re: SB 330 Preliminary Application
50 Los Gatos-Saratoga Road, Los Gatos
APN 529-24-001, -003 & -032

Dear Mr. Paulson:

Thank you for the collaboration the Town of Los Gatos has extended to us through your Department regarding our inquiries in connection with our proposed development project at 50 Los Gatos-Saratoga Road.

SummerHill Homes hereby submits a Preliminary Application for a proposed housing development project at 50 Los Gatos-Saratoga Road. This letter and the enclosed information constitute the submittal materials required to satisfy the application checklist for a Preliminary Application under Government Code section 65941.1(a). We have been told by the Planning Department that no permit processing fee is due for Preliminary Applications submitted on or before June 30, 2023.

SummerHill proposes to develop 158 new three-story for-sale townhouses on a portion of an approximately 8.81-acre tract of land (APN 529-24-001, -003 & -032), with associated amenities, landscaping, private streets, utilities and other infrastructure improvements. The living area of the townhouses will range from approximately 1,270 to 2,230 square feet, with a total living area of approximately 282,930 square feet. Each townhome will have assigned parking, either in an attached garage or in a shared parking area. The boundaries of the individual townhomes will be established through a condominium plan, and the community will be governed by a professionally managed homeowners association. SummerHill will work with the Town to modify or refine the proposed architectural style through the design review process.

SummerHill intends to designate 20 percent of the townhomes in the Project for lower income households. As a result, the Project is a housing development project protected by the provisions of the Housing Accountability Act (Gov. Code § 65589.5), including without limitation the provisions of Section 65589.5(d)(5). (The Project does not fall within the provisions of Section 65589.5(d)(1) through (4).) The Project is also entitled to the benefits of the State Density Bonus Law (Gov. Code § 65915 *et seq.*).

The Project site is designated as Mixed Use in the Town's currently applicable 2020 General Plan and is zoned CH (Restricted Commercial Highway) with a PD (Planned Development) overlay. SummerHill anticipates that the Project may require City approval of a vesting tentative subdivision map, a conditional use permit, and architecture and site approval, with review generally limited to compliance with applicable objective development standards in effect as of the date of this Preliminary Application and applicable state and federal law. SummerHill also may use the benefits available under the State Density Bonus Law, as preliminarily outlined in the enclosed materials (subject to refinement as the Project application proceeds). SummerHill intends to submit a full application for all required entitlements within 180 days of this Preliminary Application.

SummerHill is excited to work with the Town to provide much needed housing for the community. We have met individually with members of the Town Council about the Project, and we appreciate the comments and observations that we've received. We would be happy to discuss the Project with you further. Please let us know if you have any questions.

Sincerely,



John Hickey
Vice President of Development

cc: Los Gatos Planning Department (planning@losgatosca.gov)
Kevin Ebrahimi, Senior Vice President of Development
Keet Nerhan, Los Gatos Lodge, LLC
David J. Bugatto, The Bugatto Group, Inc.

Attachments:

- SB 330 Preliminary Application Checklist & Form
- 1. Property Owner Information and Consent
- 2. Supplemental Responses
- 3. ALTA/ACSM Land Title Survey
- 4. Site Plan & Elevations
- 5. Record Boundary Exhibit & Aerial Photograph



TOWN OF LOS GATOS

COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION
(408) 354-6872 Fax (408) 354-7593

CIVIC CENTER
110 E. MAIN STREET
LOS GATOS, CA 95030

July 6, 2023

John Hickey, Vice President of Development
SummerHill Homes LLC
777 California Avenue
Palo Alto, CA 94304-1179
Via email

RE: 50 Los Gatos-Saratoga Road

Senate Bill 330 Preliminary Application PRE23-00824

Preliminary Application Under Senate Bill (SB) 330 for Construction of a Residential Development (158 Residential Units) on Property Zoned CH:PD. APNs 529-24-001, -003, and -032.

PROPERTY OWNER: Keet Nerhan. APPLICANT: John Hickey, SummerHill Homes LLC.

Thank you for submitting your SB 330 preliminary application for a proposed project at 50 Los Gatos-Saratoga Road. The preliminary application materials were received on June 30, 2023. The preliminary application has been determined to be compliant with the submittal requirements of California Government Code §65941.1 (a) and is deemed submitted as of July 6, 2023. Your submittal invokes Government Code Section 65589.5(d)(5). Please note that the Town adopted its Housing Element on January 30, 2023.

Pursuant to California Code §65941.1 (d)(1), a formal application for development must be submitted within 180 calendar days after submitting a preliminary application with all the required information. The formal application must be received no later than **January 2, 2024**. If a formal application is not received within 180 days, this preliminary application is considered expired.

The Town looks forward to receiving your formal application.

Best regards,

A handwritten signature in black ink, appearing to read "JA", is written over a horizontal line.

Jennifer Armer, AICP
Planning Manager
JARmer@losgatosca.gov
(408) 399-5706

cc: David Bugatto, The Bugatto Group, Inc., Owner Representative

EXHIBIT B

HOUSING CRISIS ACT of 2019 – SB 330

PRELIMINARY APPLICATION FORM

PURPOSE

This form serves as the preliminary application for housing development projects seeking vesting rights pursuant to SB 330, the Housing Crisis Act of 2019.

GENERAL INFORMATION

An applicant for a housing development project that includes (1) residential units (2) a mix of commercial and residential uses with two-thirds of the project's square footage used for residential purposes; or (3) transitional or supportive housing, shall be deemed to have submitted a preliminary application upon provision of all of the information listed in this Preliminary Application form and payment of the permit processing fee to the agency from which approval for the project is being sought.

After submitting this Preliminary Application to the local agency, an applicant has 180 days to submit a full application or the Preliminary Application will expire.

Submittal Date Stamp^{*1,2}:

^{*1}Submittal of all the information listed and payment of the permit processing fee freezes fees and development standards as of this date, unless exceptions per Government Code § 65889.5(o) are triggered.

^{*2}Note: Record keeping pertaining to which standards and fees apply at date of submittal is imperative, as **penalties may apply for imposing incorrect standards**

Notes:

1. California Environmental Quality Act (CEQA) and Coastal Act standards apply.
2. After submittal of all of the information required, if the development proponent revises the project to change the number of residential units or square footage of construction changes by 20 percent or more, excluding any increase resulting from Density Bonus Law, the development proponent must resubmit the required information so that it reflects the revisions.

SITE INFORMATION

1. **PROJECT LOCATION** - The specific location, including parcel numbers, a legal description, and site address, if applicable.

Street Address 14859 Los Gatos Blvd., et al. Unit/Space Number _____

Legal Description (Lot, Block, Tract)

Attached? YES ☒ NO ☐

See legal description on page 11 of the attached Preliminary Title Report

Assessor Parcel Number(s) 424-07-009/053/095/094/081/115/116

2. **EXISTING USES** - The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located.

There are a total of 8 occupied rental residential units on site. There is also a two-story barn which will be re-purposed.

3. **SITE PLAN** - A site plan showing the building(s) location on the property and approximate square footage of each building that is to be occupied.

Attached? YES ☒ NO ☐

4. **ELEVATIONS** - Elevations showing design, color, material, and the massing and height of each building that is to be occupied.

Attached? YES ☒ NO ☐

5. **PROPOSED USES** - The proposed land uses by number of units and square feet of residential and nonresidential development using the categories in the applicable zoning ordinance.

PROGRAM AREA	FLOOR AREA (ZONING)	SQUARE FOOTAGE OF CONSTRUCTION	UNITS
Multi-Family Housing	290,166	441,360	250
Eden Affordable Housing	74,817	75,666	88
Townhome	232,393	319,112	119
Commercial/Retail	14,889	14,868	
Community/Civic	4,340	4,340	
Total Residential Use	597,346	836,168	437
Total Commercial Use	19,208	19,208	

*20% Affordable Housing in Eden Housing plus a portion of Multi-Family Housing

a. RESIDENTIAL DWELLING UNIT COUNT:

Please indicate the number of dwelling units proposed, including a breakdown of levels by affordability, set by each income category.

	Number of Units
Market Rate	348
Managers Unit(s) – Market Rate	1
Extremely Low Income	
Very Low Income	
Low Income	88 (portion may be VLI)
Moderate Income	
Total No. of Units	437
Total No. of Affordable Units	88
Total No. of Density Bonus Units	44

Other notes on units:

20 percent of the total units will be rented to lower income households as defined in Section 50079.5 of the Health and Safety Code at a monthly cost that does not exceed 30 percent of 60 percent of area median income. Very Low Income affordability may be achieved on some units but number will be determined at later date.

6. **FLOOR AREA** - Provide the proposed floor area and square footage of residential and nonresidential development, by building (attach relevant information by building and totals here):

	Residential	Nonresidential	Total
Floor Area (Zoning)	597,346	19,208	616,554
Square Footage of Construction	836,168	19,208	855,376

7. **PARKING** - The proposed number of parking spaces:

492 plus 238 garage spaces within Townhomes for a total of 730 parking spaces.

8. **AFFORDABLE HOUSING INCENTIVES, WAIVERS, CONCESSIONS and PARKING REDUCTIONS** - Will the project proponent seek Density Bonus incentives, waivers, concessions, or parking reductions pursuant to California Government Code Section 65915?

YES ☒ NO ☐

If "YES," please describe:

Please see separate attachment

9. **SUBDIVISION** – Will the project proponent seek any approvals under the Subdivision Map Act, including, but not limited to, a parcel map, a vesting or tentative map, or a condominium map?

YES ☒ NO ☐

If "YES," please describe:

Project will seek a Vesting Tentative Map

10. **POLLUTANTS** – Are there any proposed point sources of air or water pollutants?

YES ☐ NO ☒

If "YES," please describe:

11. **EXISTING SITE CONDITIONS** – Provide the number of existing residential units on the project site that will be demolished and whether each existing unit is occupied or unoccupied. Provide attachment, if needed.

	Occupied Residential Units	Unoccupied Residential Units	Total Residential Units
Existing	8	0	8
To Be Demolished	8	0	8

12. **ADDITIONAL SITE CONDITIONS** –

- a. Whether a portion of the property is located within any of the following:

- i. A very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection, pursuant to Section 51178?

YES ☐ NO ☒

- ii. Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993)?

YES ☐ NO ☒

- iii. A hazardous waste site that is listed pursuant to Section 65962.5, or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code?

YES ☐ NO ☒

- iv. A special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by any official maps published by the Federal Emergency Management Agency?

YES ☐ NO ☒

- v. A delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2?

YES ☐ NO ☒

- vi. A stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code?

YES ☐ NO ☒

If "YES" to any, please describe:

- b. Does the project site contain historic and/or cultural resources?

YES ☐ NO ☒

If "YES," please describe:

There are no Federal or State existing historical resources on site. Although not a formally designated resource, the project site contains a Barn that is of particular interest to the community. The Barn will be re-purposed consistent with the treatment called for in the North 40 Specific Plan.

- c. Does the project site contain any species of special concern?

YES ☐ NO ☒

If "YES," please describe:

- d. Does the project site contain any recorded public easement, such as easements for storm drains, water lines, and other public rights of way?

YES ☒ NO ☐

If "YES," please describe:

Please see attached Preliminary Title Report for description of easements.

- e. Does the project site contain a stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code? Provide an aerial site photograph showing existing site conditions of environmental site features that would be subject to regulations by a public agency, including creeks and wetlands.

YES ☐ NO ☒

If "YES," please describe and depict in attached site map:

13. COASTAL ZONE - For housing development projects proposed to be located within the coastal zone, whether any portion of the property contains any of the following: Does not apply

- a. Wetlands, as defined in subdivision (b) of Section 13577 of Title 14 of the California Code of Regulations.

YES ☐ NO ☐

- b. Environmentally sensitive habitat areas, as defined in Section 30240 of the Public Resources Code.

YES ☐ NO ☐

- c. A tsunami run-up zone.

YES ☐ NO ☐

- d. Use of the site for public access to or along the coast.

YES ☐ NO ☐

14. PROJECT TEAM INFORMATION - The applicant's contact information and, if the applicant does not own the property, consent from the property owner to submit the application.

Applicant's Name Steve Buster

Company/Firm Grosvenor USA Limited

Address One California Street **Unit/Space Number** 3000

City San Francisco **State** CA **Zip Code** 94111

Telephone (415) 434-0175 **Email** steve.buster@grosvenor.com

Are you in escrow to purchase the property?

YES ☐ NO ☒

Property Owner of Record☐

Same as applicant

☒

Different from applicant

Name (if different from applicant) Yuki Farms, LLCAddress 15495 Los Gatos Blvd. Unit/Space Number 11City Los Gatos State CA Zip Code 95032

Telephone _____ Email _____

Optional: Agent/Representative Name Don CapobresCompany/Firm Harmonie Park Development Group LLCAddress 221 Bachman Avenue Unit/Space Number _____City Los Gatos State CA Zip Code 95030Telephone 415-710-7640 Email don@harmoniepark.com**Optional: Other** (Specify Architect, Engineer, CEQA Consultant, etc.) _____

Name _____

Company/Firm _____

Address _____ Unit/Space Number _____

City _____ State _____ Zip Code _____

Telephone _____ Email _____

Primary Contact for Project: ☐ Owner ☐ Applicant ☒ Agent/Representative ☐ Other

PROPERTY OWNER AFFIDAVIT

Before the application can be accepted, the owner of each property involved must provide a signature to verify the Preliminary Application is being filed with their knowledge. Staff will confirm ownership based on the records of the City Engineer or County Assessor. In the case of partnerships, corporations, LLCs or trusts, the agent for service of process or an officer of the ownership entity so authorized may sign as stipulated below.

- **Ownership Disclosure.** If the property is owned by a partnership, corporation, LLC or trust, a disclosure identifying the agent for service of process or an officer of the ownership entity must be submitted. The disclosure must list the names and addresses of the principal owners (25 percent interest or greater). The signatory must appear in this list of names. A letter of authorization, as described below, may be submitted provided the signatory of the letter is included in the Ownership Disclosure. Include a copy of the current partnership agreement, corporate articles, or trust document as applicable.
- **Letter of Authorization (LOA).** A LOA from a property owner granting someone else permission to sign the Preliminary Application form may be provided if the property is owned by a partnership, corporation, LLC or trust, or in rare circumstances when an individual property owner is unable to sign the Preliminary Application form. To be considered for acceptance, the LOA must indicate the name of the person being authorized to file, their relationship to the owner or project, the site address, a general description of the type of application being filed and must also include the language in items 1-3 below. In the case of partnerships, corporations, LLCs or trusts, the LOA must be signed by the authorized signatory as shown on the Ownership Disclosure or in the case of private ownership by the property owner. Proof of Ownership for the signatory of the LOA must be submitted with said letter.
- **Grant Deed.** Provide Copy of the Grant Deed if the ownership of the property does not match local records. The Deed must correspond exactly with the ownership listed on the application.
- **Multiple Owners.** If the property is owned by more than one individual (e.g., John and Jane Doe, or Mary Smith and Mark Jones) signatures are required of all owners.

1. I hereby certify that I am the owner of record of the herein previously described property located in Primary address as 14925 Los Gatos Blvd. Los Gatos, CA which is involved in this Preliminary Application, or have been empowered to sign as the owner on behalf of a partnership, corporation, LLC, or trust as evidenced by the documents attached hereto.
2. I hereby consent to the filing of this Preliminary Application on my property for processing by the Department of Los Gatos Community Development for the sole purpose of vesting the proposed housing project subject to the Planning and Zoning ordinances, policies, and standards adopted and in effect on the date that this Preliminary Application is deemed complete.
3. Further, I understand that this Preliminary Application will be terminated and vesting will be forfeited if the housing development project is revised such that the number of residential units or square footage of construction increases or decreases by 20 percent or more, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision, and/or an application requesting approval of an entitlement is not filed with The Town of Los Gatos within 180 days of the date that the Preliminary Application is deemed complete.
4. By my signature below, I certify that the foregoing statements are true and correct.

Signature



Signature

Printed Name

Edward Morimoto

Printed Name

Date

April 10, 2023

Date

North 40 Phase II – SB 330 Pre-Application

8. Affordable Housing Incentives, Waivers, Concessions and Parking Reductions – Will the project proponent seek Density Bonus incentives, waivers, concessions, or parking reductions pursuant to California Government Code Section 65915?

The Project proponent will seek bonus units, incentives or concessions, waivers, and parking reductions pursuant to the State Density Bonus Law (Gov. Code § 65915). The Project is designated for 461 units in the Town's adopted Housing Element, which equates to a density of approximately 30 dwelling units per acre (du/ac). The Project is consistent with the density specified in the Housing Element, as it proposes 437 units on the 15.3-acre project site for a gross density of 28.6 du/ac and a net density of 33.36 du/ac, assuming a 13.1 acres developable site after removing area for roadway widths. With the bonus units the Project is eligible for under the State Density Bonus Law, the Project is consistent the Town's density limit established in the Housing Element.

As explained elsewhere in this Preliminary Application, the Project will dedicate 88 of its 437 units, twenty percent of the total, as units that will be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code at a monthly cost that does not exceed 30 percent of 60 percent of the area median income. By providing this level of affordability, the Project is entitled to the following benefits under State Density Bonus Law:

- A density bonus of 35% above the otherwise maximum allowable residential density (Gov. Code § 65915(f)(1));
- Two incentives or concessions (Gov. Code § 65915(d)(2)(B); for purposes of the State Density Bonus Law, the terms "incentives" and "concessions" are interchangeable, and this summary will use "concession" going forward);
- Waivers or reductions for "any development standard that will have the effect of physically precluding the construction of a development" that provides enough affordable housing to qualify for the State Bonus Law (Gov. Code § 65915(e)); and
- Minimum parking requirements, inclusive of guest parking and including paring provided in uncovered or tandem spaces, that do not exceed the following ratios:
 - Zero to one bedroom: one onsite parking space
 - Two to three bedrooms: one and one-half onsite parking spaces
 - Four and more bedrooms: two and one-half parking spaces (Gov. Code § 65915(p)).

As detailed below, the Project proponent will request to use the State Density Bonus Law's bonus units, concessions, waivers, and parking reduction benefits to allow the development of the Project as proposed. The discussion below is intended to identify anticipated State Density Bonus Law requests in connection with the Preliminary Application; further discussion and analysis will be provided in connection with the Project's formal development application. In addition, although the discussion below is complete for purposes of the anticipated State Density Bonus Law requests at this time, the Project proponent reserves the right to modify the request to include different or additional concessions and waivers if needed to address additional, applicable development standards.

Bonus Units

The Housing Element establishes a base density of approximately 30 du/ac. Applied to the 13.1 net acres of the Project site, this would result in 393 units. The 35% density bonus entitles the Project to up to 530 units. The Project proposes 437 units, well within the density permitted by the Housing Element and State Density Bonus Law.

Concessions

1. Allow residential uses on the ground floor of buildings. Section 2.5.10c of the North 40 Specific Plan prohibits residential uses on the ground floor of buildings in the Northern District, which covers the Project site. Because the Housing Element designates the Project site as a site that is suitable for very low, low-, or moderate-income households at a residential density of 30 du/ac, inconsistency with this zoning standard is not a basis to deny the Project under Government Code section 65589.5(d)(5)(A). Accordingly, we do not believe that this standard is applicable to the Project. However, to the extent it applies, the Project proponent requests a concession to allow residential uses on the ground floor of buildings. Although portions of the Project incorporate commercial elements, it is not financially feasible to develop commercial spaces in the ground floor of all the buildings on the Project site. Therefore, eliminating this development standard will result in cost savings to help provide the level of affordability proposed.
2. Relief from Intersection Improvement Standards. Section 4.6 of the North 40 Specific Plan calls for the first developer in the Northern District of the Specific Plan Area to improve the Los Gatos Boulevard/Samaritan Drive/Burton Road intersection by converting the existing eastbound lane on Burton Road to a through/left turn lane, adding one dedicated eastbound left turn lane and one eastbound right turn lane on Burton Road at Los Gatos Boulevard (including widening Burton Road for about 200 feet west from Los Gatos Boulevard), and making Burton Road a through road. Although the Project proponent would be the first developer in the Northern District of the Specific Plan Area, the improvements require expanding the right-of-way over property that the Project proponent does not own or control, and the Project proponent proposes to limit Burton Road to emergency vehicle access only. Accordingly, eliminating this development standard will result in cost savings by removing the need to acquire additional land for intersection improvements; moreover, by limiting Burton Road to EV access, there is no longer a need to implement the intersection improvements previously identified.

Waivers

1. Increased Maximum Height. Section 2.5.2 of the North 40 Specific Plan sets a maximum building height of 30 feet across the Project site. The Project requires a waiver to allow the Affordable Multifamily units to achieve a maximum height of 60 feet, the Townhome units to achieve a maximum height of 37 feet, and the Mixed-Income Multifamily units to achieve a maximum height of 94 feet. The Specific Plan's development standards do not accommodate the Project's proposed density of 28.6 du/ac, which is allowed pursuant to

the adopted Housing Element. Increased height is necessary for each proposed building typology to accommodate the proposed unit count and necessary parking facilities across the Project site.

2. *Modified Street Sections.* Section 4.13.3 of the North 40 Specific Plan defines a 40' road section for Section 6d of North A Street with two 12' drive lanes and two 8' parking lanes. The Project proposes wider sidewalks, bicycle lanes, and reduced lane widths; accommodating all of the proposed facilities in the street would require additional right of way that would reduce the amount of developable area for buildings, resulting in a lower unit count. Therefore, the Project proponent requests a waiver from the required street section dimensions.
3. *Deviations from Objective Design Standards.* The Town adopted "Objective Design Standards for Qualifying Multi-Family and Mixed-Use Residential Development" that applies to multi-family and residential mixed-use developments. The Standards provide that these standards are only to be used for review of qualifying projects where Town review, approval, and/or denial is limited to only objective design standards. For projects that will proceed through the standard review process, the objective design standards would not apply. The Project has been designed to comply with as many of the objective design standards as feasible while meeting the unit count called for in the Housing Element; however, to physically fit the Project as designed at the density allowed, the following standards must be waived:
 - A.2. Short-Term Bicycle Parking requirements cannot be accommodated for residential uses while maintaining adequate space for buildings and open space.
 - 3.4.e: dimensions of long-term bicycle spaces are proposed to be accommodated with stacked parking to save space for residential units.
 - A.11.1.b: The Affordable Multifamily building cannot accommodate balconies and cannot meet the private open space requirements while maintaining the unit count; the Mixed-Income Multifamily building can accommodate balconies on only 50% of the units
 - A.12.1: The Townhomes deviate from the continuous frontage requirement
 - B.1.2: Upper story stepbacks reduce the residential unit count
 - B.4.3: The Affordable Multifamily Building cannot reach 16 points through street-facing façade plan variation while maintaining its unit count
 - B.4.5: The Townhomes do not change materials at the inside corners
 - B.4.11: The Mixed-Income Multifamily Building's balconies extend into the airspace beyond the building footprint

Parking Reduction

Based on the bedroom count for the proposed residential units, Section (p)(1) of the State Density Bonus Law requires 592 parking spaces for the Project's 437 units. Section 2.5.8 of the North 40 Specific Plan requires 50 additional spaces for the Project's commercial uses, for a total of 642 spaces. The Project proposes 730 parking spaces, which satisfies the applicable parking requirements.



TOWN OF LOS GATOS

COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION
(408) 354-6872 Fax (408) 354-7593

CIVIC CENTER
110 E. MAIN STREET
LOS GATOS, CA 95030

April 18, 2023

Steve Buster
Grosvenor USA Limited
One California Street, Suite 3000
San Francisco, CA 95032
Via email

RE: 14859 Los Gatos Boulevard
Senate Bill 330 Preliminary Application PRE23-00472

Preliminary Application Under Senate Bill (SB) 330 for Construction of a Mixed-Use Development (437 Residential Units) on Property Zoned North Forty Specific Plan. APN 424-07-009, -053, -081, -094, -095, -115, and -116.
PROPERTY OWNER: Yuki Farms, LLC
APPLICANT: Steve Buster, Grosvenor USA Limited

Thank you for submitting your SB 330 preliminary application for a proposed project at 14859 Los Gatos Boulevard. The preliminary application materials were received on April 17, 2023. The preliminary application has been determined to be compliant with the submittal requirements of California Government Code §65941.1 (a) and is deemed submitted as of April 18, 2023.

Pursuant to California Code §65941.1 (d)(1), a formal application for development must be submitted within 180 calendar days after submitting a preliminary application with all the required information. The formal application must be received no later than **October 15, 2023**. If a formal application is not received within 180 days, this preliminary application is considered expired.

The Town looks forward to receiving your formal application.

Best regards,

A handwritten signature in black ink, appearing to read "JA", followed by a horizontal line.

Jennifer Armer, AICP
Planning Manager
JArmer@losgatosca.gov
(408) 399-5706

cc: Don Capobres, Harmonie Park Development Group LLC

N:\DEV\PLANNING PROJECT FILES\Los Gatos Boulevard\14859\PRE23-00472 (SB 330 Preliminary App)\Los Gatos Boulevard, 14859 - Deemed Submitted - 04-18-23.docx

Attachment 2

Part A

Table 10-3 RHNA Credits and Site Strategies

	VL	L	M	A	Total
Entitled/Permitted/Under Construction - Single-Family and Housing Projects	49	0	2	176	227
Entitled/Permitted/Under Construction - ADU's	0	3	11	9	23
Pipeline Projects	0	1	0	190	191
Projected ADU's	60	60	60	20	200
SB 9 Units	0	0	0	96	96
HEOZ Sites	634	357	340	640	1,971
>> Total Credits and HEOZ sites	743	421	413	1,131	2,708
RHNA	537	310	320	826	1,993
Surplus/(Deficit) over RHNA	206	111	93	305	715
% Surplus/(Deficit)	38.4	35.8	29.1	36.9	35.9

Part B

Adjusted Table 10-3 RHNA Credits and Site Strategies

Total Credits and HEOZ sites (carry down from Part A)	743	421	413	1,131	2,708
Less adjustments:					
1) Single Family and Housing Projects units permitted and counted in RHNA 5th cycle	(49)	0	(1)	(144)	(194)
2) Projected ADU affordability adjustment to reflect market conditions and AFFH Concerns	(50)	0	40	10	0
3) Site B-1 to conform affordability levels to filed SB 330 application	(86)	(54)	(62)	98	(104)
4) Site D-1 to conform affordability levels to filed SB 330 final application	(184)	2	(91)	272	(1)
5) Site I-1 to conform affordability levels to filed SB 330 final application	0	4	(4)	(8)	(8)
>> Total adjustments	(369)	(48)	(118)	228	(307)
Adjusted Total Credits and HEOZ sites	374	373	295	1,359	2,401
RHNA	537	310	320	826	1,993
Surplus/(Deficit) over RHNA	(163)	63	(25)	533	408
% Surplus/(Deficit)	(30.4)	20.3	(7.8)	64.5	20.5

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

2020 W. El Camino Ave
Sacramento, CA 95833-1829
(916) 263-2911 FAX: (916) 263-7453
www.hcd.ca.gov



January 12, 2022

Therese W. McMillan, Executive Director
Association of Bay Area Governments
375 Beale Street, Suite 700
San Francisco, CA 94105

Dear Executive Director Therese W. McMillan:

RE: Review of Adopted 2023-2031 Regional Housing Need Allocation Plan

Thank you for submitting the adopted Association of Bay Area Government's (ABAG) Sixth Cycle Regional Housing Need Allocation (RHNA) Plan. Pursuant to Government Code Section 65584.05(h), the California Department of Housing and Community Development (HCD) is required to review RHNA plans for consistency with statutory requirements.

HCD has completed its review and is pleased to approve ABAG's adopted RHNA Plan, upon finding it consistent with HCD's June 9, 2020 regional housing need determination of 441,176 housing units. Please distribute the RHNA Plan to inform all local governments of their share of new housing need to address their sixth cycle Housing Element by January 31, 2023. In updating their Housing Elements, local governments may take RHNA credit for new units approved, permitted, and/or built beginning from the start date of the RHNA projection period, June 30, 2022.

HCD is committed to assisting ABAG's local governments in preparing and implementing updated Housing Elements to effectively address the region's housing need. Local governments are encouraged to develop local land use strategies to maximize land resources and encourage affordable housing and a variety of housing types, thus furthering the state's economic, fair housing, and environmental objectives.

We appreciate ABAG's efforts in completing the RHNA process. If HCD can provide any additional assistance, or if you, or your staff, have any questions please contact Tom Brinkhuis, Housing Policy Senior Specialist, by email at tom.brinkhuis@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyrone Buckley".

Tyrone Buckley
Assistant Deputy Director



DRAFT Affordability of Accessory Dwelling Units

A report and recommendations for RHNA 6

Prepared by the ABAG Housing Technical Assistance Team with Funding from REAP

9/8/2021

1. Overview

Accessory dwelling units (ADUs) are independent homes on a residential property with their own cooking and sanitation facilities and outside access. They can either be part of or attached to the primary dwelling or can be free standing/detached from the primary dwelling. Given their smaller size, typically between 400-1000 square feet (Source: Implementing the Backyard Revolution), they frequently offer a housing option that is more affordable by design. They also offer infill development opportunities in existing neighborhoods and a potential supplemental income source for homeowners. Similar are Junior ADUs (JADUs), which are even smaller living units enclosed within a single-family structure. JADUs have independent cooking facilities and outside access, however they may share sanitation facilities with the primary home. Both have become an increasingly popular housing type in recent years.

Recent California legislation has facilitated policy changes at the local level that encourage ADU development by streamlining the permitting process and shortening approval timelines. State law requires jurisdictions to allow at least one ADU and JADU per residential lot. These legislative and policy changes have increased ADU development across many California communities.

In 2020, the Center for Community Innovation at the University of California at Berkeley (UC Berkeley) undertook a comprehensive, statewide survey of ADUs, resulting in a document entitled *"Implementing the Backyard Revolution: Perspectives of California's ADU Homeowners"*, released on April 22, 2021. This memo uses and extends that research, providing a foundation that Bay Area jurisdictions may build upon as they consider ADU affordability levels while developing their Housing Element sites inventory analyses. This report's affordability research has been reviewed by the California Department of Housing and Community Development (HCD). While they have not formally accepted it, in initial conversations they did not raise objections to the conclusions. Give HCD's workload, it is unlikely we will receive additional guidance.

Figure 1: Affordability of ADUs

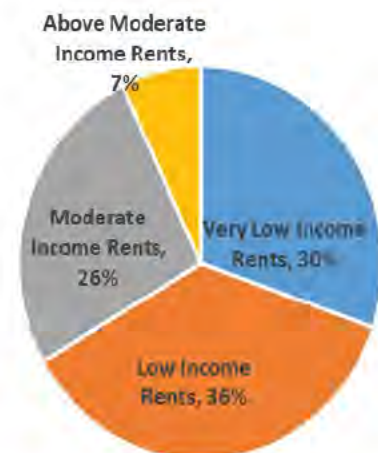




Figure 1 presents a summary of ADU affordability and Table 1 presents a recommendation for assumptions for Housing Elements. See the main body of the report for more information on methodology and assumptions.

We are recommending a conservative interpretation that assumes more moderate and above moderate ADUs than the research found. These assumptions represent a floor for most jurisdictions. If the market conditions in a particular jurisdiction warrant higher assumptions, then additional analysis can be provided to HCD for consideration.

Table 1: Affordability Recommendations for ADUs for Housing Elements

Income	Recommendation
Very Low Income (0-50% AMI)	30%
Low Income (51-80% AMI)	30%
Moderate Income (81-120% AMI)	30%
Above Moderate Income (120+ AMI)	10%

Notes: AMI = Area Median Income. See below for more information on assumptions.

Affirmatively Furthering Fair Housing Concerns

Although ADUs are often affordable, jurisdictions should be cautious about relying on them too heavily because of fair housing concerns. Many ADUs are affordable to lower and moderate income households because they are rented to family and friends of the homeowners. If minorities are underrepresented among homeowners, the families and potentially friends of the homeowners will be primarily white. Therefore, relying too heavily on ADUs could inadvertently exacerbate patterns of segregation and exclusion. Additionally, ADUs often do not serve large families, another important fair housing concern. Conversely, ADUs accomplish an important fair housing goal by adding new homes in parts of the city that are more likely to be areas of opportunity.

Jurisdictions with fair housing concerns may want to use more conservative assumptions based on open market rentals, excluding units made available to family and friends, as summarized below:

Table 1: Affordability Recommendations for ADUs for Jurisdictions with Fair Housing Concerns

Income	Recommendation
Very Low Income	5%
Low Income	30%
Moderate Income	50%
Above Moderate Income	15%

Handwritten red marks: two 'X' marks.



Further Outreach and Data

Although HCD has reviewed this memo and believes the conclusions are generally accurate, it is still important for jurisdictions to **ensure the information reflects local conditions**. As part of ground truthing the conclusions, **jurisdictions should provide opportunity for the stakeholders to comment on any assumptions, including affordability assumptions based on this memo**.

2. UC Berkeley Survey

In the Fall and Winter of 2020, the University of California at Berkeley's Center for Community Innovation, in collaboration with Baird + Driskell Community Planning, conducted a statewide survey of homeowners who had constructed ADUs in 2018 or 2019¹. Over 15,000 postcards were mailed to households directing them to an online survey. The overall response rate was approximately 5%, but Bay Area response rates were higher, up to 15% in some counties. In total, 387 ADU owners from the Bay Area completed they survey, with 245 of those units available on the long term rental market.

Key takeaways include:

- Just under 20% of Bay Area ADUs are made available at no cost to the tenant.
- An additional 16% are rented to friends or family, presumably at a discounted rent, though the survey did not ask.
- Market-rate ADUs tend to rent at prices affordable to low and moderate income households in most markets.

3. Methodology

ABAG further analyzed the raw data from the UC Berkeley survey, because the authors of *Implementing the Backyard Revolution* did not present their results according to income categories (e.g. very low income, low income, etc.).

This ABAG summary uses the affordability calculator published by the California Department of Housing and Community Development ([link](#)) to define maximum income levels. HCD defines an affordable unit as one where a household pays 30 percent or less of their annual pre-tax income on housing.

The definition of affordable rents shifts with income category (Low, Very Low, etc.), household size/unit size, and geography. The income categories are as follows: Very Low = under 50% of Area Median Income (AMI), Low Income = 50-60% AMI, Moderate = 60-110% AMI.²

¹ A summary is available here - <http://www.aducalifornia.org/implementing-the-backyard-revolution/>

² Please note, these assumptions are more conservative than is typically used, but match HCD's recommendations.



Because some counties have different median incomes, the results are adjusted accordingly. 2020 AMIs were used because the survey was completed in 2020.

Additionally, ABAG made the following assumptions regarding persons per unit, which matched HCD's recommendations:

- Studios 1 person
- 1 Bedrooms 2 people
- 2 Bedrooms 3 people
- 3 Bedrooms 4 people

See the following document for information on HCD's assumptions.

<https://www.hcd.ca.gov/community-development/housing-element/docs/affordability-calculator-2020.xlsx>

4. Summary of ADU Use

Table 2, below, shows the usage of ADUs. Because this report concerns affordability of available dwelling units, those not available for rent (short term rentals, home office and other) are excluded from further analysis.

Table 3. Usage of Accessory Dwelling Units

Region	Friend/ Family Rental	Family - No Rent	Long Term Rental (Open Market)	Short Term Rental	Home Office	Other
East Bay	12%	19%	27%	2%	14%	27%
Peninsula	16%	18%	28%	4%	14%	20%
North Bay	13%	16%	33%	2%	8%	28%
Bay Total (9 Counties)	14%	18%	29%	3%	13%	24%
Statewide Total	16%	19%	30%	2%	12%	21%

Other includes homeowners who live in the ADU, needs repairs, empty, used as extra bedroom, etc. The response rate in San Francisco was too low for meaningful comparison so it is not presented separately, but is included in the Bay Area total. East Bay includes Alameda and Contra Costa Counties, Peninsula includes San Mateo and Santa Clara Counties, North Bay includes Marin, Sonoma and Napa Counties.



5. Affordability of ADUs

Rental Data

The analysis found that many ADUs are made available to family members, often at no rent. The survey did not query the rent of family/friend rentals, only asking if rent was charged.

Of those ADUs available on the open market (not rented to family or friends), most charged rents between \$1,200 and \$2,200, as shown in in Figure 2.



Assigning ADUs to Income Categories

This report's affordability analysis has two parts:

1. Market Rate ADUs: Those not rented to friends or family; and
2. Discount Rate ADUs: Those rented to family or friends for discounted or no rent

Market Rate ADUs

Market rate ADUs were usually affordable to low or moderate income households, based on the methodology identified above. Depending on the part of the region, the ABAG analysis found:

- Very Low Income: 0-7% of market rate units were affordable to very low income
- Low Income: 15-44% of market rate units were affordable to low income
- Moderate income: 40-70% of market rate units were affordable to moderate income households.
- Above moderate: 9-15% of market rate units were affordable to above moderate income households.



The data is summarized in the chart below.

Table 4. Affordability of Market Rate Units

	Very Low	Low	Moderate	Above Moderate
East Bay	0%	15%	70%	15%
Peninsula	6%	31%	48%	15%
North Bay	7%	44%	40%	9%

This chart only shows ADUs rented on the open market. The response rate in San Francisco was too low for meaningful comparison so it is excluded from this analysis.

Discount Rate ADUs

Based on previous HCD precedent, this analysis uses actual rents to determine affordability. The occupant's relationship to the owner is secondary, the relevant factor is the rent charged. (Please note the potential fair housing concerns that can arise from this approach). Specifically, this analysis assigns units made available to family or friends available at no rent as very low income. Additionally, this analysis assigns units *rented* to family or friends as low income³.

Combined Market and Affordable ADUs

Table 5, below, combines the information for discounted and market rate ADUs.

Table 5. Usage of No Rent/Discount Rent ADUs and Affordability - Combined

Region	Friend/ Family Rental	Family - No Rent	Very Low Income Rents	Low Income Rents	Moderate Income Rents	Above Mod. Income Rents
East Bay	20%	33%	0%	7%	33%	7%
Peninsula	24%	28%	3%	15%	23%	7%
North Bay	20%	25%	4%	24%	22%	5%
Bay Total (9 Counties)	22%	28%	2%	14%	26%	7%
State-Wide Total	24%	28%	1%	9%	23%	14%

The response rate in San Francisco was too low for meaningful comparison so it is not presented separately, but is included in the Bay Area total.

³ The survey did not ask the rent of units that were rented to family members.



Assigning the family/friends ADUs to income categories produces the following results:

Table 6. Affordability Including Family/Friends Rentals

Region	Very Low Income Rents	Low Income Rents	Moderate Income Rents	Above Mod. Income Rents
East Bay	33%	27%	33%	7%
Peninsula	31%	39%	23%	7%
North Bay	29%	44%	22%	5%
Bay Total (9 Counties)	30%	36%	26%	7%
Statewide Total	29%	33%	23%	14%

This chart combines ADUs made available for free with Very Low Income and ADUs available for a discount with the Low Income category. The response rate in San Francisco was too low for meaningful comparison so it is not presented as its own line, but is included in the SF Bay Area Total.

Figure 2 shows affordability levels for the region. It is a graphical representation of the Bay Area as a whole.

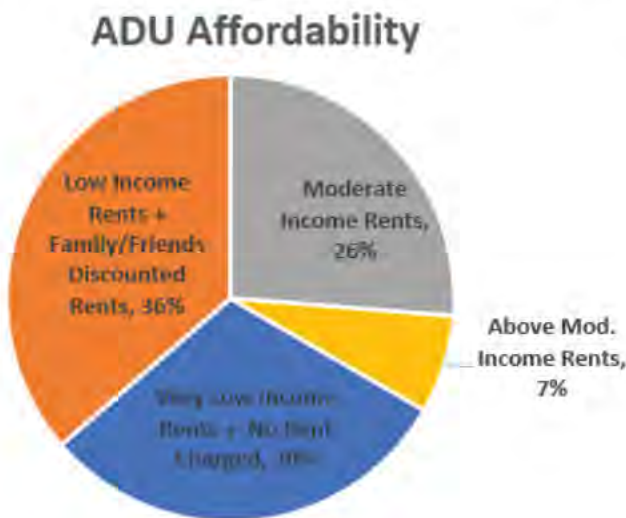


Figure 2: Results shown for 9-county Bay Area. "Very low" rents include units available to family or friends at no cost. "Low" rents include discounted family rentals.



6. Additional Research and Considerations

In general, ADUs are affordable for several reasons:

- Many units are available for no or low cost rent to family members or friends. Additionally, a smaller number of owners intentionally rent their ADUs below market because they believe affordable housing is important. Source: Implementing the Backyard Revolution
- ADUs tend to be fewer square feet than units in apartment buildings after controlling for bedroom size, which results in lower prices. Source: Wegmann & Chapple (2012)
- ADU owners tend to prefer their choice of tenant versus maximizing rent. Additionally, they will often not significantly raise rents once they have a tenant they like. Source: Baird + Driskell homeowner focus groups.
- ADU owners often do not know the value of their unit so they may underprice it unintentionally. Source: Baird + Driskell homeowner focus groups.

A number of other studies have found that many ADUs are used as housing for friends or family for free or very low cost, consistent with the UC Berkeley Report. A selection of these are outlined below:

- A 2012 UC Berkeley publication entitled “Scaling up Secondary Unit Production in the East Bay” indicates that approximately half of all secondary dwelling units are available for no rent.⁴
- A 2018 report entitled “Jumpstarting the market for ADUs” surveyed ADUs in Portland, Seattle, and Vancouver and found that approximately 17% of ADUs were occupied by a friend or family member for free.⁵
- A 2014 analysis entitled “Accessory dwelling units in Portland, Oregon: evaluation and interpretation of a survey of ADU owners” found that “18% of Portland ADUs are occupied for free or extremely low cost.”⁶

7. Notes

This report was funded by the Regional Early Action Grant, which the state legislature provided to ABAG and other council of governments. Analysis was conducted by Baird + Driskell Community Planning. Please contact Josh Abrams, abrams@bdplanning.com for more information.

⁴https://communityinnovation.berkeley.edu/sites/default/files/scaling_up_secondary_unit_production_in_the_east_bay.pdf?width=1200&height=800&iframe=true

⁵ http://ternercenter.berkeley.edu/uploads/ADU_report_4.18.pdf

⁶ <https://accessorydwellings.files.wordpress.com/2014/06/adusurveyinterpret.pdf>

From: Judy L <[REDACTED]>
Sent: Wednesday, September 27, 2023 11:12 PM
To: Housing Element <HEUpdate@losgatosca.gov>
Subject: Public Comment on Revised Draft 2023-2031 Housing Element

To the Housing Element Advisory Board,

Thank you for posting the Revised Draft Housing Element.

I have a few concerns and comments on the draft.

1) Building height in CH zone is limited to 35' per [Los Gatos Planning website](#), which applies to the 401-409 Alberto Way property. The newest plan for this property is to build 4 floors, so that the building is 50'. Please consider building only 2 or 3 floors, so that the buildings meet the 35' limit. This will also keep the small town feel of Los Gatos, because the buildings will match other home properties on Alberto Way which are only 2 floors.

2) Have you considered working with the owner of the property at Los Gatos Blvd and Los Gatos-Almaden Rd, near 15600 Los Gatos Blvd? The property no longer has an active business. Using this land to meet HCD requirements would be ideal. Future homeowners would be walking distance to businesses and thus more easily support the local economy. By using this land, you can decrease the number of units built on Los Gatos Lodge property and Alberto Way property. Neighbors near Los Gatos Lodge and Alberto Way properties will be more agreeable to your plans.

Thank you for reading, and I look forward to hearing your response.

-Judy Lee
[REDACTED]

From: Steve [REDACTED]
Sent: Wednesday, September 27, 2023 3:13 PM
To: Housing Element <HEUpdate@losgatosca.gov>
Subject: Comments regarding the Drat Revised Housing Element

Housing Element Advisory Board Members,

I believe the "constraints" section of the Appendix D Site Inventory Analysis, should be used to alert potential developers to major issues that need to be addressed with their development proposals instead of advising them of the obvious need to demolish existing buildings. These major issues would include traffic mitigations measures requiring street dedications and improvements and mitigation measures for noise and air pollution on sites that are adjacent to Highway 17. Examples of affected sites include Oka Road, the North 40 and on the Los Gatos Lodge and Alberto Way sites.

In the case of the Los Gatos Lodge and Alberto Way sites, there is an opportunity to provide a secondary vehicular connection from the high school parking lot out to the intersection with Alberto Way. Currently, the high school parking lot is at the end of a cut de sac. Consequently, students choose to park on surrounding residential streets and walk to their vehicles, rather than queue up for the long procession out of the parking lot at the end of the school day. Also, Los Gatos Boulevard regularly backs up in the morning and afternoon with school traffic because there are limited options into and out of the high school. The Alberto Way connection would provide an alternative route directly to and from Los Gatos/Saratoga Road. This alternative would help the school traffic and be critical if the parking lot and/or surrounding neighborhood needed to be evacuated during an emergency. Similarly Oka Road is a cul de sac that currently connects to Lark Avenue at an uncontrolled intersection. With new development it may be necessary to provide a signalized intersection to safely accommodate the exiting traffic.

Similarly the major concern of residents on Alberto Way will be traffic impacts from any new development. There may be an opportunity to provide multiple exit lanes out of Alberto Way including a dedicated freeway lane to relieve queuing backup onto Alberto Way. This improvement would likely require dedication of right of way and improvements directly affecting the Alberto Way site.

Potential developers should be given the courtesy of an early warning to study and help the Town to identify and fund the best solutions to minimize traffic impacts from new developments and to address the noise and air pollution issues for sites adjacent to Highway 17.

Thank you,

Steve Piasecki

From: [REDACTED]
Sent: Saturday, August 26, 2023 5:26 PM
To: Housing Element <HEUpdate@losgatosca.gov>; Clerk <Clerk@losgatosca.gov>; Town Manager <Manager@losgatosca.gov>
Subject: Fwd: HEAB meeting followup 8-24-23

[EXTERNAL SENDER]

Hi Wendy, I am not sure exactly how to get a follow-up email to the HEAB following the last meeting on the 24th. Hopefully this follows protocol

This is a follow-up to VC Janoff when she asked what I perceived happened if the Town did not get the HE certified by 1/31/23.

Ms. Whelen is correct that it is the HE Zoning that must be completed by then. **Just a point of clarification.... The Town needs to complete all rezoning required by a compliant (eg certified by HCD) Housing Element by January 31, 2024. It isn't a deadline for getting the HE certified- just a deadline for completing the rezoning of the parcels identified in the site inventory list. A question that needs to be explored is how does the Town know that the rezoning is sufficient and complete until the HE is certified including the site inventory? It feels like putting the cart before the horse.**

Until the Town gets the HE certified by HCD AND completes the rezoning, the Town is still exposed to the builders remedy. Both need to be done before the Town is no longer exposed to the builders remedy.

What I was referring to at the 8/24 meeting are spelled out in the attachment. I am referring the letter from HCD to the city of Del Mar who was also headed for their fourth attempt at certification. This was the list of the *potential penalties for not getting certified that I was referencing*. There is no "date certain" that I can find. My concern is that Los Gatos may be headed in the direction of Del Mar if we don't get it right this time.

We are actually hoping that the Town has a certifiable HE by 1/31/24. We all have a win of sorts depending on what the HCD judges the status of the SB 330's to be. Based on what we know, we're still of the opinion that those favor the developer regardless of what happens on the 31st and we'll be stuck with 4 builders remedies.

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

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

August 25, 2022

Ashley Jones, City Manager
City of Del Mar
1050 Camino del Mar
Del Mar, CA 92014

Dear City Manager Ashley Jones:

**RE: City of Del Mar Failure to Adopt a Compliant 6th Cycle Housing Element –
Letter of Inquiry**

The purpose of this letter is to inquire about the status of the City of Del Mar's (City) 6th cycle planning period housing element pursuant to Government Code section 65588, subdivision (e). As you are aware, the 6th cycle update was due April 15, 2021, and the City is out of compliance with State Housing Element Law (Article 10.6 (commencing with section 65580) of Chapter 3 of the Government Code). The Department of Housing and Community Development (HCD) is requesting the City provide a specific timeline for (1) submitting an updated draft housing element and (2) obtaining compliance with State Housing Element Law no later than September 25, 2022.

6th Cycle Housing Element Submission and Review History

The 6th cycle planning period for the City is April 15, 2021, through April 15, 2029. The City failed to submit a compliant adopted housing element by its 6th cycle due date of April 15, 2021, pursuant to Government Code section 65588. HCD records are as follows:

- On October 20, 2020, the City submitted a draft housing element to HCD for review.
- On December 17, 2020, HCD issued a findings letter to the City noting multiple revisions necessary for the housing element to be compliant with Housing Element Law.
- On March 4, 2021, the City submitted informal draft revisions for technical assistance to HCD.
- On April 12, 2021, the City submitted an element adopted March 25, 2021, to HCD for review.
- On July 9, 2021, HCD issued a second findings letter to the City noting revisions were still necessary for the housing element to be compliant with State Housing Element Law.

- On December 21, 2021, the City submitted an element adopted December 13, 2021, to HCD for review.
- On March 21, 2022, HCD issued a third findings letter to the City noting revisions were still necessary for the housing element to be compliant with State Housing Element Law.

AB 1398, Statutes of 2021

Please note, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), a jurisdiction that failed to adopt a compliant housing element within one year from the statutory deadline cannot be found in compliance until any rezones necessary to accommodate a shortfall of sites pursuant to Government Code section 65583, subdivision (c)(1)(A), and Government Code section 65583.2, subdivision (c) are completed.

Consequences of Noncompliance

There are various consequences that may apply if the City does not have a housing element in compliance with State Housing Element Law. First, noncompliance will result in ineligibility or delay in receiving state funds that require a compliant housing element as a prerequisite, including, but not limited to the following:

- Permanent Local Housing Allocation Program
- Local Housing Trust Fund Program
- Infill Infrastructure Grant Program
- SB 1 Caltrans Sustainable Communities Grants
- Affordable Housing and Sustainable Communities Program

Second, jurisdictions that do not meet their housing element requirements may face additional financial and legal ramifications. HCD may notify the California Office of the Attorney General, which may bring suit for violations of State Housing Element Law. Further, statute provides for court-imposed penalties for persistent noncompliance, including financial penalties. Government Code section 65585, subdivision (l)(1), establishes a minimum fine of \$10,000 per month, up to \$100,000 per month. If a jurisdiction continues to remain noncompliant, a court can multiply the penalties up to a factor of six. Other potential ramifications could include the loss of local land use authority to a court-appointed agent.

In addition to these legal remedies available in the courts, under the Housing Accountability Act (Gov. Code § 65589.5, subd. (d)), jurisdictions without a substantially compliant housing element cannot rely on inconsistency with zoning and general plan

standards as a basis for denial of a housing project for very low-, low-, or moderate-income households.¹

Conclusion

As a reminder, housing elements are essential to developing a blueprint for growth and are a vital tool to address California's prolonged housing crisis. Accordingly, state law has established clear disincentives for local jurisdictions that fail to comply with State Housing Element Law. To meet the 6th cycle update requirements for a substantially compliant housing element, the City must consider HCD's written findings from previous drafts, adopt the housing element, and submit it to HCD for review and certification before it can be considered compliant. (Gov. Code § 65585.)

HCD will consider any written response before taking further action authorized by Government Code section 65585, subdivision (j), including referral to the California Office of the Attorney General. If you have any questions or would like to discuss the content of this letter, please contact Kevin Hefner of our staff at Kevin.Hefner@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melinda Coy', with a long, sweeping horizontal stroke extending to the right.

Melinda Coy
Senior Housing Accountability Manager

¹ For purposes of the Housing Accountability Act, housing for very low-, low-, or moderate-income households is defined as having at least 20 percent of units set aside for low-income residents or 100 percent of units set aside for middle-income residents. (Gov. Code § 65589.5, subd. (h)(3).)