

Public Comments

I
APPENDIX

Appendix I. Public Comments

I.1 Public Comments

Public Comment Review Period

Pursuant to Assembly Bill (AB) 215, the Initial Public Review Draft Housing Element must undergo a draft review process subject to a 30-day public comment period, and if comments are received, an additional 10-day consideration and revision period prior to Housing and Community Development (HCD) submittal. For any subsequent revisions, the local government must post the draft revisions on its website and email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting the draft revision to HCD.

Government Code 65585(b)(1) indicates that the purpose of the public review process includes the following:

- Disclosing agency analysis;
- Discovering public concerns; and
- Incorporating public comments.

The following document outlines all public comments received during the public comment periods as well as responses and revisions to the Draft Housing Element prior to each submittal and resubmittal to HCD.

Public Comments on the October 2022 Initial Draft Housing Element

As required by HCD, the Initial Public Review Draft Housing Element was posted on the Town website and the Housing Element Update website (EngageLosGatoshousing.com) for a 30-day public review period from August 29, 2022, to September 27, 2022, during which the Town received 11 written public comments. A Housing Element Advisory Board meeting was held via Zoom on September 15, 2022, to accept verbal public comment on the Initial Public Review Draft Housing Element. Three people provided verbal comments at that meeting.

Comment Response for the Initial Public Review Draft Housing Element

This response to public comments for the Initial Public Review Draft Housing Element has been prepared to address comments received during the public comment period.

Written Comments

The following written comments were received during the 30-day public comment period:

1. Mary Pope-Handy, email dated August 29, 2022;
2. Phil Koen, email dated September 4, 2022;
3. Phil Koen, email dated September 4, 2022;
4. Phil Koen, email dated September 4, 2022;
5. William Walker, Engage Los Gatos website comment dated September 4, 2022;
6. Adam Mayer, email dated September 13, 2022;
7. Edward Morimoto, email dated September 15, 2022;
8. Phillip Keon, emailed dated September 26, 2022;
9. Bill Ehlers, email dated September 26, 2022;
10. Don Capobres, email dated September 27, 2022; and
11. Keith Diggs, email dated September 27, 2022.

Verbal Comments

Verbal comments were received at a Housing Element Advisory Board meeting on September 15, 2022, from the following participants:

1. Mitch Vinciguerra;
2. Susan Burnett; and
3. Brian Handy.

Written Draft Housing Element Comments

Written comments on the Draft Housing Element and responses to those comments are presented on the following pages.

Appendix I. Public Comments

Comment Letter # 1

From: Mary Pope-Handy <[REDACTED]>
Sent: Monday, August 29, 2022 4:51 PM
To: Housing Element <HEUpdate@losgatosca.gov>
Subject: Comments on the LOS GATOS HOUSING ELEMENT

Hello Community Development Department,

Thank you for the time and hard work put into the Los Gatos Housing Element. We do need more housing, particularly affordable housing, in our town.

I'd like to suggest that in addition to adding residential units, we factor in the health impacts of various potential locations for housing. A number of the locations specified in the draft are up against busy streets or even freeways. These locations have health risks associated with them and it would be better if those areas were not homes.

The EPA has a [publication](#) on these health risks (please click on link to get the EPA report). Additional links: [Living near major roads linked to risk of dementia, Parkinson's, Alzheimer's and MS](#) University of British Columbia- ScienceDaily. ScienceDaily, 23 January 2020.

[Living near busy road stunts children's lung growth, study says](#) - article in The Guardian (British publication), with links to the academic studies [Kids living near major roads at higher risk of developmental delays](#) - (American study) ScienceDaily.com April 9, 2019 [Living Near Highways and Air Pollution](#) - Lung.org by the American Lung Association. We do have other options for housing. For example, rather than putting townhomes at Blossom Hill and Harwood, but them at Harwood and Almond Blossom, where there's far less traffic. Right now there's a small, empty school sitting there that would be better as a few residences. The town could also incentivize putting two homes on one lot, or turning a house into a duplex, by providing tax breaks or other assistance. It would also make sense to add housing over single story strip malls, particularly as they would be more set back from busy roads than a gas station would be. In real estate, the most important factor is always location. We should not aspire to build homes in locations that are likely to have long term, negative consequences to the health of their occupants. If homes must be built in those locations, mitigation efforts should include robust air purifiers and sound buffers such as triple pane windows.

Sincerely,

Mary Pope-Handy
Town resident and Realtor

[REDACTED]
Mary Pope-Handy
REALTOR®, ABR, AHWD, CIPS, CRS, SRES
408.204.7673 | [Move2SiliconValley.com](#)
[LiveInLosGatos.com](#) | [PopeHandy.com](#)
DRE 01163805
[SanJoseRealEstateLosGatosHomes.com](#) | [ValleyofHeartsDelight.com](#)



Response to Comment #1

- **Health risks of living near highways (high traffic sites)**
 - Numerous factors were considered through the site selection process, including feedback received during the development of the 2040 General Plan, public discussion at HEAB meetings, and on June 7, 2022, the Town Council accepted the draft Site Inventory as recommended by the HEAB. The Site Inventory has since been modified based on the receipt of a new Property Owner Interest Form and a request to be removed by a property owner.
 - The International Building Code includes requirements that mitigate some effects of buildings in close proximity to highways, including maximum noise standards.
- **Implementing Senate Bill 9 (SB 9) and Accessory Dwelling Units (ADUs) as additional housing with incentives**
 - ADU's and SB 9 projects are included in the Town's Site Inventory to assist at achieving the Town's RHNA plus HCD's recommended 15 percent buffer.
 - The following approaches were included within the Draft Housing Element to incentivize multiple homes on single-family residential lots:
 - Policy HE-1.7: Infill Opportunities in Single-Family Neighborhoods;
 - Policy HE-2.6: Promote Accessory Dwelling Unit Construction;
 - Policy HE-6.5: Infill Opportunities in Single-Family Neighborhoods;
 - Implementation Program Q: Accessory Dwelling Units to waive building fees when an ADU is deed restricted for very low- and low-income households; and
 - Implementation Program AO: Educate Single-Family Property Owners Regarding In-Fill Housing Options.
- **Consider school-owned property to be converted to housing**
 - The Housing Element Advisory Board (HEAB) discussed and considered including a program to encourage public school-site conversions and chose not to include any school owned property as the Town does not have jurisdiction on public school property.
 - The subject site is a private school located on private property and has an active Conditional Use Permit for a private school use and is zoned for single-family residential uses.
 - Town staff has recently received an inquiry from a potential new tenant for the private school site, therefore the Town does not have justification to assume that the site would redevelop for housing within the next eight years.

Appendix I. Public Comments

Comment Letter #2

9/6/22, 11:47 AM

above e-mail address.



Think Green, please consider the environment before printing this e-mail.

From: Phil Koen <[REDACTED]>
Sent: Sunday, September 4, 2022 9:52 AM
To: Housing Element <HEUpdate@losgatosca.gov>
Subject: Fwd: Agenda item #2 - HEAB Meeting August 18, 2022

EXTERNAL SENDER

I am submitting these comments because the public draft HE has not been fully corrected. These comments were originally submitted on August 17, 2022 to the HEAB.

Thank you.

Phil Koen



Sent from my iPhone

Begin forwarded message:

From: Phil Koen <[REDACTED]>
Date: August 17, 2022 at 4:47:00 PM GMT+1
To: [REDACTED]
Cc: [REDACTED]
Subject: Agenda item #2 - HEAB Meeting August 18, 2022

Dear Members of the HEAB,

Please accept the following comments on the Draft 2023 – 2031 Housing Element

1. Page B-10: The comment at the bottom of the page referencing Figure B-8 and discussing jobs per employed ratio is incorrect. Figure B-8 shows Jobs-Household ratio and not Jobs-Employed Resident ratio. Additionally, the comment that the Town of Los Gatos is a “net importer of workers” is misleading. The Town is a “net importer of workers” only in the low wage category. At the high wage category, the Town is a “net exporter of workers”. There is a bar bell distribution by wage category and care needs to be exercised in explaining this distribution. Lastly, the comment that the jobs per employed resident ratio has increased from 1.32 in 2002 to 1.59 in 2018 is factually incorrect. These are the numbers of Jobs-Household ratio from schedule POPEMP-13 not the numbers for jobs per employed resident ratio.
2. Page D – 2: Table D-2 has not been completed, yet the data is available in the site inventory analysis. There are a total of 179 pending units which can be applied to the RHNA. In addition, the Town can credit the 200 planned ADU toward the RHNA. This brings the remaining RHNA units to 1,913 which includes a 15% buffer.
3. Pages D-22 – D-30: These pages discuss sites that were previously used in the 5th cycle. According to the HCD Site Inventory Guidebook, for sites that were used in a prior housing element planning period, a program requiring rezoning within three years of the beginning of the planning period to allow residential use by right at specified densities for housing development in which at least 20 percent of the units are affordable to lower income households must be included in the Housing Element. Does this requirement apply to these sites?
4. Pages D-40 – D-44: Attached please find an example of the site inventory prepared by the City of Sunnyvale. Sunnyvale has included in their inventory analysis a realistic buildout density based on development

9/6/22, 11:47 AM

standards, market trends and recent development to calculate capacity. This complies with HCD's requirements to demonstrate that the projected development is likely to occur. Additionally, the Sunnyvale analysis also includes a redevelopment likelihood which further informs the reader of the suitability of the identified sites. The Town's analysis does not contain any such analysis and therefore most likely overstates the development capacity. Would it be prudent for the Town to revisit the site selection inventory and include realistic buildout density and redevelopment likelihood in the analysis?

5. Pages D-40 – D-44: It is not clear from these tables if the Town is relying on nonvacant sites to accommodate 50 percent or more of the RHNA for lower income households. If the Town is relying on nonvacant sites to accommodate 50 percent or more of its RHNA for lower income households, the nonvacant site's existing use is presumed to impede additional residential development, unless the housing element describes findings based on substantial evidence that the use will likely be discontinued during the planning period. Has the HEAB been able to determine if the Town is relying on 50 percent or more of the identified nonvacant sites to accommodate RHNA for lower income households?

6. Page E-3: Table E-1 states for program 1.2 that the Town amended the Town Code to address this program. While the Town Code was amended, it does not appear that it was amended as specified in the program 1.2 and further detailed by the Enhanced Second Unit Program on page 19 of the 2015-2023 Housing Element. The enhanced second unit program for Hillside Residentially zoned lots 5 acres and greater required "as a prerequisite for obtaining approvals in the Second Unit Program expanded area, participating homeowners would be required to record a deed restriction on the title record of properties specifying that the second unit shall be offered at a reduced rent that is affordable to a lower income renter (i.e. less than 80 percent of AMI) if the unit is occupied by someone other than a member of the household". At that time, the Town did not allow second units on any non-conforming residential lots or in hillside areas. In exchange for allowing such second units, the participating homeowner would be required to record a deed restriction. The amended Town Code does not appear to include this prerequisite. The Town Attorney should review the amended Town Code to verify the accuracy of program 1.2 results.

Lastly, we wish to inform the HEAB as of yesterday afternoon the Los Gatos Community Alliance delivered to the Town Clerk 3,417 signatures on 159 petitions regarding a Referendum Against a Resolution Passed by the Town Council. The required number of signatures based upon 10% of 21,978 registered voters is 2,198. 3,147 signatures exceed the minimum number of signatures required in order to qualify for filing said petition.

Given this development, the HEAB may wish to reconsider the site inventory analysis and include a rezoning program for the specific sites identified in the site inventory that will allow for development potential consistent with the Town's RHNA requirements. We have attached an example of a rezoning program that was included in the City of Saratoga's draft Housing Element for your consideration.

We want to thank the HEAB for their hard work and dedication in assisting the Town in preparing the 6th cycle Housing Element.

Thank you for considering our comments.

Los Gatos Community Alliance

Appendix I. Public Comments

Comment Letter #2 Attachment #1

CHAPTER 5 | SITES INVENTORY AND FUNDING RESOURCES

Table 5-8: City of Sunnyvale, 2023-2031 Housing Element, Lawrence Station Area Plan

Site Number	Assessor Parcel Number	Address	Size (Gross Acres)	General Plan Land Use Designation	Zoning	Maximum Achievable Density ¹	Realistic Density ²	Tier	Redevelopment Likelihood	Total Units	Lower- Income Units	Moderate- Income Units	Above Moderate- Income Units	Subject to AB 1397 by-right policy?	Description of Existing Use/Status
LSAP-1	20550024	1171 Sonora Ct	1.3	Transit Mixed Use	MXD-I/S	80	76	1	100%	99	59	15	25		Site includes existing office building. City provided funding for site purchase to support proposed future MidPen Housing affordable housing development.
LSAP-2	21627068	1382-1388 Kifer Rd	3.56	Transit Mixed Use	MXD-II	68	65	3	25%	57	34	9	14		Research and development building, built in 1999. City has received interest from brokers, residential redevelopment likely in 2 nd half of planning period.
LSAP-3	21627069	1400 Kifer Rd	6.34	Transit Mixed Use	MXD-II	68	65	3	25%	102	61	15	26		Existing data center. City has received interest from brokers, residential redevelopment likely in 2 nd half of planning period.
LSAP-4	21627047	111 Uranium Dr	5.79	Transit Mixed Use	MXD-II	68	65	3	25%	94	56	14	23		Existing data center. Built in 1970. Most recently sold in 2019. City has received interest from brokers, residential redevelopment likely in 2 nd half of planning period.
LSAP-5	21301002	1165 Reed Ave	0.96	Transit Mixed Use	MXD-IV	45	43	1	100%	41	25	6	10	Yes	Existing grocery store, restaurant, auto repair and print shop. Constructed from 1961-1972. All three parcels under same ownership. Property owner has expressed interest in mixed-use redevelopment.
	21301003	1155 Reed Ave	1.54	Transit Mixed Use	MXD-IV	45	43	1	100%	66	40	10	16	Yes	
	21301004	1164 Willow Ave	0.34	Transit Mixed Use	MXD-IV	45	43	1	100%	15	9	2	4	Yes	
	Site Total		2.84							122	74	18	30		
LSAP-6	20550019	1175 Sonora Ct	1.31	Transit Mixed Use	MXD-I/S	80	76	2	25%	25	15	4	6		Existing office space for lease. Built in 1976. Potential for mixed-use development likely in 2 nd half of planning period.
LSAP-7	20550028	1135 Sonora Ct	1.47	Transit Mixed Use	MXD-I/S	80	76	1	100%	112	67	17	28		Existing office space. Built in 1977. Property owner expressed interest in mixed-use redevelopment.
LSAP-8	21627037	1360 Kifer Rd	14.58	Transit Mixed Use	MXD-I	80	76	3	25%	277	166	42	69		Existing industrial space and data center. Constructed in 1979. Fully leased. Property owner interested in residential conversion. This is a large site. The inventory assumes 60 percent lower-income, 15 percent moderate-income, and 25 percent above moderate-income development.
TOTAL			37.2							888	532	134	221		

¹Maximum achievable density includes density bonus points received through the LSAP incentive program but excludes density bonus points available through the City's Green Building Program and the State density bonus.

²Realistic densities are calculated at 95 percent of maximum achievable density.

Source: Ascent, 2021.

Comment Letter #2 Attachment #2

City of Saratoga General Plan Update



- Exhibited developer and/or property owner interest to develop residential uses at greater densities and intensities than currently permitted.
- Presence of existing infrastructure adjacent or in proximity to sites due to the location of sites within existing urbanized portions of the city. While some sites may require lateral connections or expansions of existing utilities, these improvements are considered standard improvements and routine of redevelopment projects in urbanized areas. Such improvements will be done at the expense of developers.

Individual parcels comprising housing sites may be "vacant" by definition (i.e., undeveloped with little to no physical improvements), but are grouped as "non-vacant" resources due to their anticipated consolidated development along with other parcels that are developed and "non-vacant."

A complete list of the City of Saratoga's non-vacant land resources is included in Table 6-8 below.

Rezoning Program

Pursuant to Government Code Section 65583.2(c) **several of the City of Saratoga's non-vacant housing sites, as described above, will be included within a proposed rezoning program to allow for development potential consistent with the city's RHNA requirements.** This rezoning program will consist of the creation, and adoption of three new mixed-use zoning districts: "Mixed Use" (MU), "Mixed Use High Density" (MU/HD), and "Mixed Use Very High Density" (MU/VHD). These new zoning districts will allow for mixed-use residential development at greater densities throughout the city than currently permitted, require at least 50 percent of building floor area, and allow for up to 100 percent of building floor area, to be dedicated to residential uses. These new mixed use zoning districts are summarized below in Table 6-8. Sites which are proposed to be rezoned to one of the new zoning designations as part of this Update are indicated in the Non-Vacant Inventory included within Table 6-9.

TABLE 6-8: SARATOGA REGIONAL HOUSING NEEDS ALLOCATION (2023-2031)

PROPOSED REZONING DISTRICTS	ALLOWABLE DENSITY	MAXIMUM BUILDING HEIGHT
MIXED-USE (MU)	15-25 du/acre	2 Stories
MIXED-USE HIGH DENSITY (MU/HD)	30-40 du/acre	3 Stories
MIXED-USE VERY HIGH DENSITY (MU/VHD)	80-150 du/acre	10 Stories

Source: City of Saratoga Community Development Department.



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HOUSING ELEMENT | 6-15

Appendix I. Public Comments

City of Saratoga General Plan Update



TABLE 6-9: NON-VACANT/UNDERUTILIZED LAND INVENTORY

APN	ADDRESS	ACRES	EXISTING USE	EXISTING	EXISTING	PROPOSED	PROPOSED	REALISTIC CAPACITY											
				GENERAL				(DU/ACRE)	VLI	LI	MI	AMI	TOTAL						
EXISTING SENIOR HOUSING SITE																			
FELLOWSHIP PLAZA HOUSING SITE																			
39712016	14500 Fruitvale Ave. ⁴	10.47	Senior Housing	CPS	R-1-40,000	-	20	80	0	0	0	0	80						
MULTI-FAMILY HOUSING SITES																			
MIXED USE MULTI-FAMILY HOUSING SITES																			
GATEWAY NORTH HOUSING SITE																			
36622022	12029 Saratoga Sunnyvale Rd.	2.54	Commercial Center	CR	CN	MU	15-25	0	0	19	19	22							
36622023	12015 Saratoga Sunnyvale Rd.	0.38	Gas Station	CR	CN	MU	15-25	0	0	3	3	22							
SUBTOTAL		2.92							0	0	22	22	44						
HIGH DENSITY MULTI-FAMILY HOUSING SITES																			
GATEWAY SOUTH HOUSING SITE																			
36612066	12361 Saratoga Sunnyvale Rd.	0.32	Commercial Building	CR	CV	MU/HD	30-40	3	2	1	5	10							
36612065	12341 Saratoga Sunnyvale Rd.	0.94	Funeral Home	CR	CV	MU/HD	30-40	7	4	2	14	28							
36612054	12333 Saratoga Sunnyvale Rd.	1.01	Commercial Building	CR	CV	MU/HD	30-40	8	5	2	15	30							
36612072	12299 Saratoga Sunnyvale Rd.	3.08	Storage	CR	CV	MU/HD	30-40	25	14	7	46	92							

⁴ Please Note that the Fellowship Plaza Housing Site shares the same Street address as the Saratoga Retirement Community Site identified within the "Pending Projects" Section of this Report. Both the Saratoga Retirement Community and the Fellowship Plaza Housing Development are owned by the Independent Order of the Odd Fellows (IOOF), but are two separate, distinct developments. Accordingly, while the two developments share the same street address, they have unique APN values.



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HOUSING ELEMENT | 6-16

City of Saratoga General Plan Update



APN	ADDRESS	ACRES	EXISTING USE	EXISTING GENERAL PLAN	EXISTING ZONING	PROPOSED REZONING	PROPOSED DENSITY (DU/ACRE)	REALISTIC CAPACITY				
								VLI	LI	MI	AMI	TOTAL
38653031	12312 Saratoga Sunnyvale Rd.	1.23	Office Building	CR	CV	MU/HD	30-40	10	6	3	18	37
SUBTOTAL		6.58						52	30	16	98	197
SARATOGA AVENUE HOUSING SITE												
38906017	13025 Saratoga Ave.	9.76	Vacant	PA	PA	MU/HD	30-40	79	44	47	123	293
38906007	12961 Village Dr.	0.45	Office Building	PA	PA	MU/HD	30-40	4	2	2	6	14
38906006	12943 Village Dr.	0.38	Vacant	PA	PA	MU/HD	30-40	3	2	2	5	11
38906008	Village Dr.	0.49	Vacant	PA	PA	MU/HD	30-40	4	2	2	6	15
38906016	12989 Saratoga Ave.	0.37	Vacant	PA	PA	MU/HD	30-40	3	2	2	5	11
SUBTOTAL		11.45						93	52	55	144	344
VILLAGE EAST HOUSING SITE												
39727028	14320 Saratoga Sunnyvale	0.46	Commercial Center	CR	CV	MU/HD	30-40	4	2	2	6	14
39727029	20440 Arbeleche Ln.	0.83	Multi-Family	RMF	R-M-4000	MU/HD	30-40	7	4	4	10	25
39727001	Arbeleche Ln. (city parcel)	0.28	Parking Lot (City)	CR	CV	MU/HD	30-40	2	1	1	4	8
39731020	14395 Saratoga Ave.	0.49	Office Building	PA	PA	MU/HD	30-40	4	2	2	6	15
39731011	14375 Saratoga Ave.	0.56	Office Building	PA	PA	MU/HD	30-40	5	3	3	7	17
39731008	14363 Saratoga Ave.	0.28	Office Building	PA	PA	MU/HD	30-40	2	1	1	4	8
SUBTOTAL		2.90						23	13	14	37	87



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HOUSING ELEMENT | 6-17

Appendix I. Public Comments

City of Saratoga General Plan Update



APN	ADDRESS	ACRES	EXISTING USE	EXISTING GENERAL PLAN	EXISTING ZONING	PROPOSED REZONING	PROPOSED DENSITY (DU/ACRE)	REALISTIC CAPACITY											
								VLI	LI	MI	AMI	TOTAL							
VERY HIGH-DENSITY MULTI-FAMILY HOUSING SITE																			
PROSPECT LAWRENCE HOUSING SITE																			
38610043	18562 Prospect Rd.	2.14	Commercial Center	CR	C-N(RHD)	MU/VHD	80-150	46	26	27	72	171							
38610004	18560 Prospect Rd.	0.87	Carwash	CR	C-N(RHD)	MU/VHD	80-150	19	10	11	29	70							
38610055	18522 Prospect Rd.	0.30	Auto Repair	CR	C-N(RHD)	MU/VHD	80-150	6	4	4	10	24							
38610006	18506 Prospect Rd.	0.94	Auto Parts	CR	C-N(RHD)	MU/VHD	80-150	20	11	12	32	75							
38610007	18480 Prospect Rd.	0.87	Commercial Building	CR	C-N(RHD)	MU/VHD	80-150	19	10	11	29	70							
SUBTOTAL		5.12						111	61	66	172	410							
SINGLE FAMILY HOUSING SITES																			
WARDELL HOUSING SITE																			
36614041	20851 Wardell Rd.	7.35	Non-Vacant	RHC	HR	R-1-12,500	1.36	0	0	0	10	10							
ALLENDALE/CHESTER HOUSING SITE																			
39701071	14001 Chester Ave.	12.13	Agriculture	RVLD	A	0 R-1-20,000	1.98	0	0	0	24	24							
QUITO/POLLARD HOUSING SITE																			
40322016	14076 Quito Rd.	3.56	Vacant	RVLD	R-1-40,000	R-1-10,000	2.81	0	0	0	10	10							
TOTAL								359	156	172	517	1,204							

Notes: VLI = Very Low Income, LI = Low Income, MI = Moderate Income, AMI = Above Moderate Income

Source: City of Saratoga Community Development Department.



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HOUSING ELEMENT | 6-18

Response to Comment #2

- **Employment characteristics**
 - The employment characteristics (jobs-households ratio) have been corrected on pages B10 and B11.
 - Table D-2 has been deleted.
- **RHNA data and Site Inventory**
 - The Town's Site Inventory can be found in Appendix H and a summary of identified vacant/partially vacant and available sites, ADUs, SB 9 units, and pipeline projects to meet the Town's RHNA plus 15 percent buffer can be found in Appendix D of the HCD Draft Initial Review Housing Element.
- **Site reuse from 5th Cycle Housing Element requirements**
 - There are three sites that were previously used in the Town's 5th Cycle Housing Element. Implementation Program AS has been added to the Draft Housing Element. This program states that the Town will rezone those sites to allow housing developments by right pursuant to Government Code section 65583.2(i) when 20 percent or more of the units are affordable to lower income households on the following sites as identified in Appendix H to accommodate the lower income RHNA that was previously identified in past housing elements: Parcel 424-08-074; Parcel 424-08-057; and Parcel 424-08-21.
- **Site Inventory, typical density for residential**
 - The Housing Element Sites Inventory Form located in Appendix H and the Overview of Selected Sites located in Appendix D have both been updated utilizing the typical density identified in 2040 General Plan Residential Buildout Table.
- **Percentage of nonvacant sites for low-income housing to accommodate the RHNA**
 - The Town is relying on non-vacant sites to accommodate 50 percent or more of the RHNA for lower income households. Property owner interest forms have been submitted on a majority of the non-vacant sites showing property owner interest in of residential redevelopment within the 6th cycle planning period.
- **Accessory Dwelling Unit incentive program**
 - On April 7, 2020, the Town Council adopted Ordinance 2307, amending the Zoning Code of the Town Code regarding ADUs to comply with State law. The Town has provisions in the Town Code that include an incentive program [Town Code, Section 29.10.320(a)] *Incentive program*. *Any accessory dwelling unit developed under an Incentive Program which may be established by Resolution of the Town Council shall be made affordable to eligible applicants pursuant to the requirements of the Incentive Program. A deed restriction shall be recorded specifying that the accessory dwelling unit shall be offered at a reduced rent that is affordable to a lower income renter (less than eighty (80) percent AMI) provided that the unit is occupied by someone other than a member of the household occupying the primary dwelling.*
 - The current incentive program is applicable to any accessory dwelling unit meeting the requirements of the Town's ADU incentive program. The incentive program expands the eligible to all units rather than just non-conforming residential lots over 10,000 square feet or in the Hillside Residential Zone on sites that are larger than five acres as described in Action HOU-1.2 of the 2015-2023 Housing Element.
- **Implementation Program, Housing Element Overlay Zone (HEOZ)**
 - On June 30, 2022, the Town Council adopted the 2040 General Plan. As of September 27, 2022, the Land Use and Community Design Elements of the 2040 General Plan are suspended pending the results of a referendum. In the interim, the 2020 General Plan Land Use and Community Design Elements will govern during the suspension period. The Draft Housing Element includes Programs AQ and AR, requiring amendment of the Zoning Code and 2020 General Plan Land Use Element to include a Housing

Appendix I. Public Comments

Element Overlay Zone (HEOZ) to apply to the sites included in the Sites Inventory to modify the development standards on those sites as a more targeted use of increase in height and density included in the 2040 General Plan Land Use Element as needed to meet the Town's RHNA and 15 percent buffer.

Comment Letter #3

From: Phil Koen <[REDACTED]>
Sent: Sunday, September 4, 2022 10:12 AM
To: Jocelyn Shoopman <jshoopman@losgatosca.gov>; Housing Element <HEUpdate@losgatosca.gov>
Cc: Erin Walters <EWalters@losgatosca.gov>; Jennifer Armer <JArmer@losgatosca.gov>; Joel Paulson <jpaulson@losgatosca.gov>; Gabrielle Whelan <GWhelan@losgatosca.gov>
Subject: Re: Town of Los Gatos 6th Cycle 2023-2031 Initial Public Review Draft Housing Element Now Available For Review

Hello Ms. Shoopman,

In reviewing the Initial Public Review Draft Housing Element, it appears the document is incomplete and contains known errors which were not corrected prior to releasing for public comment.

My question is why has the Town released an incomplete document for public review? How can the public be properly informed if this draft document contains known errors and omissions? What is the standard of completeness and accuracy that Town used to determine the draft is actually ready for public comment?

Thank you.

Phil Koen
[REDACTED]
[REDACTED]

Sent from my iPhone

Appendix I. Public Comments

Response to Comment #3

- **Initial Public Draft of the Housing Element**

- Assembly Bill 215 (AB 215) was signed by the Governor on September 28, 2021. AB 215 requires that a local government make the first draft version of the Housing Element available for public comment for at least 30 days and, if any comments are received, take at least 10 additional business days to consider and incorporate public comments into the draft Housing Element before submitting it to HCD. On August 29, 2022, the Town of Los Gatos released the Initial Public Review Draft of the 2023-2031 Housing Element for a 30-day public comment period which ran from August 29, 2022, to September 27, 2022.

Comment Letter #4

9/6/22, 12:10 PM

From: Phil Koen [REDACTED] >
Sent: Sunday, September 4, 2022 10:55 AM
To: Housing Element <HEUpdate@losgatosca.gov>
Cc: [REDACTED]
Subject: HE Public Comment

EXTERNAL SENDER

In reviewing the Housing Element public draft, Table B-1 on page B-3 does not show the Town's estimated population through 2040. Please see the attached document from the City of Redwood City which was included in their draft 6th Cycle Housing Element.

To provide the public with a complete view and understanding of the estimated population growth, schedule B-1 should be updated to include the California Department of Finances estimate for the Town's 2040 population as reported in the E-5 series.

For ease of reference, the estimated 2040 population for Los Gatos and Santa Clara County are 31,635 and 1,986,340 respectively.

No where in the draft Housing Element is there a projection for the Town's 2040 population. Since the Housing Element is an integral part of the 2040 General Plan update, a 2040 projection should be included to conform with the General Plans 20 year time frame.

Thank you,

Phil Koen
[REDACTED]

Sent from my iPhone

Appendix I. Public Comments

Comment Letter #4 (Sender Revision)

9/6/22, 12:05 PM

From: Phil Koen [REDACTED]
Sent: Sunday, September 4, 2022 11:03 AM
To: Housing Element <HEUpdate@losgatosca.gov>
Cc: [REDACTED] >
Subject: HE Public comment

EXTERNAL SENDER

Please see the attached document which is page H1-1 from the city of Redwood City's housing element. I inadvertently attached the entire Housing Element document to my prior email when I intended to only send this one page.

I apologize.

Phil Koen
[REDACTED]

<https://outlook.office.com/mail/inbox/id/AAQkAGQyZjg1YWNiLTc3OTktNDZkMS04NTVjLTg2OTQ0MTAyMjExYwAQAM2mfz%2Fn9E%2BOsanGRIC37sg%3D> 2/2

Comment Letter #4 Attachment #1

2 0 2 3 - 2 0 3 1	H O U S I N G	Needs Assessment
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Needs Assessment

Population and Employment Trends

To best understand the types of housing that are needed to meet existing and future demand, Housing Element law requires that the Housing Element assess local population demographics and housing stock characteristics. Characteristics such as age, ethnicity, and employment influence the type and cost of housing needed or in high demand. Tracking changes in demographics can also help City leaders better respond to or anticipate changing housing demand. This section evaluates the various population characteristics that affect Redwood City's housing needs.

Current Population and Population Growth

Between 2010 and 2020, as reported by the U.S. Census, the population of Redwood City grew by approximately 13 percent, from 76,815 to 86,754 residents. This growth rate was greater in Redwood City than San Mateo County as a whole (7.6 percent). The Association of Bay Area Governments (ABAG) forecasts continued population growth through 2040. From 2020 to 2045, ABAG estimates that the City's population will grow by 20 percent, while countywide population is expected to increase by 18.5 percent (Table H1-1).

Table H1-1: Population Growth and Projected Growth

	2010	2020	2040	% Change	% Change
				2010-2020	2020-2040
Redwood City	76,815	86,754	103,940	12.9%	19.8%
San Mateo County	718,451	773,244	916,590	7.6%	18.5%

Sources: Association of Bay Area Governments and Metropolitan Transportation Commission Housing Element Data Package and Projections 2040

In addition to population projections, several other demographic characteristics and trends define housing needs. Among these characteristics are age composition, racial and ethnic composition, and employment.

Age

Patterns indicate that different age groups have varying housing needs. As such, housing choice often correlates to the age of residents. Table H1-2 shows the age distribution of Redwood City residents. In 2019, the 25-44 year old age group constituted the largest age group at approximately 33 percent, followed by the 45-64 years old age group at 26 percent. Of note, certain segments of the population are increasing more rapidly than others, resulting in variations in total population make-up of the city. For example, the share of the population represented by seniors (65 years old and above) increased by two percentage points over the past 10 years, while the youth share of the population (0-14 age group) decreased by two percentage points.

Appendix I. Public Comments

Response to Comment #4

- **Population projections**

- The Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC) has compiled demographic, economic, and housing stock data required by HCD for each Bay Area jurisdiction. Each jurisdiction received a data packet that can be used in the Housing Needs section of the draft Housing Element. Population data sets and associated graphics were provided for year 1990 to 2020. The Town will contact ABAG/MTC to see if population data and updated graphics can be provided for the year 2040, but no additional data is available at this time.

Comment Letter #5

Feedback on Town of Los Gatos 6th Cycle 2023-2031 Housing Element
William Walker September 4, 2022

I will give feedback referenced by section.

10.1.1 California's Housing Crisis

The document states that there is a housing crisis, but there is no reference to any peer-reviewed academic study demonstrating a crisis. Last time California had a housing crisis was 2007-2008, when housing prices plummeted due to sub-prime mortgages. Many families were bankrupted.

The second paragraph states that Santa Clara County is projected to add 169,450 jobs, but again there is no reference to where the projection originated. My understanding is that California lost population in the previous several years (<https://www.macrotrends.net/states/california/population>(External link)), and that Santa Clara county population has declined since 2020. Also some large companies such as Charles Schwab, Tesla, HP, Oracle have relocated their headquarters out of state. Moreover, the advent of work-at-home has resulted in workers relocating to lower cost states. So I am very skeptical that population will continue to increase as in the past.

In my opinion, historically low interest rates in the previous few years resulted in excessive housing demand. The real housing crisis is likely to be a repeat of 2007-2008, which we are already starting to see as increasing interest rates cause a recession and falling house prices. Adding more housing will make the crisis worse, as it did in 2007-2008.

I find the final paragraph is really puzzling. When I moved to Los Gatos in 1983, it was highly segregated, indeed many neighborhoods built before 1963 excluded racial minorities from home ownership. It is right to condemn those bad old days. But times have completely changed, my neighborhood, and Los Gatos as a whole is highly integrated now. There is no problem to solve here.

10.1.2

Same comments as the previous section, I am highly skeptical of the projected increase in households. The actual data from last year indicates California's population is declining (<https://www.macrotrends.net/states/california/population>(External link)).

At least here there is a reference to where the data came from, but I don't believe the data.

10.1.3 Affirmatively Furthering Fair Housing

I don't understand how California is supposed to enforce replacement of segregated living patterns with integrated living patterns. Will Cupertino be forced to kick out Chinese residents? It's an unfortunate part of human nature that many people prefer to live in neighborhoods with their affinity groups. I'm not one of them, I like the melting pot and oppose multiculturalism, but I also believe in freedom of association. Based on the racial make-up of my neighborhood, I'm very skeptical of the statement that "racial segregation in Los Gatos increased between 2010 and 2020". Los Gatos is a model community for racial integration.

Ironically, when I went to college at Cal in the 1970s, the student Co-op where I lived was completely integrated. Now, if you visit the Berkeley Student Co-op website, you will find that many of the Co-op houses have "themes", such as people-of-color, and LGBT, and students are encouraged to segregate themselves to live with their affinity groups. O brave new world, that has such people in it! Segregation has become fashionable again.

10.1.4 Overview of Planning and Legislative Efforts

I'm sorry my feedback to the general plan was not adopted by the Town Council. Most importantly, the vast expansion of housing adopted by the general plan flies in the face of sound city planning practice, and will result in environmental destruction and a deterioration of the quality of life in Los Gatos and throughout the bay area. An environmentally sensitive plan would have advocated to decrease the population of outlying suburbs with no access to public transportation, such as Los Gatos, and to increase the population density within 1km of mass transit hubs, such as Cal Train stations. This is how planning is done in Japan (where my wife and I have a second home). Most of the northeastern states, such as New York, historically have very low population densities once you leave the big cities, California was built out as a continuous suburb. We need to make California look

Appendix I. Public Comments

more like Japan or New York. The Los Gatos general plan doubles down on the environmentally unsustainable continuous suburb model.

I understand the California legislature has mandated certain housing policies, but the solution is to push back by banding together with other outlying suburbs and rural communities to fight environmentally destructive mandates.

Of course Los Gatos is segregated from other communities by income. Los Gatos is a luxury brand, with vacant lots running over \$1 million. Forcing low income housing into Los Gatos is like asking Daimler Benz to build an economy car, their cost structure doesn't allow it. Los Gatos land costs can't sustain low cost housing. You don't need to travel far from Los Gatos to get to areas with lower land prices, for example, Santa Clara, San Jose, Morgan Hill, Milpitas.

Finally, building high-density low-income housing in Los Gatos will violate the original covenants and restrictions on existing housing and degrade its value. I view the covenants and restrictions as a contract I signed onto when I bought my house. I don't see any proposal in this document to compensate existing residents for degrading their property values. Again, the town needs to push back against legislative mandates that don't make sense.

10.1.5 Public Participation

Public disclosure of new regulations by the Town Council is inadequate. Many residents do not subscribe to social media, do not read newspapers, shop at Safeway rather than at the farmer's market, and avoid using the internet as much as possible. For instance, my neighbor bought a gas leaf blower one week before the town banned them. A proper form of disclosure is by USPS, every resident needs to receive a hard-copy in the mail. But more importantly, when radical proposals that completely and irrevocably change the town's character are proposed, the citizens of the town should be given an opportunity to vote.

This was not done with the 2040 General Plan.

10.2 Overview of Housing Need and Constraints

This section is largely repeating and expanding on what was already written in the previous section. My comments above apply.

10.2.6 Special Housing Needs

This section is mostly free of data, and what little data is presented lacks citations. I'm a senior, but I question the section about senior household affordability. My understanding is that seniors are the wealthiest Americans ([https://www.lexingtonlaw.com/blog/finance/average-net-worth-by\(External link\)-age.html](https://www.lexingtonlaw.com/blog/finance/average-net-worth-by-age.html)). Seniors also benefit from Medicare, Social Security, Prop. 13 property tax reductions, and senior discounts.

The section on homelessness lacks data, and the reasons stated for homelessness are wrong. My understanding of the homeless crisis in California, as documented in Michael Shellenberger's book San Fransicko, is that it is almost entirely a crisis of drug addiction and untreated mental illness. Organizations advocating personal liberty such as the ACLU, together with progressive prosecutors, have made it impossible to solve the homeless crisis. Open borders have increased the supply of Fentanyl. And it is a real crisis: in San Francisco more people died of drug overdoses than Covid in the last two years.

10.4 Energy and Resource Conservation

Solar roof panels are not a means of reducing energy costs. Considering the maintenance and depreciation, I believe (I am an electrical engineer specializing in semiconductor physics) they generating very expensive power. If the town really believes solar roof panels are a good investment, then the numbers should be presented in this document. Although I am an SVCE customer, and own an electric car I have not experienced any reduction of my power costs.

Indeed, California has some of the most expensive power in the US.

The figures touting 99% reduction in utility-related emissions by providing clean energy are patently false. When the energy required to manufacture solar panels is accounted for and amortized over their life, and recognition of the fact they are manufactured in China using high-carbon coal power, the numbers are nowhere near as good. Moreover, solar power is not generated during the peak demand period between 4PM and 9PM. Back-up power

capital equipment needs to be kept on-line, and that adds to the cost. Failure to do so has led to California's current energy crisis, and caused my electric car to be charged with out-of-state coal power brought in to alleviate the crisis.

A better way and less expensive way to reduce power costs is to install a light colored roof, insulate your attic, and plant deciduous trees to shade your house. Fenestration should be minimized. I notice that most houses being remodeled these days are styled as retro mid-century modern with black roofs and huge windows, which is very bad from an energy efficiency standpoint.

California has shut down two of its three nuclear plants in the last few years, with Diablo Canyon scheduled to be taken off-line in 2024-2025. The result is an increase in the proportion of carbon-spewing power generation, and higher energy costs from renewables. According to Wikipedia, Diablo Canyon generates electricity at six cents per kW hour, one fourth of what I pay for so-called SVCE clean power. And nuclear generates power 24/7.

10.5 Goals, Policies, and Implementation Programs

Basically, I oppose almost all of the policy recommendation in this section. Here are my proposed replacement policies.

1. The town should advocate for the state to electrify CalTrain and eliminate all grade crossings. The money saved from killing the bullet train can be reallocated for this project. Once Caltrain is electrified, San Jose to San Francisco is a 30 minute commute (electric express trains without grade crossings can travel at 80 MPH). California is way behind on electric commuter trains.
2. The town should recommend a 1km circle centered around each major CalTrain station be re-zoned for ultra-high-density housing. The entire housing needs of San Mateo and Santa Clara county can be met for many years. People can walk to train stations in five minutes, eliminating the need to expand freeways. Similar zoning changes would be beneficial for BART.
3. Towns and suburbs not served by mass transit hubs should be encouraged to down-size or remain stagnant to alleviate the burden on highways and reduce car-miles, exactly the opposite of what the town is currently advocating.
4. The town should request that Diablo Canyon not be closed. San Onofre nuclear power station decommissioning should be stopped immediately, and the power station should be rebuilt and brought back on line. Third-generation nuclear power stations should be built to replace windmills and photovoltaics, which are not viable sources of carbon-free power. Reasons for advocating this position can be found in Michael Shellenberger's book *Apocalypse Never*.
5. The town recognizes that the VTA light rail system is a failure. It is slow, expense, unreliable, doesn't stop near your office or home, and needs to be fixed or dismantled. Google buses are an alternative. The town should recommend to study how to get people to work without cars. Bicycles are not a good option.

Appendix I. Public Comments

Response to Comment #5

The public comment includes multiple topics, including: projected housing; racial segregation; planning and legislative efforts; public participation; quality of data; energy conservation; and goals, policies, and programs. However, most of the suggested changes are either: not within the Town's authority; not consistent with the Town's 2040 General Plan Vision and Guiding Principles; not aligned with the stated goals for Affirmatively Furthering Fair Housing (AFFH); or would not result in a greater likelihood of housing production for the next eight-year cycle. Therefore, no changes to the Draft Housing Element were included in response to these comments.

Comment Letter #6

From: Adam Mayer
Sent: Tuesday, September 13, 2022 11:28 PM
To: Housing Element <HEUpdate@losgatosca.gov>
Cc: Joel Paulson <[REDACTED]>; Jocelyn Shoopman <[REDACTED]>; Jennifer Armer <[REDACTED]>; Erin Walters <[REDACTED]>
Subject: Re: Comments re: Los Gatos Draft Housing Element

Hi Planning Staff,

First of all, thank you for delivering the hard copy of the Draft Housing Element - this has been very helpful in evaluating the document. Just have a few comments in anticipation of the upcoming Housing Element Advisory Board meeting on Thursday (9/15):

Downtown District

I realize this is something we discussed early on in the Housing Element process. Still, I would like to revisit the site inventory for the Downtown District because I feel like we are missing an opportunity to plan for the potential to add housing units in the most pedestrian-friendly and resource-rich part of the Town. I think there are ways to strategically do this that keep the charming character of Downtown without changing the fundamental nature of the surrounding historic residential districts.

Furthermore, according to the "Vision 2040" of the 2040 General Plan's Community Design Element, The Downtown District:

"emphasizes first floor retail and restaurant uses and encourages office and residential units above the first floor. It is through this mixed-use development that residential growth is accommodated. Multi-story mixed-use transitions in scale seamlessly with nearby residential, which includes growth through small multi-unit housing while maintaining the charm and character of these neighborhoods.

The Downtown District provides a truly walkable environment, where sidewalks are wide and pedestrian friendly. The expanded sidewalks accommodate additional space for outdoor dining, public art, and street furniture. Enhancing the visitor experience in the Downtown District, digital display informational kiosks with establishment directories provide a 21st-century amenity. Updated building signage, a Downtown wayfinding system, and gateway entrance signs mark the Downtown as the core of the community.

The Downtown District thrives as one of the most beloved areas of the Town, one that has stood the test of time and continues to do so"

This is a lovely vision that the GPAC came up with here, but the Housing Element Site Inventory for the Downtown District leaves much to be desired. In fact, given the current site inventory, I don't think achieving the vision of a genuinely mixed-use Downtown will come to pass.

Currently, the Housing Element has identified only three sites in the Downtown District at opposite ends of Santa Cruz Avenue (the site of the former Hult's restaurant on the north and the Post Office and the Park Avenue parcel on the south). These three sites only account for 45 housing units or a mere 2% of the RHNA number.

Early in the process, I suggested evaluating the bank sites on Santa Cruz Avenue (see attached markup with sites highlighted in orange) - Bank of America, Bank of the West, Wells Fargo, US Bank - as

Appendix I. Public Comments

candidates.

Now while I understand that these sites are not currently vacant (and perhaps is the reason they are not included in the site inventory, which prioritizes vacant/partially vacant sites), given the outlook of where the [banking sector is trending with regard to digitization](#), physical bank branches might become obsolete within the next 10-20 years (and even if they don't become obsolete right away, there is nothing that would preclude a bank branch from occupying the ground floor commercial retail space of a mixed-use building that has residential units above). The HCD website has some good tips about how to analyze "Existing Uses" for Non-vacant sites: <https://www.hcd.ca.gov/analysis-of-sites-and-zoning>

Even if these sites are not added to the site inventory, they will not see any multi-family residential in the future if they remain zoned as they currently are (C-2 Central Business District Commercial Zone), which does not allow multi-family residential use.

In case my comments get misinterpreted here (as often happens in these discussions about land use), I would like to clarify that I am not suggesting that we raze Downtown Los Gatos and its surrounding historic districts and build high-density housing everywhere.

The approach I am proposing is careful and thoughtful - any proposed development should go through the proper Planning and Historic evaluations to ensure that Los Gatos gets the highest quality projects possible and that the Downtown is enhanced and beautified by any new building that is introduced to the district.

Los Gatos Boulevard Area

In contrast to the Downtown Area, the Los Gatos Boulevard area site inventory accounts for 427 new residential units, or about 21% of the RHNA. As has been mentioned by other members of the HEAB, this presents an excellent opportunity to turn Los Gatos Blvd into a grand boulevard. The "Vision 2040" of the 2040 General Plan's Community Design Element, Los Gatos Boulevard District, does a good job of laying this out:

"The Los Gatos Boulevard District reflects a comprehensive transformation from a 1950s automobile-oriented corridor to a multi-modal District with 21st-century amenities. The Los Gatos Boulevard District includes high-density residential living over retail and commercial offices. It is a pedestrian-oriented district with clearly defined bike lanes, wider sidewalks, and mid-block pedestrian crossings. Increased landscaping provides visual consistency between the Boulevard and the scenic backdrop of the Santa Cruz Mountains."

Now the state has given us a new tool to help realize this vision, Assembly Bill 2011 (AB 2011), which, [according to this SF Examiner piece](#): *"rezones commercial areas on major boulevards for three-to-six story residential development. And it permits those buildings 'by right,' meaning they will not be subject to discretionary reviews from neighbors or lawsuits under the California Environmental Quality Act."*

AB 2011 is based on the "Grand Boulevards" concept by Berkeley planner/architect Peter Calthorpe. More can be read about this concept here: <https://www.hdrinc.com/insights/grand-boulevards-plan-solve-californias-housing-crisis>

Alignment Between the Housing Element, General Plan (Land Use Element & Community Design Element), current Town Zoning Code and State Laws

One underlying reality that has left me uneasy throughout the Housing Element process is the alignment

between the different documents that will guide the Town's Land Use in the coming years (and decades).

We can now identify inconsistencies between the current Town Zoning Code and the new General Plan and Draft Housing Element. Add on top of that the new legislation coming from the state in Sacramento and the potential repealing of parts of the 2040 General Plan by signature collection here locally in Los Gatos.

Which document or legislation *legally* has the final say in local land use? As I am not an attorney, I don't have the answer to that, but I know that much of the state legislation is written to override local rules. So even if the signature collection to repeal parts of the 2040 General Plan are successful, and the Land Use Element has to be reconsidered, what guides us in the interim? Do we have to wait to update the Town Zoning Code? HCD will be watching like a hawk to ensure that the implementation programs from the Housing Element are progressing.

I don't have an answer to any of these questions, but I only bring them up because I think they're important to consider. I understand Town Staff is under a lot of pressure to clarify everything while remaining proactive, so these questions are not being raised to try and make your life more difficult (the situation is complex as it is).

Best,
Adam Mayer
Housing Element Advisory Board Member

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STUDIO-AMA

Adam N. Mayer AIA, LEED AP BD+C, WELL AP

Appendix I. Public Comments

Comment Letter #6 Attachment #1

Initial Draft 2023-2031 Housing Element

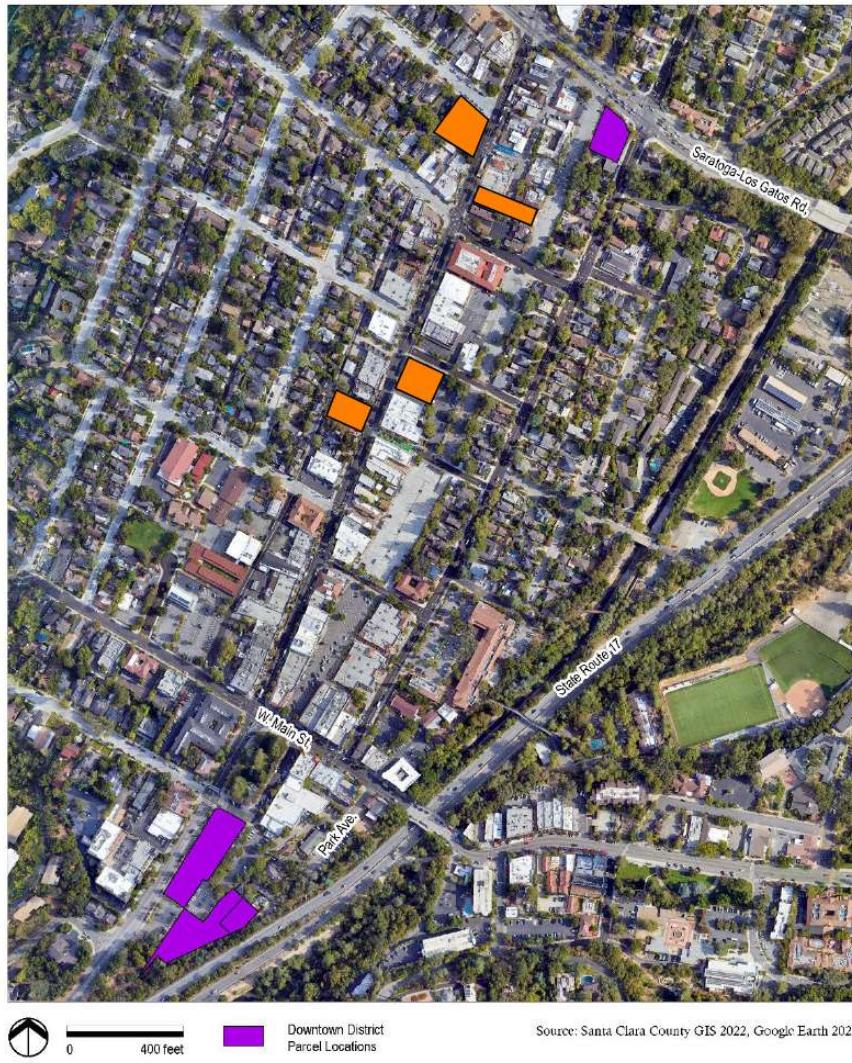


Figure 1
Downtown District

Tier 1 - Los Gatos Housing Element Update - Draft Site Selection
6th Cycle (2023-2031)

Response to Comment #6

- **Downtown site additions to Site Inventory**
 - The HEAB discussed this subject at a public meeting and collectively determined to continue moving forward with the Downtown sites in the Draft Site Inventory as recommended by the HEAB.
 - The bank sites located in the Downtown on Santa Cruz Avenue Areas, and referenced with this comment, were placed in the Town's third tier of potential sites based on their gross lot area of less than half an acre and because the Town has not received any Property Owner Interest Forms for residential development on those sites.
- **Recent changes to State laws**
 - The Town is committed to learning more about recent changes to State laws and how these may impact the Town zoning and contribute to opportunities for affordable housing construction and will incorporate them where appropriate.

Appendix I. Public Comments

Comment Letter #7

To: Town of Los Gatos, Community Development
 (via email to: HEUpdate@losgatosca.gov)

From: Edward S. Morimoto
 [REDACTED]

CC: Joel Paulson, Director, Community Development (via email)
 Katharine Hardt-Mason, Esq. (via email)

Date: September 15, 2022

Re: Town of Los Gatos 2023-2031 Housing Element – comments on the Initial Public Review Draft

Thank you to Town Staff, the Housing Element Advisory Board and the Planning Commission/Town Council for all the hard work that has gone into this important, albeit challenging, planning exercise. Solving for decades of housing production dramatically outstripped by economic/job growth in the South Bay now reflected in RHNA allocations and stricter state mandates is nothing short of a Herculean task that will require not only creativity, but compromise & open-mindedness.

As a resident of the Town and a beneficiary of the prosperity that has given rise to this burden, I would expect any solution to call on my neighbors and I to be accepting that our neighborhood may need to evolve to meet this challenge. And as the owners of the parcels on Oka Road identified in the Draft Housing Element site inventory as E-1 and E-2, we should similarly be open to evolving land use for our properties.

However, I also believe for the Town to succeed in addressing housing needs, planning cannot rely upon imposing unrealistic or unfair land uses, and it is through that lens I would like to express a number of concerns with the Housing Element with regards to the Oka Road sites:

- ***Yielding 5 du/ac in the LDR (Low-Density Residential) parcels with an 8000 sf minimum lot size is unrealistic.*** Although mathematically five, 8000 sf parcels could be created from a single acre (43,560 sf), real-world site geometries, infrastructure & access needs and other development constraints makes this a practical impossibility. Prior efforts to test-fit the 6.2 acre E-2 site has yielded 20 compliant residential parcels (8000 sf+) which equates to 3.2 du/ac (and this did not account for the large utility easement impacting the North side of the property). Absent a reduction in minimum lot size, we believe the Element should account for yielding no more than 3 du/ac on the R-1/LDR parcels in E-1 and E-2.
- ***Accounting for 22 du/ac on the parcels currently zoned R-M:5-12 (HDR under the new General Plan) is not economically realistic.*** In addition to space concerns similar to those expressed above on the LDR parcels, we believe a density of 22 du/ac is a bit of a “tweener” and is dangerously close to a “no man’s land” between economically feasible building types – too dense for townhomes but not dense enough for multi-story, multifamily. For these reasons, we believe it is more realistic to use the “Typical Density” of 18 du/ac as described in the 2040 General Plan for HDR in the Housing Element.
- ***The extremely high proportion of affordable units ascribed to sites E-1 & E-2 is an unfair burden.*** I understand from Town Staff this level of assignment was made in error, so I hope this is corrected in the version submitted for review to HCD. With building costs as high as they are, the Town’s standard 20% BMP

Response to Comment #7

• Site Inventory, typical density

requirement for larger sites is challenging enough to fulfill, but the levels in the Draft Element are completely unrealistic and, if enforced, would be tantamount to an uncompensated taking.

Although I understand the Housing Element is primarily a planning vehicle which should not preclude land use consistent with underlying zoning & the General Plan (even if it falls short of Housing Element targets), we believe the Town should correct these shortcomings for a number of reasons:

- While legal interpretation varies, our counsel advises "no net loss" provisions create a potential liability on landowners to backfill shortfalls even if the initial planning numbers were unrealistic.
- The imposition of unrealistic targets gives further reason for would-be housing producers to be wary of undertaking projects in Los Gatos, an already notoriously challenging jurisdiction for development.
- Inevitably, production targets in the Element have the potential to color the judgement, whether consciously or unconsciously, of the Town's land use decision-makers and introduce headwinds to housing projects consistent with the Town's zoning/General Plan but short of unrealistic Housing Element targets.
- History shows us that when developers fail to meet unrealistic Housing Element targets, the public can interpret this as a nefarious act – a misperception the Town has been either unable or unwilling to correct. This further erodes public trust in those working to produce housing and undermines our collective goal of addressing housing shortfalls.

Thank you for the opportunity to provide comments on the Draft Housing Element. I sincerely hope the issues raised above are addressed in a future draft to produce an Element that is fair and realistic. Not only will this help ensure the Element is approved by HCD but also support the broader objective of making meaningful progress chipping away at the regions housing shortage.

Regards,



Edward Morimoto
[REDACTED]

Appendix I. Public Comments

- The Housing Element Sites Inventory Form located in Appendix H and the Overview of Selected Sites located in Appendix D have been updated utilizing the typical density identified in 2040 General Plan Residential Buildout, rather than the maximum allowed density.
- **High number of affordable units assigned**
 - The Town acknowledges the property owner's concern with the proposed estimated income distribution and capacity estimate for the sites. This is an estimate and has been modified in response to comments received.
- **No net loss law**
 - The Town acknowledges that there is a concern by property owners that they will bear the required burden of the No Net Loss Law. However, per Government Code section 65863, the No Net Loss Law requires a jurisdiction to maintain a sufficient supply of adequate sites in its Housing Element at all times throughout the Housing Element planning period to meet a jurisdiction's remaining unmet share of the RHNA for each income category. To comply with the No Net Loss Law, jurisdictions must ensure their actions do not create a shortfall of available sites. When making decisions regarding zoning and land use (e.g., downzoning) and/or when approving housing development projects, jurisdictions must assess the impacts those actions have on their ability to accommodate new housing on the remaining sites in their Housing Element Sites Inventories. If, at any time during the planning period, the jurisdiction finds that their remaining sites are insufficient to accommodate its remaining RHNA, the jurisdiction must take immediate action to correct the shortfall by amending its Housing Element Sites Inventory to increase capacity by either adding previously unidentified sites or rezoning remaining sites to correct for the shortfall. If a development is approved at a lower density or income distribution than what was assumed in the Sites Inventory of the Housing Element, No Net Loss Law requires a jurisdiction to make written findings and identify additional site capacity. The No Net Loss Law is not the responsibility of the property owner.

Comment Letter #8

From: Phil Koen [REDACTED] >
Sent: Monday, September 26, 2022 10:28 AM
To: Housing Element <HEUpdate@losgatosca.gov>; [REDACTED]
Cc: [REDACTED]
Subject: Housing Element Update comments on Appendix E

EXTERNAL SENDER

Hello Joel,

In addition to my previous comments submitted regarding the Housing Element, please accept these additional comments on Appendix E.

1. Appendix E discusses the production of housing for the 5th RHNA cycle. The write up states the Town “achieved approximately 83 percent of the Town’s RHNA”. While mathematically correct, it is grossly misleading because it fails to explain the 83% is driven by an extreme barbell distribution of production achievement for extremely low, very low and low affordability levels vs. moderate and above moderate levels. It would be the equivalent of having one foot in boiling water and the other foot in freezing water and claiming the average water temperature was 83 degrees. In fact, the Town achieved a dismal 16.7% of the RHNA for extremely low, very low and low affordability housing. At the other end of the barbell, the Town achieved an amazing 150% of the RHNA for moderate and above moderate housing (reference Table A5-2). The point is the Town does not have an issue with the production of above market rate housing. Rather the massive problem is with the production of below market rate housing. As written, the reader is misinformed as to the core issue facing the Town. Given the income levels for the extremely low, very low, and low income groups, to be affordable the purchase price must be approximately \$550 per square foot which is substantially below the current market rate price of approximately \$1,000 per square foot in Los Gatos. This “affordability gap” needs must be addressed by effective goals, objectives and policies which will increase the odds of below market rate housing production. Please add additional language which fully explains the Town’s 83% housing production metric and highlights for the reader the lack of below market rate housing production for the extremely low, very low, and low income groups and the over achievement in production of market rate housing.
2. Appendix E additionally discusses the appropriateness of goals, objectives and policies identified in the 2015 Housing Element. Again, the concept of affordable housing and below market rate housing seems to be conflated. Affordable housing is defined by income level for various income groups, whereas below market rate vs. market rate housing is defined by the current going rate of housing in Los Gatos. They are very different concepts and should be discussed separately. Given the very high price of housing in Los Gatos as measure by price per square foot, it is safe to say that for almost all families in the extremely low, very low, and low income groups, market rate housing is beyond their reach – it is not affordable. By definition, the only housing within their reach will be below market rate housing. On the other end of the spectrum, the vast majority of families in the moderate and above moderate income levels living in Los Gatos are able to find market rate housing that fits their affordability level. This is why the focus needs to be on the production of below market rate housing as opposed to a generalize concept of “affordability”. Because of this conflation, I

Appendix I. Public Comments

believe the conclusion the Town has made that “the Town successfully provided the governmental framework to encourage and facilitate affordable housing through a continuation of its BMP program and enhanced Accessory Dwelling Unit Ordinance” is simply wrong. As written the statement suggests that by simply “providing a governmental framework” the Town is able to claim success with no regard to the actual outcomes. however when measured by the actual production of below market rate housing that would be affordable to the lowest and most needy income groups there is no objective evidence that can remotely substantiate this claim. I suggest that the Town rewrite this section to reflect the actual results achieved.

3. In a previous note, I pointed out that the achievement noted in Table E-1 for policy 1.2 is factually incorrect and misleading. Rather than again detail this point, I would suggest you refer to my prior notes on this matter.

Thank you.

Phil Koen

Response to Comment #8

- **Production of below market rate housing units**
 - The Town recognizes the historic challenges of producing below market rate housing units within the Town. One of the primary purposes of this update of the Town of Los Gatos Housing Element is to increase production of below market rate housing. Goal HE-2: "Provide New Affordable Housing" is supported by 12 policies and numerous implementation programs.
- **Defining affordable housing**
 - The Town utilizes the Department of Housing and Community Development (HCD)'s definition of affordability housing thresholds through the income categories assigned through Town's RHNA. HCD with input from the Association of Bay Area Governments (ABAG), and Metropolitan Transportation Commission (MTC), determined the total RHNA for the 2023-2031 period. On December 16, 2021, the ABAG Executive Board adopted the Final RHNA Plan: San Francisco Bay Area, 2023-2031. Los Gatos's allocation is 1,993 units, which is broken down by income category, as shown in the table below:

Income Group Number of Units

Very Low (0-50% AMI) 537

Low (50-80% AMI) 310

Moderate (80-120% AMI) 320

Above Moderate (120%+ AMI) 826

TOTAL = 1,993

*AMI is Area Median Income

- **Accessory dwelling unit incentive program**

- See response to Comment #2, Accessory Dwelling Unit Incentive Program.

Appendix I. Public Comments

Comment Letter #9

-----Original Message-----

From: Bill Ehlers [REDACTED] >
Sent: Monday, September 26, 2022 9:23 PM
To: Housing Element <HEUpdate@losgatosca.gov>
Subject: Public Input

EXTERNAL SENDER

Good day.

I would like to submit the following public comments.

In general, having many sites east of Highway 17 greatly limits the access of these sites to the Los Gatos Creek Trail.

There are no less stress ways for users of active transportation to cross Highway 17, east to west. This is a missed opportunity to encourage active transportation modes.

Overall, I support the plan.

Bill Ehlers
Resident of Los Gatos
These comments are provided as a member of the public.

Town affiliation:
Vice Chair of the Complete Streets and Transportation Commission

[REDACTED]

Response to Comment #9

The recently adopted 2040 General Plan includes numerous goals, policies, and implementation programs to increase access to alternative transportation modes throughout Town. These comments do not raise an issue with the Draft Housing Element; therefore, no changes to the draft Housing Element are necessary.

Appendix I. Public Comments

Comment #10



September 27, 2022

Via Email: HEUpdate@losgatosca.gov

Town of Los Gatos
Community Development Department
110 E. Main Street
Los Gatos, CA 95030

SUBJECT: Comments on the Initial Public Review Draft Housing Element

I am writing representing the interests of Grosvenor Americas (Grosvenor). Grosvenor is very interested in developing housing on site D-1 of the North Forty District, formerly identified as Site E-1 in previous Housing Element documents provided for review.

As we have expressed in past public comments, we agree that including site D-1 of the North Forty District in the Town's Housing Element Site Inventory makes sense, and we believe that it will be feasible to develop *at least* 200 housing units on the site during the sixth RHNA cycle's upcoming eight-year planning period. However, the Initial Public Review Draft Housing Element (Draft Element) appears to unintentionally limit site D-1's development potential, and it does not yet include clarifying changes that are necessary for the Housing Element to reflect the intent of Town Council, staff, and the public.

On Page D-19 of Appendix D, the Draft Element says that the *maximum* number of permitted housing units is 200, and that "The site is designated and zoned as North Forty Specific Plan, which would accommodate a maximum of 200 units at a density of 13 du/ac." This information is repeated on Page D-39 of Appendix D, where the Draft Element says that the 2040 General Plan allows 13 du/ac for a maximum of 200 units, with 130 units assumed to be available as affordable to low and very low income households.

Not only is the above information incorrect, but it directly contradicts the Draft Element's Implementation Programs, which are required to identify how the Town will achieve its housing goals. Specifically, Program D on Draft Element Page 10-30 says that the Town will amend the North Forty Specific Plan (which includes site D-1) "to increase the maximum allowable density from 20 dwelling units per acre to more than 30 dwelling units per acre and increase the total number of dwelling units allowed in the Specific Plan." It is our understanding that this Program D accurately reflects the Town's intent, and the conflicting misstatements in Appendix D should be corrected.

Note that we agree that it is appropriate for the Town to take credit for up to 200 units of housing on site D-1, as that is what is currently economically feasible. However, it would be a mistake to characterize this as a "maximum" or to limit the density to preclude additional housing should market conditions change before Grosvenor submits its application. We also note that the Town would be unable to support its affordability assumptions if it maintains the current density designations in Appendix D. Under the Government Code's and HCD's current default densities appropriate to accommodate lower-income households, a density of at least 30 du/ac would be necessary to support the Town's affordability assumptions.

Harmonie Park Development | 221 Bachman Avenue | Los Gatos, CA 95030

Accordingly, we request the following edits to the Draft Element, Appendix D:

- Page D-19's header text should be revised to reflect a maximum unit count of 462 units (15.4 acres x 30 du/ac) and a projected unit count of 200 units.
- The text on Page D-19 should be revised as follows: "The site is designated and zoned as North Forty Specific Plan where it is projected to include at least 200 units and that the Town will amend to permit up to 30 du/ac, which would accommodate a maximum of 200 units at a density of 13 du/ac."
- The table on Page D-39 should reflect a maximum density of 30 du/ac, rather than 13 du/ac.

Although we do not think that buildout of more than 200 units is feasible under current market conditions, as expressed in prior communications, we remain interested in providing additional housing should conditions change in the future. Designating Site D-1 for 30 du/ac (as discussed in the Draft Element's Implementation Programs) will preserve the flexibility to deliver more than 200 units in the future, which would help take development pressure off of other sites in the Town's Housing Element site inventory. Moreover, to maintain the ability to create 200 units as part of a mixed-use development, it may be necessary to go above 13 du/ac on parts of the site, while devoting other parts of the site to commercial uses.

Finally, we also note that the Draft Element assumes that 130 of the 200 units be planned as affordable for very low, low, and moderate income households. This is higher than the Town previously considered. Although when the property develops we fully expect to meet the Town's generally applicable affordability requirements, and we are open to possibly exceeding them to the extent feasible, we do not anticipate developing a project that includes the exact affordability mix shown. Therefore, if the Town elects to keep the affordability mix as shown to help with its current planning obligations, it likely will need to make "no net loss" findings when it takes action to approve residential development on Site D-1.

Thank you for your consideration and your efforts to ensure that the Town has a legally compliant and realistic Housing Element, and we look forward to continuing to work with the Town to deliver much needed housing in the coming years.

Thank you for your consideration.

Sincerely,



Don Capobres

cc: Steve Buster, Grosvenor Americas
Whitney Christopoulos, Grosvenor Americas
Eric Phillips, BWS Law
Jennifer Renk, Sheppard Mullin

Appendix I. Public Comments

Response to Comment #10

- **Site D-1, maximum allowable density and maximum number of housing units**
 - Site D-1 has been updated to reflect a maximum of 461 units at a minimum density of 30 dwelling units per acre (Appendix D and Appendix H). Implementation Program D includes amending the North Forty Specific Plan to increase the maximum allowable density from 20 dwelling units per acre to 30 dwelling units per acre and increase the total number of dwelling units allowed in the Specific Plan (Sites D-1, D-2, D-3, D-4, D-5, D-6 and D-7) as discussed in the update process for the 2040 General Plan.
- **Meeting affordability requirements**
 - 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. The Site Inventory includes a 15 percent buffer to allow flexibility in consideration of development proposals without triggering the No Net Loss provisions of State law. In addition, please see Response to Comment #7, No Net Loss Law.

Comment Letter #11



Campaign for Fair Housing Elements
fairhousingelements.org



The Town of Los Gatos

Via email: HEUpdate@losgatosca.gov
Cc: HousingElements@hcd.ca.gov

September 27, 2022

Re: Los Gatos's Draft Housing Element

To the Town of Los Gatos:

YIMBY Law appreciates the Town's recognition that "densification is the only practical solution to providing [its] fair share of future housing." (Los Gatos Draft [Housing Element](#), pp.10-22, D-41.) The Town is correct that it (and the region) will become "less competitive" if it fails to stem the housing crisis (*id.* p.10-2); the South Bay's [shrinking population](#) warns us that its decline may have begun. Los Gatos effectively failed to produce any multifamily housing in the 2010s; overall home production peaked six decades ago. (*Id.* pp.B-22 to -23.) The Town must address this humanitarian disaster by throwing out the constraints it created to produce it. (Gov. Code § 65583(c)(3).)

We reject the Californian planning folklore that towns like Los Gatos are "largely built out." (Contra Draft, pp.10-22, D-41.) This just isn't true. [Vast swathes](#) of Los Gatos are zoned R-1, with building illegal on half of any lot (see *id.* p.C-1), and the Town enforces wasteful lot sizes far beyond any household's wildest needs (*id.* p.C-4; cf. *id.* p.A-9 [euphemizing lot sizes as "generous"]). The Town also charges thousands of dollars just to redraw the imaginary lines that prevent homes from being built. (*Id.* p.C-13.)

State law requires none of this. It *does* require that affordable housing in Los Gatos be allowed to develop at at least 30 homes per acre ([HCD Default Densities](#), p.18), and we call for the Town's affordable-housing overlay (Draft, p.C-5) to be raised to at least that level. Better still, legalize density across the Town. Similarly, the Town should *exceed*

Appendix I. Public Comments

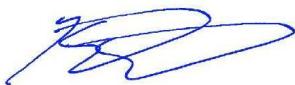
what SB 9 already requires with respect to lot splits. (See *id.* pp.10-22.) Doing so would show that Policies HE-1.2, -1.7, and -6.5 are serious. (*Id.* pp.10-24, -28.)

Besides density, processing time is a major known contributor to the housing shortage. We thank the Town for publishing that it takes 1-1½ years to permit an approved multifamily development. (*Id.* p.C-20.) While this is on par with other Santa Clara County jurisdictions (*id.* p.C-19), there's no inherent reason the process should take so long: safe, dense, and affordable cities preexist our modern approval processes by millennia. Be bold and dismantle any nonsafety design standards.

Finally, we appreciate the Town's confirmation that the owners of several opportunity sites "ha[ve] expressed interest in residential redevelopment." (See *id.* pp.D-2 to -36.) It appears, however, that the owners of many other sites have not. (See *ibid.*) We question whether it is in fact realistic that those sites will see housing in this cycle.

We look forward to the City's next draft. Please contact me with questions.

Sincerely,



Keith Diggs
Housing Elements Advocacy Manager, YIMBY Law
[REDACTED]



Campaign for Fair Housing Elements
fairhousingelements.org

2

Response to Comment #11

- Replacement of Affordable Housing Overlay Zone (AHOZ) with the Housing Element Overlay Zone (HEOZ) with increased density
 - The AHOZ Overlay Zone has been replaced with the HEOZ Overlay Zone, which provides increased density for residential and residential mixed-use development.
- Enable SB-9 projects in excess of minimum State standards
 - The Town is currently in process to update their SB 9 regulations to implement as a permanent ordinance with clear standards and processes which comply with State law and include provisions in excess of the minimum required, for example, allowing an additional 10 percent FAR for use by the first primary housing unit developed through a Two Unit Housing Development application to encourage these additional housing units.
- Reduce permit process time
 - The Draft Housing Element includes:
 - Policy HE-3.1 Regulatory Incentives for Affordable Housing: Facilitate the development of affordable housing through regulatory incentives and concessions, and/or financial assistance. Continue expediting the permit processing system for affordable residential development applications and proactively seek out new models and approaches in the provision of affordable housing.
 - Policy HE-3.3 Efficient Development Processing: Explore continued improvements to the entitlement process to streamline and coordinate the processing of permits, design review, and environmental clearance.
 - Implementation Program F: Update Permit Software System to better monitor average processing times for ministerial and discretionary development permits. Use data to set baselines timelines to drive improvements. Update the Town planning and zoning regulations and remove permit processing constraints as appropriate.
 - Implementation Program K: Lot Consolidation: The Town will conduct outreach to property owners in these areas to identify meaningful incentives to facilitate lot consolidation, lot assemblage and redevelopment in mixed-use and commercial areas. Based on this feedback, within two years of Housing Element adoption, the Town will consider the development of a Lot Consolidation Ordinance to include specific incentives such as: flexible development standards such as reduced setbacks, increased lot coverage, increased heights, reduced parking, and reduced fees. Streamlined permit processing through administrative staff review. Upon adoption of the Ordinance, the Town will work with property owners that are receptive to lot consolidation/lot assemblage to assist them in facilitating the parcel merge process in a streamlined and timely manner.
 - Implementation Program AP: Special Needs Housing: Prioritize special needs housing by allowing for reduced processing times and streamlined procedures for applicable zoning/land use applications. Include preferential handling of special needs populations in management plans and regulatory agreements of funded projects.

Appendix I. Public Comments

• **Verbal Draft Housing Element Comments**

- Verbal comments were received on the Draft Housing Element at a HEAB meeting held on Thursday, September 15, 2022, via Zoom. The verbal comments and responses to those comments are presented below.

• ***Verbal Comment #1 Mitch Vinciguerra***

- The speaker stated three standards that should be included in the Housing Element including: labor standards; healthcare standards; and apprenticeship program standards. The speaker suggested labor standards be implemented to ensure developers are paying area standard wages so skilled workers can afford to live in the local community. Additionally, the speaker emphasizes the value of local hiring to ensure money generated by new developments stay in the community in the form of sales and property tax revenue. Secondly, the speaker touched on workers' reliance on emergency rooms resulting in taxing an overburdened system. Lastly, the speaker suggested the use of apprentice programs to assist individuals in obtaining employment at no cost to taxpayers.

• ***Response to Verbal Comment #1***

- Many of these topics are part of State laws recently enacted or currently under consideration. The Town will comply with State law. These comments do not raise an issue with the Draft Housing Element; therefore, no changes to the Draft Housing Element are necessary.

• ***Verbal Comment #2 Susan Burnett***

- The speaker stated concerns regarding the number of proposed units for the Downtown Area and existing congestion. The speaker noted that an increase of housing units is likely to result in exacerbated parking, traffic, and overall density challenges in an already small, congested area.

• ***Response to Verbal Comment #2***

- The Housing Element Advisory Board (HEAB) discussed this subject at a public meeting and collectively determined to continue moving forward with including these sites on the Site Inventory List as accepted by Town Council.

• ***Verbal Comment #3 Brian Handy***

- The speaker stated two concerns including: potential health impacts associated with the proximity of proposed housing sites to major roadways; and the privacy and protection of backyards for multi-story buildings.

• ***Responses to Verbal Comment #3***

- While there are trade-offs for housing opportunity locations, several factors have been considered through the site selection process, including locations that have existing infrastructure and access to services, even though those locations are often near major roadways. On June 7, 2022, the Town Council accepted the draft Site Inventory as recommended by the HEAB. The Site Inventory has since been modified based on the receipt of a new Property Owner Interest Form and a request to be removed by a property owner. The International Building Code includes some requirements that mitigate effects of buildings in close proximity to highways, including maximum noise standards. Objective Design and Development Standards can be a tool for local communities to affect future land-use compatibility in the built environment, and the Town is currently in the process of developing Objective Standards for multi-family and mixed-use developments which includes standards related to privacy.

- **Modifications to the Draft Housing Element in Response to Public Comments**

- Pursuant to AB215, following the 30-day public comment period, the public comments received by the Town were considered during the 10-day consideration and revision period prior to the Housing and Community Development (HCD) submittal for first comments.
- The following modifications were made to the Town's Draft Housing Element in response to public comments:
- Added Implementation Program AS – Provide Adequate Sites for Lower Income Households on Nonvacant and Vacant Sites Previously Identified in the 5th Cycle Housing Element;
- Revised the housing density for the Sites Inventory to be consistent with the typical density identified in the 2040 General Plan Residential Buildout;
- Increased the density within the North Forty Specific Plan area to align with the related Implementation Program D;
- Increased the density for residential and mixed-use residential developments through the creation of the Housing Element Overlay Zone (HEOZ) as described in Implementation Program AQ and AR; and
- Corrected employment characteristics.

Appendix I. Public Comments

Public Comments on the 2023-2031 Housing Element Adopted on January 30, 2023

On January 30, 2023, the Los Gatos Town Council adopted the 2023-2031 Housing Element with modifications to the Sites Inventory. The Adopted 2023-2031 Housing Element was posted showing modifications from the October 2022 Initial Draft Housing Element to the Town's Housing Element website (EngageLosGatoshousing.com). Notification was provided to all individuals and organizations that previously requested notices, as well as all parties on the Town's notification list, including those who have previously commented on the Draft Housing Element for the seven-day public review period. The public review period was from February 3, 2023, to February 10, 2023, seven days prior to submittal of the adopted Housing Element to HCD for review consistent with AB 215 requirements, during which the Town received four written public comments.

Comment Response for the 2023-2031 Adopted Housing Element

This response to public comments for the Adopted 2023-2031 Housing Element has been prepared to address comments received during the seven-day public review period.

Written Comments

The following written comments were received during the seven-day public review period:

1. Linda Swenberg, email dated February 3, 2023;
2. Jeffrey Barnett, email dated February 3, 2023;
3. Eric S. Phillips on behalf of Burke, Williams, and Sorensen, LLP, email dated February 10, 2023; and
4. Jak Van Nada on Behalf of the Los Gatos Community Alliance, email dated February 10, 2023.

Written Draft Housing Element Comments

Written comments on the Adopted 2023-2031 Housing Element and responses to those comments are presented on the following pages.

Comment Letter #1

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

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

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

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

Linda Swenberg

[REDACTED], Los Gatos, CA 95032

Appendix I. Public Comments

Response to Comment #1

- **Fair housing inquires based on race**
 - The error was corrected.

Comment Letter #2

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

Dear Friends.

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

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

A slightly modified version of the Desk Item is attached.

Thank you in advance.

Jeffrey A. Barnett

Appendix I. Public Comments

Comment Letter #2 - Attachment

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

Policy HE-6.1 Fair Housing Page 10.38.

Current Language:

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

Proposed revisions:

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

These recommendations are based on the following:

A. California Civil Code Section 51:

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

(e) For purposes of this section:

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

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

(i) The individual's genetic tests.

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

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

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

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

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

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

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

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

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

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

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

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

C. Government Code 12920:

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

D. AFFH Report, Appendix A at Page 65

A.6 Fair Housing Enforcement and Outreach Capacity

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

Appendix I. Public Comments

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

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

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

Race, color

Ancestry, national origin

Citizenship, immigration status

Primary language*

Age

Religion

Disability, mental or physical

Sex, gender

Sexual orientation

Gender identity, gender expression

Genetic information

Marital status

Familial status

Source of income

Military or veteran status

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

Response to Comment #2

- **Expand List of Classes Protected by Discrimination**
 - Policy HE-6.1 was modified to include an expanded list of classes protected against discrimination.

Appendix I. Public Comments

Comment Letter #3



1 California Street - Suite 3050
San Francisco, California 94111-5432
voice 415.655.8100 - fax 415.655.8099
www.bwslaw.com

Direct No.: 415.655.8114
ephillips@bwslaw.com

February 10, 2023

VIA E-MAIL: HEUPDATE@LOSGATOSCA.GOV

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

Re: Comments on 2023-2031 Housing Element Update

Dear Mr. Paulson:

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

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

As HCD points out in its comment letter, the Housing Element must include an analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. (Gov. Code, § 65583(a)(5).) Additionally, the Housing Element must propose programs to

Los Angeles – Inland Empire – Marin County – Oakland – Orange County – Palm Desert – San Diego – San Francisco – Silicon Valley – Ventura County



Joel Paulson, Director
February 10, 2023
Page 2

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

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

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

1. Story Poles

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

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

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



Joel Paulson, Director
February 10, 2023
Page 3

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

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

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

2. Development Impact Fees and Program Exactions

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

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



Joel Paulson, Director
February 10, 2023
Page 4

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

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

Sincerely,

A handwritten signature in blue ink that reads "Eric S. Phillips".

Eric S. Phillips

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

Appendix I. Public Comments

Response to Comment #3

- **Governmental constraints - story poles**
 - Added Story Poles discussion under the government constraints section of Appendix C. Story poles are a balance of both governmental constraints and a benefit to the community. Program AW was added to review the Story Pole and Netting Policy and explore options for residential or mixed-use projects with affordable housing to reduce the associated costs of installing story poles. The program's objective is to consider reducing the cost of development by modifying story pole requirements for affordable housing projects.
- **Governmental constraints - development impact fees and program exactions**
 - Added discussion in Appendix C, Governmental Constraints, regarding TDM Program Fees, VMT Impact Fees, and Transportation Impact Fees.

Comment Letter #4



Dear Mayor Ristow and Council Members,

Re: Housing Element and Public Comment Period

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

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

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

With this understanding we offer the following comments and recommendations:

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

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

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

Appendix I. Public Comments

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

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

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

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

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

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

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

Site Inventory 1,840 units

ADU 200

SB 9 units 96

Pipeline units 176

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

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

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

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

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

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

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

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

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

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

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

Appendix I. Public Comments

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Appendix I. Public Comments

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

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

Concluding Comment

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

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

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

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

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

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

Jak Van Nada, On Behalf of the

Los Gatos Community Alliance

Response to Comment #4

- **Planning Commission to provide reasonable standard of objective review of the Draft Housing Element**
 - On January 11, 2023, the Planning Commission made a recommendation to the Town Council to adopt the Draft 2023-2031 Housing Element with the revised Sites Inventory Analysis and revised Sites Inventory Form. No modifications to the Housing Element are required in response to this comment.
- **Table 10-3 to be updated and additional information added**
 - Updated Table 10-3, Summary of Vacant and Underutilized Housing Sites.
- **Substantial development constraints for North 40 sites D1 – D7**
 - Program D amends the North Forty Specific Plan to increase the maximum allowable density from 20 dwelling units per acre to 40 dwelling units per acre and increase the total number of dwelling units allowed in the Specific Plan.
 - Added new section “Appropriate Density/Default Density” in Appendix D, starting on page D-2 describes the development trends of in residential development in the Town and nearby jurisdictions, capacity information on non-vacant and commercial sites, and examples of residential development that occurred in non-residentially zoned parcels in the Town.
 - Added new text to Appendix C, Governmental Constraints or Non-Governmental Constraints to Housing Development.
 - Updated achievements and effectiveness of the 5th Cycle Housing Element Programs was added in Appendix E.
- **Total units and low-income units not adequately analyzed and need adjustment to reflect realistic development for site D-1**
 - The distribution of units per income level is implemented consistent with State law for sites with a density of 30 or more dwelling units per acre.
- **Sites D2-D7 have no evidence of redevelopment for the 6th cycle**
 - A new section providing examples of affordable and market-rate residential developments that have occurred on sites that were less than half an acre (small sites) will be added.
 - Program K, Lot Consolidation, facilitates outreach to property owners to identify meaningful incentives to facilitate lot consolidation, lot assemblage and redevelopment in mixeduse and commercial areas. Based on this feedback, within two years of Housing Element adoption, the Town will consider the development of a Lot Consolidation Ordinance to include specific incentives such as: flexible development standards such as reduced setbacks, increased lot coverage, increased heights, reduced parking, reduced fees, and streamlined permit processing through administrative staff review. Upon adoption of the Ordinance, the Town will work with property owners that are receptive to lot consolidation/lot assemblage to assist them in facilitating the parcel merge process in a streamlined and timely manner.
- **Non-vacant sites accommodate 98% of lower income units and no evidence is provided that existing uses will continue during the 6th cycle**
 - Added new section “Appropriate Density/Default Density” in Appendix D, describing development trends in residential development in the Town and nearby jurisdictions, details of the questions provided on the Town’s Property Owner Interest Forms in relation to HCD’s Sites Inventory Guidebook, and provides construction age of most commercial buildings within the Sites Inventory.

Appendix I. Public Comments

Modifications to the 2023-2031 Adopted Housing Element in Response to Public Comments

Pursuant to AB215, following the seven-day public comment period, the public comments received by the Town were considered prior to the Housing and Community Development (HCD) submittal for second comments.

The following modifications were made to the 2023-2031 Adopted Housing Element in response to public comments:

- The summary describing the types of Fair Housing Inquires for bias was updated in Chapter 10.
- Policy HE-6.1 was modified to include an expanded list of classes protected against discrimination.
- Added Story Poles discussion under the government constraints section of Appendix C. Program AW was added to review the Story Poles and Netting Policy and explore options for residential or mixed-use projects with affordable housing to reduce the associated costs of installing story poles.
- Added discussion in Appendix C, Governmental Constraints, regarding TDM Program Fees, VMT Impact Fees, and Transportation Impact Fees.
- Updated Table 10-3, Summary of Vacant and Underutilized Housing Sites.
- Added new section “Appropriate Density/Default Density” in Appendix D, starting on page D-2 describes the development trends of in residential development in the Town and nearby jurisdictions, capacity information on non-vacant and commercial sites, and examples of residential development that occurred in non-residentially zoned parcels in the Town.
- Added new text to Appendix C, Governmental Constraints or Non-Governmental Constraints to Housing Development.
- Updated achievements and effectiveness of the 5th Cycle Housing Element Programs was added in Appendix E.
- Added new section providing examples of affordable and market-rate residential developments that have occurred on site that were less than half an acre (small sites),
- Added new section “Appropriate Density/Default Density” in Appendix D, describing development trends in residential development in the Town and nearby jurisdictions, details of the questions provided on the Town’s Property Owner Interest Forms in relation to HCD’s Sites Inventory Guidebook, and provides construction age of most commercial buildings within the Sites Inventory.

Public Comments on the March 2023, Draft Revised 2023-2031 Housing Element

On January 30, 2023, the Los Gatos Town Council adopted the 2023-2031 Housing Element with modifications to the Sites Inventory, making the finding that it is in substantial compliance with State law. On February 13, 2023, the Town submitted the adopted 2023-2031 Housing Element to HCD for review and comment. As described in the February 13, 2023, letter to HCD, the Town modified Appendix D (Sites Inventory Analysis), and Appendix H (Sites Inventory Form), to assume development at a minimum density. The letter described that the Town was in process of addressing the remaining comments found in the January 12, 2023, HCD Findings/Comment Letter and would be resubmitting a revised Housing Element after the revisions have been completed.

The Draft Revised 2023-2031 Housing Element was posted showing modifications to the Adopted 2023-2031 Housing Element to the Town's Housing Element website (EngageLosGatoshousing.com). Notification was provided to all individuals and organizations that previously requested notices, as well as all parties on the Town's notification list, including those who have previously commented on the Draft Revised 2023-2031 Housing Element for the seven-day public review period. The public review period was from March 23, 2023, to March 30, 2023, seven days prior to submittal of the adopted Housing Element to HCD for review consistent with AB 215 requirements, during which the Town received one written public comment.

Comment Response for the Draft Revised 2023-2031 Housing Element

This response to public comments for the Draft Revised 2023-2031 Housing Element has been prepared to address comments received during the seven-day public review period.

Written Comments

The following written comment was received during the seven-day public review period:

1. Phil Koen, email dated March 30, 2023.

Written Draft Housing Element Comments

The written comment provided on the Draft Revised 2023-2031 Housing Element and the response to the comment is presented on the following pages.

Appendix I. Public Comments

Comment Letter #1

From: Phil Koen <[REDACTED]>
Sent: Thursday, March 30, 2023 1:26 PM
To: Gabrielle Whelan <GWhelan@losgatosca.gov>
Cc: [REDACTED]; Rick Van Hoesen <[REDACTED]>; Jocelyn Shoopman <jshoopman@losgatosca.gov>; Joel Paulson <jpaulson@losgatosca.gov>; Laurel Prevetti <LPrevetti@losgatosca.gov>; Erin Walters <EWalters@losgatosca.gov>
Subject: RE: Town of Los Gatos Seven-Day Public Review of the Revised Draft 6th Cycle Housing Element

[EXTERNAL SENDER]

Hello Gabrielle,

Thank you for your reply. I agree with your suggestion to add clarifying information to the website and staff reports to make sure the public understands the Town is now in the process of modifying the adopted Housing Element. There is a material difference in revising a draft element as opposed to modifying an adopted element. What has not been adequately explained to the public is the rational for now modifying the adopted Housing Element when the Town Council just found the element to be "substantially compliant" with State Law and passed a resolution on January 30, 2023, stating the recitals were true and correct.

Furthermore, on February 13, 2023, the Town submitted to HCD the adopted element for their certification stating the "Housing Element responds to the comment and feedback from the State Department of Housing and Community Development's (HCD) July 12, 2023 (sic January 12, 2023) letter". The Town is now waiting to hear whether HCD will certify the adopted element. HCD's response should be received within 60 days of February 13.

The public deserves a full and complete explanation as to why any amendments are now required, given we are in the middle of the certification process. If the Staff truly believes the adopted element does comply with State Law, wouldn't it be prudent to wait for HCD's review to be completed and receive their comments before making any proposed amendments?

The only logical reason I can think of to amend the adopted element prior to any written feedback from HCD would be because the Staff believes the adopted housing element does not comply with State Law and material changes are in fact required to obtain HCD certification. This conclusion would be at direct odds with the resolution that was passed on January 30, 2023, and the findings that were made. If this is the case, and the Staff believes an error has been made and material and extensive changes are now needed to comply with State Law, then the Staff needs to be fully transparent with the public on this point and provide a full and complete explanation.

Based on my understanding, the housing element was adopted pursuant to Govt. Code Section 65585 (f) (2) which allows a local jurisdiction to adopt a draft element without changes even though HCD had found the draft element did not substantially comply with State Law. As you know, HCD's January 12, 2023, letter contained an eleven-page appendix that detailed multiple statutory requirements that were not met and HCD concluded "revisions will be necessary to comply with State Housing Element Law". To be very clear, the inventory of land suitable and available for residential development was only one of many issues discussed in HCD's letter and was not deemed by HCD to be their "primary concern". This language simply does not exist in the HCD letter.

In my opinion it is misleading to suggest that making a very minor change of the Town's site inventory would be sufficient to address the multitude of statutory issues discussed in HCD's eleven-page document. There doesn't appear to be any reasonable basis for making the finding that the minor change in the site inventory, while ignoring all HCD's other substantive comments, would be sufficient to conclude, based on substantial evidence in the record, the adopted element was indeed compliant with State Law. This is a problem.

I would greatly appreciate a clear and full explanation as to why the Town is now amending the adopted element before receiving HCD's response on certification. If an error was made and the Staff now believes the adopted element is legally deficient, then please clearly state this. The public deserves full transparency on this matter.

Lastly, it is highly unlikely Town will meet the statutory deadline of adopting a compliant housing element by May 31, 2023, given the timing of this amendment and HCD's 60-day response deadline. This is a serious matter, and the Staff needs to fully explain to the public the consequences of missing this deadline including potential impacts on receiving federal, state, and regional funding and the likelihood of successfully completing all rezoning mandated by the Housing Element by January 31, 2024. Missing the January 31, 2024, rezoning deadline would be catastrophic for the Town.

I look forward to your reply.

Thank you,

Phil Koen

From: Gabrielle Whelan <GWhelan@losgatosca.gov>
Sent: Tuesday, March 28, 2023 9:53 AM
To: Phil Koen <[REDACTED]>
Cc: [REDACTED]; Rick Van Hoesen <[REDACTED]>; Jocelyn Shoopman <jshoopman@losgatosca.gov>; Joel Paulson <jpaulson@losgatosca.gov>; Laurel Prevetti <LPrevetti@losgatosca.gov>
Subject: RE: Town of Los Gatos Seven-Day Public Review of the Revised Draft 6th Cycle Housing Element

Hello, Mr. Koen.

I believe that the posted document description is factually accurate in that the document posted is a draft only and proposes revisions to the Housing Element. In order to clarify that the proposed draft revisions will amend the Town's adopted Housing Element, staff is going to add information to both the Town's website and the staff report to make it clear that the document being considered is a proposed amendment to the Town's adopted Housing Element.

When the Housing Element was adopted, the Town made the finding that the Housing Element was in "substantial compliance" with state law in that the sites inventory had been revised to

Appendix I. Public Comments

assure that adequate sites were available for development. This addressed HCD's primary concern. At the same time, the Town committed to work with HCD to make the additional revisions requested by HCD. Now that those additional revisions have been completed, staff is recommending adoption of the revised Housing Element.

Government Code Section 65585(h)(3) provides that HCD has 60 days to provide findings on proposed amendments to adopted Housing Elements.

With regard to process, staff proposed to take the Housing Element revisions to HCD first for comments. That way, when the revised Housing Element comes to the Town Council for review, the Town Council will know that HCD is prepared to certify the revised Housing Element if adopted. That said, a Town Council discussion of the Housing Element has been added to the 4/4 Town Council agenda.

Please let me know if you have any follow-up questions. Thank you.



Gabrielle Whelan • Town Attorney

Town Attorney's Office • 110 E Main Street, Los Gatos, CA 95030
Desk: 408.354.6818 • gwhelan@losgatosca.gov
www.losgatosca.gov • <https://www.facebook.com/losgatosca>

From: Phil Koen <[REDACTED]>
Sent: Thursday, March 23, 2023 3:46 PM
To: Gabrielle Whelan <GWhelan@losgatosca.gov>
Cc: [REDACTED] Rick Van Hoesen <[REDACTED]>; Jocelyn Shoopman <jshoopman@losgatosca.gov>; Joel Paulson <jpaulson@losgatosca.gov>; Laurel Prevetti <LPrevetti@losgatosca.gov>
Subject: Fwd: Town of Los Gatos Seven-Day Public Review of the Revised Draft 6th Cycle Housing Element

[EXTERNAL SENDER]

Hello Gabrielle,

Please note that the document posted for public comment is a proposed amendment to the legally adopted housing element. To reference the document as a "revised draft" is factually incorrect. Please correct this so the public fully understands the nature of the document being posted for public comment.

The 6th Cycle Housing Element was adopted by the Town Council on January 30, 2023 pursuant to Govt. Code Section 65585 (f) (2). The changes now being proposed are numerous, wide ranging and material in nature. In fact, the changes are exactly what was recommended by HCD in their January 12, 2023 letter. This calls into question why these changes are now being made if the housing element was adopted pursuant to the code cited above which specifically discusses the adoption of a housing element without making changes recommended by HCD.

HCD Draft Revised 2023-2031 Housing Element

At the time of adoption, the Council made a finding that the Housing Element was in substantial compliance with State Law despite the findings of HCD. Is it the Town's determination that those findings are now incorrect and as such the amendment is now required to be compliant with State Law? The public needs to fully understand why this amendment is now necessary.

Under Govt. Code Section 65585 (h) HCD will have 90 days to review the draft amendment and report its findings once the proposed amendment is filed. Please make sure the Town Council is aware of the 90 day response time because it will be past the May 31, 2023 deadline. To the best of our knowledge this has never been disclosed.

Lastly, would you please clarify why the Planning Commission and Town Council are not approving this amendment prior to being submitted to HCD? This seems to put the cart before the horse and is not consistent with other local jurisdictions who have adopted housing elements and are now revising them in order to be certified by HCD.

We look forward to your reply.

Thank you.

Phil Koen

Begin forwarded message:

From: Jocelyn Shoopman <jshoopman@losgatosca.gov>
Date: March 23, 2023 at 8:40:44 PM GMT+1
Cc: Jennifer Armer <JArmer@losgatosca.gov>, Joel Paulson <jpaulson@losgatosca.gov>, Erin Walters <EWalters@losgatosca.gov>
Subject: Town of Los Gatos Seven-Day Public Review of the Revised Draft 6th Cycle Housing Element

Hello,

On March 16, 2023, the Housing Element Advisory Board reviewed the revised Draft 2023-2031 Housing Element with modifications in response to the California Department of Housing and Community Development's (HCD) Findings and Comment letter received by the Town on January 12, 2023. Following their review, they recommended that staff resubmit the revised Draft Housing Element to HCD with additional modifications.

The revised Draft 2023-2031 Housing Element is available to the public for a seven-day review period prior to HCD re-submittal. The seven-day public review period ends on March 30, 2023. The following items can be viewed on the Town's Housing Element Update website at:

<https://www.losgatosca.gov/1735/General-Plan---Housing-Element>

1. Revised Draft 2023-2031 Housing Element – Clean Copy
2. Revised Draft 2023-2031 Housing Element – Track Changes Copy
3. Response Memorandum to HCD's Findings and Comment Letter

Appendix I. Public Comments

Written comments (including name, affiliation, telephone number, and contact information) can be submitted through March 30, 2023, by email to HEUpdate@losgatosca.gov or by mail to:

Town of Los Gatos
Community Development Department
110 E. Main Street
Los Gatos, CA 95030

Sincerely,



Jocelyn Shoopman • Associate Planner

Community Development Department • 110 E Main Street, Los Gatos CA 95030
Ph: 408.354.6875 • JShoopman@losgatosca.gov
www.losgatosca.gov • <https://www.facebook.com/losgatosca>

COMMUNITY DEVELOPMENT HOURS:

Counter Hours: 8:00 AM – 1:00 PM, Monday – Friday
Phone Hours: 8:00 AM – 5:00 PM, Monday – Friday

All permit submittals are to be done online via our Citizen's Portal platform. All other services can be completed at the counter. For more information on permit submittal, resubmittal, and issuance, please visit the [Building](#) and [Planning](#) webpages.



General Plan Update, learn more at www.losgatos2040.com



Housing Element Update, learn more at <https://www.losgatosca.gov/1735/General-Plan---Housing-Element>

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Response to Comment #1

- **Provide clarification regarding modification of adopted housing element**
 - The Town's Housing Element website and the staff report was updated to clarify that the document being considered is a proposed amendment to the Town's Adopted Housing Element.
- **Why is the adopted housing element being amended?**
 - On February 13, 2023, the Town submitted the adopted 2023-2031 Housing Element to HCD. A cover letter was included in the submittal describing that the Town was in the process of addressing all the remaining comments found in the HCD findings/comment letter and would be resubmitting a Draft Revised Housing Element after all the revisions addressing the January 12, 2023, HCD findings/comment letter were completed.
 - On February 16, 2023, the Housing Element Advisory Board met to review and discuss the HCD findings/comment letter, and how the comments and findings would be addressed.
 - On March 16, 2023, the Housing Element Advisory Board reviewed the Draft Revised 2023-2031 Housing Element which included modifications to the Town Council adopted 2023-2031 Housing Element in response to the January 12, 2023, HCD comments.

Modifications to the Draft Revised 2023-2031 Housing Element in Response to Public Comments

Pursuant to AB215, following the seven-day public comment period, the public comments received by the Town were considered prior to the Housing and Community Development (HCD) submittal for second comments.

The following modifications were made to the Draft Revised 2023-2031 Housing Element in response to public comments:

- The Town's Housing Element website and the staff report was updated to clarify that the document being considered is a proposed amendment to the Town's Adopted Housing Element.

Appendix I. Public Comments

Public Comment Received on August 22, 2023, Regarding the Los Gatos 2023-2031 Housing Element

On August 22, 2023, the Town received the following email and attachments from Matthew D. Francois on behalf of the Los Gatos Community Alliance. HCD was copied on the email and attachments. The attached letter suggests that the Town needs to expand the sites inventory as preliminary applications for SB 330 have been submitted with less low-income housing than is anticipated in the Draft Revised Housing Element.

Written Draft Housing Element Comments

The written comment provided on the Draft Revised 2023-2031 Housing Element and the response to the comment is presented on the following pages.

Comment Letter #1

From: Respicio, Maryknol <[REDACTED]>
Sent: Tuesday, August 22, 2023 12:39 PM
To: Joel Paulson <jpaulson@losgatosca.gov>
Cc: Phil Koen [REDACTED] <[REDACTED]>; Town Manager <Manager@losgatosca.gov>; Attorney <Attorney@losgatosca.gov>; Paul.McDougall@hcd.ca.gov; jose.iauregui@hca.ca.gov; Francois, Matthew <[REDACTED]>
Subject: Los Gatos 2023-2031 Housing Element

[EXTERNAL SENDER]

Dear Mr. Paulson:

Attached please find a letter regarding Los Gatos 2023-2031 Housing Element issues.

Please let Matt Francois if you have any questions.

Thank you.

Maryknol Respicio
Assistant to Matthew D. Francois

Five Palo Alto Square, 3000 El Camino Real, Ste. 200 | Palo Alto, CA 94306
O. (650) 320-1500 | D. (650) 320-1500 x7723

mrespicio@rutan.com | www.rutan.com

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Appendix I. Public Comments



Matthew D. Francois
Direct Dial: (650) 798-5669
E-mail: mfrancois@rutan.com

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.

Joel Paulson
August 22, 2023
Page 2

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.

Appendix I. Public Comments

RUTAN
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Joel Paulson
 August 22, 2023
 Page 3

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.)



Joel Paulson
August 22, 2023
Page 4

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.

Appendix I. Public Comments

RUTAN
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Joel Paulson
 August 22, 2023
 Page 5

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.)



Joel Paulson
August 22, 2023
Page 6

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].)

Appendix I. Public Comments



Joel Paulson
August 22, 2023
Page 7

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

Appendix I. Public Comments

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.

Appendix I. Public Comments

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:

[Large empty box for description]

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

Appendix I. Public Comments

12. ADDITIONAL SITE CONDITIONS –

- a. Whether a portion of the property is located within any of the following:
- A very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection, pursuant to Section 51178?
YES NO
 - Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993)?
YES NO
 - 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
 - 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
 - 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
 - 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

Appendix I. Public Comments

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 or 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 _____

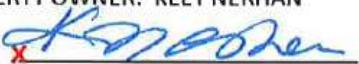
SIGNATURES ON FOLLOWING PAGE

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: 

Name: Keet Nerhan

Date:  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: 

Name: Keet Nerhan, its Managing Member

Date:  6-27-23

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

PROPERTY OWNER: KEET S. NERHAN

By: 

Name: Keet S. Nerhan

Date:  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.



Keet Nerhan

Date:  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: 

Keet Nerhan, its Managing Member

Date:  6-27-23

Appendix I. Public Comments

*Attachment 1 to SB 330 Preliminary Application
50 Los Gatos-Saratoga Road, Los Gatos*

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.


Keet S. Nerhan
Date: 6-27-23

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.

Appendix I. Public Comments

Attachment 2 to SB 330 Preliminary Application
 50 Los Gatos-Saratoga Road, Los Gatos

- 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:

*Attachment 2 to SB 330 Preliminary Application
50 Los Gatos-Saratoga Road, Los Gatos*

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).

Appendix I. Public Comments



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.*).

Joel Paulson
Community Development Director
June 30, 2023
Page 2 of 2

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

Appendix I. Public Comments



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,



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

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

EXHIBIT B

Appendix I. Public Comments

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}:

*¹Submittal 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.

*²Note: 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	441,380	250
Eden Affordable Housing	74,817	75,696	68
Townhome	232,363	319,112	119
Commercial/Retail	14,868	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

Appendix I. Public Comments

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

Appendix I. Public Comments

- 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

Appendix I. Public Comments

Property Owner of Record Same as applicant Different from applicant

Name (if different from applicant) Yuki Farms, LLC

Address 15495 Los Gatos Blvd. Unit/Space Number 11

City Los Gatos State CA Zip Code 95032

Telephone _____ Email _____

Optional: Agent/Representative Name Don Capobres

Company/Firm Harmonie Park Development Group LLC

Address 221 Bachman Avenue Unit/Space Number _____

City Los Gatos State CA Zip Code 95030

Telephone 415-710-7640 Email don@harmoniepark.com

Optional: Other (Specify Architect, Engineer, CEQA Consultant, etc.) _____

Name _____

Company/Firm _____

Address _____ Unit/Space Number _____

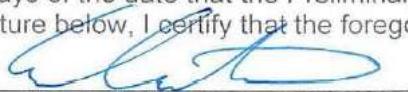
City _____ State _____ Zip Code _____

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 or 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 _____

Appendix I. Public Comments

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

Appendix I. Public Comments

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 "J. Armer".

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

Appendix I. Public Comments

Response to Comment #1

• SB 330 Preliminary Applications

- The SB 330 preliminary applications have not been included in the Sites Inventory as they are preliminary and not formal applications and they have not been approved. In the event that formal planning applications are approved that create a shortfall of units in the Town's Sites Inventory, the Town will need to comply with the State's "no net loss" provisions. The State "no net loss" law requires that, if and when a project is approved below the density described in the Town's Housing Element, the Town must rezone sufficient sites to make up the shortfall within six months of project approval. In other words, the "no net loss" provisions kick in upon project approval. The Town intends to comply with the "no net loss" provisions if a project approval results in a shortfall.

Public Comment Received on July 31, 2023, Regarding Story Pole Policy Modifications

On July 31, 2023, the Town received the following email and attachment from Eric S. Phillips, Partner with Burke, Williams and Sorensen, LLP, representing Grosvenor USA Limited, regarding the Town Council's consideration of the Town's Story Pole Policy Modification scheduled for the August 1, 2023, Town Council meeting. HCD was copied on the email and attachments. The attached email describes that Grosvenor USA Limited is the developer for the proposed North Forty Phase II residential development and has interest in the outcome of the Town's proposed story policy modifications and suggestions.

Written Draft Housing Element Comments

The written comment regarding the story pole policy modification and the response to the comment is presented on the following pages.

Appendix I. Public Comments

Comment Letter #1

From: Phillips, Eric S. [REDACTED] >
Sent: Monday, July 31, 2023 1:30 PM
To: Council <Council@losgatosca.gov>
Cc: [REDACTED]; Whitney Christopoulos [REDACTED] >; Don Capobres <[REDACTED]>; Louis Liss <[REDACTED]>; Jennifer Renk <[REDACTED]>; McDougall, Paul@HCD <paul.mcdougall@hcd.ca.gov>; jose.jauregui@hcd.ca.gov
Subject: 8/1/23 Agenda Item 15 - Story Pole Policy Modification

[EXTERNAL SENDER]

Dear Town Council Members,

Attached is public comment for your consideration regarding the Town's Story Pole Policy Modification scheduled to be heard as Item 15 at your August 1, 2023 Meeting.

Thank you,

Eric S. Phillips | Partner

Pronouns: he, him, his

[REDACTED] | San Francisco, CA 94111

ephillips@bwslaw.com | [vCard](#) | bwslaw.com



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www.bwslaw.com

Direct No.: 415.655.8114
ephillips@bwslaw.com

July 31, 2023

Mayor Maria Ristow and
Los Gatos Town Council
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

Re: Agenda Item 15: Story Pole Policy Modifications

Dear Honorable Mayor and Council Members:

Our firm represents Grosvenor USA Limited (“Grosvenor”) in connection with housing and land use matters for development of the North Forty Specific Plan Area in the Town of Los Gatos (the “Town”). Grosvenor has submitted a preliminary application to the Town to develop the North Forty Phase II site in manner consistent with the policies and assumptions applicable to the site as an opportunity site for housing development for lower income households included in the Town’s 2023-2031 Housing Element. Because Grosvenor’s housing development project will be affected by the Town’s policy regarding height pole and netting requirements (collectively, the “Story Pole Policy”), we have been following the Town’s process to update its Story Pole Policy with interest.

The current proposed Story Pole Policy modifications presented in your agenda packet for the August 1, 2023 Town Council Meeting represent an improvement over the Town’s current requirements. However, without further revisions, the Story Pole Policy will continue to be an impediment on projects that seek to deliver much needed housing at all income levels, including projects with a significant percentage of affordable housing. In its May 30, 2023 letter to Community Development Director Joel Paulson regarding legal deficiencies with the Town’s 2023-2031 Housing Element, the State Department of Housing and Community Development (“HCD”) directed the Town to “commit to an actual outcome” regarding Story Pole Policy modifications that will reduce housing costs and “establish alternatives or modifications [to the Story Pole Policy] that promote approval certainty.” HCD suggested removing the Story Pole Policy or allowing for its requirements to be satisfied through an alternative such as visual renderings.

Appendix I. Public Comments



Los Gatos Town Council
July 31, 2023
Page 2

The proposed Story Pole Policy revisions fall short of HCD's direction and do not fully mitigate the Story Pole Policy's constraint on housing production in the Town. Requiring installation of height poles and netting on a site before any development can begin imposes a significant financial and political obstacle to housing development.

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

Second, requiring story poles also creates unnecessary tension within the community and can create false expectations about the Town's ability to deny or modify design elements such as height or massing that are consistent with the Town's development standards. For example, during Phase 1 of the North 40 development, acres and acres of unsightly story poles stirred enough angst among community members to temporarily derail the approval process for a project that satisfied all of the Town's development criteria specified in its adopted Specific Plan. However, given that the Phase 1 development (and many other housing developments) are protected by state laws that prevent the Town from denying or reducing the density of housing development projects, including the Housing Accountability Act and the State Density Bonus Law, the story poles do nothing more than create unnecessary opposition to projects that are legally entitled to move forward, which in turn can create an impediment for projects to achieve the full density ostensibly allowed by the Town's development standards.

The Planning Commission recommended that the Story Pole Policy continue to require height poles and netting for proposed residential and non-residential buildings "[i]f proposed project includes a variance or exception to the physical characteristics of the primary structure." The language referencing an "exception to the physical characteristics of the primary structure" could be interpreted to apply to projects that are legally entitled to incentives, concessions, or waivers under the State Density Bonus Law. This would impose a requirement specifically on projects that include affordable



Los Gatos Town Council
July 31, 2023
Page 3

housing, and it creates an economic and political barrier discouraging use of the State Density Bonus Law. The Story Pole Policy should be amended so that receipt of incentives, concessions, or waivers under the State Density Bonus Law does not trigger height pole and netting requirements.

The Planning Commission recommended that the Story Pole Policy include an exemption for projects that include a “high level of affordable housing” without specifying how much affordable housing would trigger the exemption. Staff has recommended that projects must double the Town’s below market price program (“BMP”) requirements in order to qualify for an exemption, which would mean that projects could be required to provide as much as 40 percent of their units as BMP units. This means that the Story Pole Policy would continue to apply to many projects that would be eligible for “by-right” approval under Government Code Section 65583.2(i) by virtue of providing 20 percent of their units as affordable to lower income households on opportunity sites included in the Housing Element. The Story Pole Policy should be amended to include an exception for all projects that include at least 20 percent of their units as affordable to lower income households.

The Planning Commission also recommended that flag rope be allowed in place of netting when buildings are over 35 feet tall and to reduce the number of poles required for multi-building developments to only include the tallest structure and those along the perimeters of the site. These are clear improvements over the current Story Pole Policy, but they remain more burdensome than other available alternatives. Projects with more than one building should be allowed to comply using 3-D renderings and project identification signs that comply with Sections II.G and III of the Story Pole Policy.

Amending the Story Pole Policy is an important step towards helping the Town achieve its housing production goals and comply with HCD’s direction to adopt a legally adequate Housing Element that includes programs to eliminate development constraints. We encourage the Town Council to make further amendments to the Story Pole Policy as suggested above to fully comply with HCD’s direction while still achieving the Town’s goal of informing Town residents, staff, and decision-makers about a project’s proposed massing.



Los Gatos Town Council
July 31, 2023
Page 4

Thank you for considering our suggested revisions. The Grosvenor team looks forward to working with the Town to deliver much needed housing during the planning period.

Sincerely,



Eric S. Phillips

cc: Steve Buster, Senior Vice President, Grosvenor
Whitney Christopoulos, Senior Development Manager, Grosvenor
Don Capobres, Principal, Harmonie Park Development
Louis Liss, Associate Director of Real Estate Development, Eden Housing
Jennifer Renk, Esq., Partner, Sheppard Mullin
Paul McDougall, HCD Senior Program Manager
Jose Armando Juaregui, HCD Housing Policy Analyst

Response to Comment #1

- **Regarding Story Pole and Netting Policy Modifications**

- The Housing Element includes a discussion on the Town's Story Pole and Netting Policy in the government constraints section of Appendix C. Story poles are a balance of both governmental constraints and a benefit to the community. Program AW's objective is to update the Story Pole and Netting Policy and create options for residential or mixed-use projects with affordable housing to reduce the associated costs of installing story poles. Modifications already approved by Town Council on August 1, 2023, include: use of flag rope instead of netting; reduce story pole requirements for multi-building projects to just represent perimeter of site and tallest buildings; and removal of story pole requirements for projects with 30 percent Below Market Rate housing or 20 percent Low Income or Very Low Income housing. Additional modifications to further reduce impacts of the story pole policy are scheduled for review by the Town Council on December 5, 2023.

Modifications to the 2023-2031 Adopted Housing Element in Response to Public Comments

The following modifications were made to the 2023-2031 Adopted Housing Element in response to public comments:

- Program AW was updated, as described above, to reflect Town Council's approved modifications to the Story Pole and Netting Policy.

Appendix I. Public Comments

Public Comments on the September 2023, Draft Revised 2023-2031 Housing Element

Pursuant to Government Code 65585(b)(1), the Town has posted the modifications to the Town's Housing Element website and provided notification to all individuals and organizations that previously requested notices, as well as all parties on the Town's notification list, including those who have previously commented on the Housing Element. The Draft Revised Housing Element was posted September 22, 2023, through September 29, 2023, seven days prior to the October 2, 2023, submittal of the Draft Revised Housing Element to HCD for review. During the public comment period the Town received eight written comments.

Comment Response for the September 2023, Draft Revised 2023-2031 Housing Element

This response to public comments for the September 2023 Draft Revised 2023-2031 Housing Element has been prepared to address comments received during the seven-day public review period.

Written Comments

The following written comment was received during the seven-day public review period:

1. Lee Qunitana, email dated September 29, 2023;
2. Phil Koen, email dated September 29, 2023 (4:08 p.m.);
3. Phil Koen, email dated September 29, 2023 (1:45 p.m.);
4. Anne Paulson, email dated September 29, 2023;
5. Phil Koen, email dated September 28, 2023;
6. Judy L, email dated September 27, 2023;
7. Steve Piasecki, email dated September 27, 2023; and
8. Jak Van Nada, email dated August 26, 2023.

Written Draft Housing Element Comments

The written comments provided on the September 2023 Draft Revised 2023-2031 Housing Element and the response to comments is presented on the following pages.

Comment Letter #1

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 Appendices

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 previous 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 of 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 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

Appendix I. Public Comments

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: left 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 (in 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

Appendix I. Public Comments

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.

Response to Comment #1

- **Formatting**

- Acknowledges public comment on suggested document format changes.

- **Edits and Clarifications**

- The density for RD has been added to Table C-1, Appendix C. The density is 5-12 dwelling units per acre (2020 General Plan Land Use Category - Medium Density Residential).
- The number of units that were entitled, permitted, under construction, and finalized from June 30, 2022, to January 31, 2023, as listed in Table 10-3, Table D-2, and Table D-7 of the Draft Revised Housing Element (November 2023) were modified to remove units that were reported to the California Department of Finance.
- Programs AD, AP, and AQ, describe the required Zoning Code amends to comply with State law.

Comment Letter #2

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

CITY OF DEL MAR HOUSING ELEMENT UPDATE

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?

Appendix I. Public Comments



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	
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.us/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

Appendix I. Public Comments



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)
 - c. 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

Appendix I. Public Comments



- 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.

Appendix I. Public Comments



- 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

Appendix I. Public Comments



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

Appendix I. Public Comments



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.

Appendix I. Public Comments



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

Appendix I. Public Comments



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

Appendix I. Public Comments



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.

Response to Comment #2

Clarification on 5th cycle Units Carried over to 6th cycle:

- After further clarification from HCD the number of units that were entitled, permitted, under construction, and finalized from June 30, 2022, to January 31, 2023, as listed in Table 10-3, Table D-2, and Table D-7 of the Draft Revised Housing Element (November 2023) were modified to remove units that were reported to the California Department of Finance.

Appendix I. Public Comments

Comment Letter #3

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/permited/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 2020, 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/permited/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 jurisdiction's 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.

Appendix I. Public Comments

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

GAVIN NEWSOM, Governor

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,



Tyrone Buckley
Assistant Deputy Director

HCD Draft Revised 2023-2031 Housing Element

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

		1	Regional Housing Needs Allocation Progress Permitted Units Issued by Affordability										3	4
Income Level	RHNA Allocation by Income Level		2015	2016	2017	2018	2019	2020	2021	2022	2023	Total Units to Date (all years)		
Very Low	Deed Restricted	201	-	-	-	-	-	-	40	-	-	40	102	
	Non-Deed Restricted	-	-	-	-	-	-	-	-	-	-	-	-	
Low	Deed Restricted	112	-	-	2	-	-	-	1	-	-	3	102	
	Non-Deed Restricted	-	-	-	-	-	-	-	-	-	-	-	-	
Moderate	Deed Restricted	132	-	-	-	-	-	-	1	2	-	156	-	
	Non-Deed Restricted	-	2	3	4	16	28	26	36	36	-	-	-	
Above Moderate		174	-	13	38	9	7	3	75	185	145	-	475	
Total RHNA		619	-	18	43	19	23	31	184	223	181	-	683	
Total Units		-	-	-	-	-	-	-	-	-	-	-	261	
Progress toward extremely low-income housing need, as determined pursuant to Government Code 65583(a)(1).														
		5	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total Units to Date	Total Units Remaining	
		Extremely low-income Need	-	-	-	-	-	-	-	-	-	-	101	
Extremely Low-Income Units*		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.

Appendix I. Public Comments



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/Finalized (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.

Response to Comment #3

Clarification on 5th cycle Units Carried over to 6th cycle:

- After further clarification from HCD the number of units that were entitled, permitted, under construction, and finalized from June 30, 2022, to January 31, 2023, as listed in Table 10-3, Table D-2, and Table D-7 of the Draft Revised Housing Element (November 2023) were modified in yellow highlight to remove units that were reported to the California Department of Finance.

Appendix I. Public Comments

Comment Letter #4

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

Appendix I. Public Comments

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

Appendix I. Public Comments

Response to Comment #4

- Programs
 - The Housing Element now includes a matrix with actions to ensure the Town's Housing Element goals affirmatively further fair housing. This matrix includes specific actions, geographic targeting, timelines, and eight-year metrics that aim to address fair housing concerns including fair housing outreach and enforcement, housing mobility, place-based strategies for neighborhood improvement, new housing opportunities in high resource areas, and tenant protection and anti-displacement.
 - Program E – The program's objective is to pursue opportunities to work with an affordable housing developer to construct affordable housing on two of the Town owned properties. The number of affordable units has been increased.
 - Program G – The program's objective is to increase the floor area ratio to promote higher density housing development. A preliminary study will be completed by December 2024 to achieve this objective.
 - Program J – The program's objective is to increase the number of low-rise multi-family developments from the previous year. The number of units has been increased.
 - Program O – Additional objectives are now included, including a reduction in development impact fees and an increase in the total number of affordable housing units.
 - Program R – The program amends the Density Bonus Ordinance per State law by December 2024 and will recommend changes to increase the number of units constructed.
 - Program T – The program commits annually meeting with nonprofit groups on an annual basis to discuss constraints to development and develop strategies and actions for affordable housing development, especially meeting affordable housing needs for extremely low-income households and developing incentives for affordable housing.
 - Program Y – The program describes the Town's commitment to continue to provide funding to WVCS for homeless persons services.
 - Program Z – The program is to study and implement recommendations with regard to the Town's Rental Dispute Mediation and Arbitration Ordinance 2128 to help further stabilize rents for long-term residents. The study will be completed by January 2025 and implemented into the Town Code by June 2025.
 - Program AA – The program commits to initiate a study to determine specific updates for the Municipal Code to address reduction in parking requirements including: align parking requirements with the preparation of the Objective Design Standards; reduce parking requirements near transit, remove guest parking requirements; and allow parking to unbundled from residential units. The study is to be completed by January 2025 and implemented into the Town Code by June 2025.
 - Program AQ – The rezonings and creation of the Housing Element Overlay Zone (HEOZ) has been recommended by Planning Commission and introduced by Town Council on November 7, 2023. The rezoning is scheduled to be adopted by Town Council on November 21, 2023.
 - Program AV, Senate Bill 9 Monitoring - The inclusion of Senate Bill 9 units in the Housing Element towards meeting the Town's RHNA was removed from the Draft Revised Housing Element (November 2023).
- BMP Housing Program In-Lieu Fees
 - The Below Market Price Housing Program In-Lieu fees are allocated as directed by Town Council through the Town's annual Strategic Priorities. Every year the Town Council identifies their Strategic Priorities as an initial step in the budget development process. The Town Council has made affordable housing partnerships a 2023-2025 Strategic Priority.

- Affirmatively Furthering Fair Housing
 - AFFH – Goals to affirmatively further fair housing have been strengthened through specific actions, geographic targeting, and eight-year metrics outlined in a new implementation table. The Town has outlined place-based strategies for neighborhood improvement with geographic targeting to ensure areas with additional need, including areas with proposed lower income RHNA units, are adequately served.
- Sites Inventory Locations
 - The sites within the Sites Inventory were based on property owner interest to develop residential within the planning period. The sites in the Sites Inventory do not saturate one specific set of income category in a specific location, rather they are spread throughout the Town. The sites in the Sites Inventory are spread throughout Town and were selected for their proximity to Town services and amenities, such as parks, high quality schools, shopping, and local Valley Transportation Authority bus transit that links to regional light rail transit.
- Minimum Lot Size for Single Family
 - The Town's minimum residential lot size is 5,000 square feet in the R-1D zone.
 - SB 9 allows for a minimum residential lot size of 1,200 square feet.
- Duplexes/Two-Family Dwellings
 - Two family dwelling units are permitted in the R-1D , R-D, and R-M zones.
 - ADUs and Junior ADUs are permitted in the RC, HR, R-1, R-1D, R-D, R-M zones in conjunction with a single-family home, resulting up to three units per parcel.
 - SB 9 is allowed on a legal parcel located within a single-family residential zone (R-1 or Single-Family Residential Zone; R-1D or Single-Family Residential Downtown Zone; HR or Hillside Residential Zone), excluding historic properties, hazardous waste sites, sites withing earthquake fault zones, flood zone, natural habitat, prime farmland, and wetlands. SB 9 allows up to four units per parcel.

Appendix I. Public Comments

Comment Letter #5

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.

Appendix I. Public Comments

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.

Appendix I. Public Comments

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



Matthew D. Francois
Direct Dial: [REDACTED]
E-mail: [REDACTED]

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.

Appendix I. Public Comments



Joel Paulson
 August 22, 2023
 Page 2

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.



Joel Paulson
August 22, 2023
Page 3

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.)

Appendix I. Public Comments



Joel Paulson
 August 22, 2023
 Page 4

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.



Joel Paulson
August 22, 2023
Page 5

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.)

Appendix I. Public Comments



Joel Paulson
 August 22, 2023
 Page 6

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].)



Joel Paulson
August 22, 2023
Page 7

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

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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.

Appendix I. Public Comments

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.

Appendix I. Public Comments

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.

- i. **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

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

Residential	Nonresidential	Total Automobile Parking
351 spaces	0	351 spaces

Appendix I. Public Comments

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

Appendix I. Public Comments

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

Appendix I. Public Comments

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 or 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

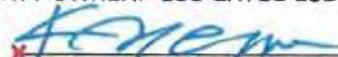
PROPERTY: Parcel One of Tract One, as more particularly described in Exhibit A to Attachment 2.

PROPERTY OWNER: KEET NERHAN

By: 
Name: Keet Nerhan
Date: 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: 
Name: Keet Nerhan, its Managing Member
Date: 6-27-23

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

PROPERTY OWNER: KEET S. NERHAN

By: 
Name: Keet S. Nerhan
Date: 6-27-23

Appendix I. Public Comments

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.


Keet Nerhan
Date: 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: 
Keet Nerhan, its Managing Member
Date: 6-27-23

*Attachment 1 to SB 330 Preliminary Application
50 Los Gatos-Saratoga Road, Los Gatos*

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.


Keet S. Nerhan

Date: 6-27-23

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.

*Attachment 2 to SB 330 Preliminary Application
50 Los Gatos-Saratoga Road, Los Gatos*

- 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:

Appendix I. Public Comments

*Attachment 2 to SB 330 Preliminary Application
50 Los Gatos-Saratoga Road, Los Gatos*

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 \(Record Boundary Exhibit and Aerial Photograph\)](#).



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.*).

Appendix I. Public Comments

Joel Paulson
Community Development Director
June 30, 2023
Page 2 of 2

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 "J. Armer".

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}:

*¹Submittal 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.

*²Note: 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.

Appendix I. Public Comments

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	280,166	441,360	250
Eden Affordable Housing	74,617	75,606	68
Townhome	232,363	319,112	119
Commercial/Retail	14,863	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

Appendix I. Public Comments

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:

Appendix I. Public Comments

- 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, LLC

Address 15495 Los Gatos Blvd. Unit/Space Number 11

City Los Gatos State CA Zip Code 95032

Telephone _____ Email _____

Optional: Agent/Representative Name Don Capobres

Company/Firm Harmonie Park Development Group LLC

Address 221 Bachman Avenue Unit/Space Number _____

City Los Gatos State CA Zip Code 95030

Telephone 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

Appendix I. Public Comments

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 or 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.



TO 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,



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

cc: Don Capobres, Harmonie Park Development Group LLC

HCD Draft Revised 2023-2031 Housing Element

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

Appendix I. Public Comments

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

GAVIN NEWSOM, Governor

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,



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

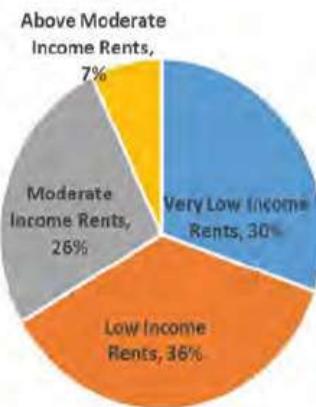
1. Overview

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.

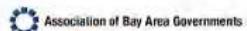
Recent California legislation has facilitated policy changes at the local level that encourage ADU development by streamlining the permitting process and shortening approval timelines. State law requires jurisdictions to allow at least one ADU and JADU per residential lot. These legislative and policy 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. Given HCD's workload, it is unlikely we will receive additional guidance.

Figure 1: Affordability of ADUs



Appendix I. Public Comments



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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%



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 the 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.

Appendix I. Public Comments



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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 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.

Appendix I. Public Comments



DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT

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.



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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.

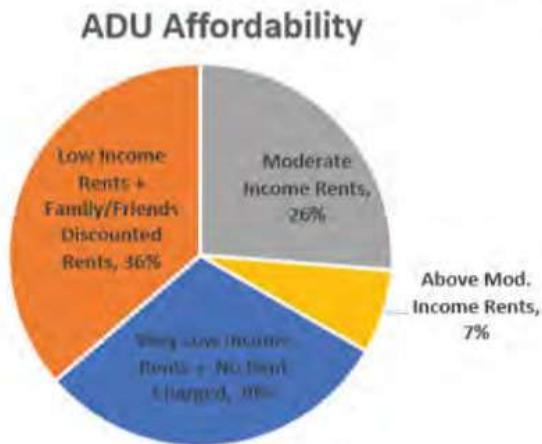


Figure 2: Results shown for 9-county Bay Area. "Very low" rents include units available to family or friends at no cost. "Low" rents include discounted family rentals.

Appendix I. Public Comments



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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>

Response to Comment #5

- SB 330 Applications
 - The Town has received direction from HCD that No Net Loss law is only applicable once a project has been approved. The preliminary and formal SB 330 applications that the Town has received have not been approved.
- Clarification on 5th cycle Units Carried over to 6th cycle:
 - After further clarification from HCD the number of units that were entitled, permitted, under construction, and finalized from June 30, 2022, to January 31, 2023, as listed in Table 10-3, Table D-2, and Table D-7 of the Draft Revised Housing Element (November 2023) were modified in yellow highlight to remove units that were reported to the California Department of Finance.
- ADU Income Distribution
 - ADU income distribution is based guidance provided in the “Using ADU’s to Satisfy RHNA” Technical Memo provided by the Association of Bay Area Governments.

Appendix I. Public Comments

Comment Letter #6

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]

Response to Comment #6

- **Building Height**
 - The Alberto site is located in the Town's Sites Inventory and was rezoned with a Housing Element Overlay Zone (HEOZ). The HEOZ overlay in a CH allows for a 45-foot-tall building height to encourage residential development. The property owner has applied for a formal SB 330 application which proposes an approximately 50-foot tall building. Under State law the applicant has asked for a waiver for height. The application is pending.
- **Alternative Site**
 - The two sites located north of the 15600 Los Gatos Boulevard property are in the Housing Element's Site's Inventory as Site C-9 (15480 Los Gatos Boulevard and 15550 Los Gatos Boulevard).

Comment Letter #7

From: Steve ██████████
Sent: Wednesday, September 27, 2023 3:13 PM
To: Housing Element <HEUpdate@losgatosca.gov>
Subject: Comments regarding the Draft 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 cul 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

Response to Comment #7

- **New Development**
 - Each project will be evaluated independently depending upon the site and proposed scope of work. Traffic, noise, air mitigations, off-site improvements, and dedications, etc. will be evaluated through development review and CEQA review.

Appendix I. Public Comments

Comment Letter #8

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.

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

GAVIN NEWSOM, Governor

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
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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.

Appendix I. Public Comments

Ashley Jones, City Manager
Page 2

- 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

Ashley Jones, City Manager
Page 3

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,



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).)

Appendix I. Public Comments

Response to Comment #8

- **Penalties**

The Town knowledges the public comment expressing concerns regarding penalties for not having a certified housing element, including potential builder's remedy projects. Staff and the Town's Consultant continue to work diligently with the Town's HCD reviewer to address HCD's comments to achieve a certified Housing Element as quickly as possible.

Summary Modifications to the Draft Revised 2023-2031 Housing Element in Response to Public Comments

Pursuant to AB215, following the 7-day public comment period, the public comments received by the Town were considered prior to resubmitting to HCD. The following modifications were made to the Town's Draft Housing Element in response to public comments:

- The density for RD has been added to Table C-1, Appendix C. The density is 5-12 dwelling units per acre (2020 General Plan Land Use Category- Medium Density Residential).
- The number of units that were entitled, permitted, under construction, and finalized from June 30, 2022, to January 31, 2023, as listed in Table 10-3, Table D-2, and Table D-7 of the Draft Revised Housing Element (November 2023) were modified to remove units that were reported to the California Department of Finance.
- The Housing Element now includes a matrix with actions to ensure the Town's Housing Element goals affirmatively further fair housing. This matrix includes specific actions, geographic targeting, timelines, and eight-year metrics that aim to address fair housing concerns including fair housing outreach and enforcement, housing mobility, place-based strategies for neighborhood improvement, new housing opportunities in high resource areas, and tenant protection and anti-displacement.
- Programs objectives and timelines modified. The inclusion of SB 9 units in the Housing Element towards meeting the Town's RHNA was removed from the Draft Revised Housing Element (November 2023).
- Goals to affirmatively further fair housing have been strengthened through specific actions, geographic targeting, and eight-year metrics outlined in a new implementation table. The Town has outlined place-based strategies for neighborhood improvement with geographic targeting to ensure areas with additional need, including areas with proposed lower income RHNA units, are adequately served.

Appendix I. Public Comments

Public Comments on the November 2023, Draft Revised 2023-2031 Housing Element

Pursuant to Government Code 65585(b)(1), the Town has posted the modifications to the Town's Housing Element website and provided notification to all individuals and organizations that previously requested notices, as well as all parties on the Town's notification list, including those who have previously commented on the Housing Element. The Draft Revised Housing Element was posted November 16, 2023, through November 27, 2023, seven days prior to the November 28, 2023, submittal of the Draft Revised 2023-2031 Housing Element, implementing changes in response to comments in the Draft Preliminary Review Matrix provided by HCD on November 7, 2023, to HCD for review. During the public comment period the Town received one written comment.

Comment Response for the November 2023, Draft Revised 2023-2031 Housing Element

This response to public comments for the November 2023 Draft Revised 2023-2031 Housing Element, implementing changes in response to comments in the Draft Preliminary Review Matrix provided by HCD on November 7, 2023, has been prepared to address comments received during the seven-day public review period.

Written Comments

The following written comment was received during the seven-day public review period:

1. Los Gatos Community Alliance ("LGCA")

Written Draft Housing Element Comments

The written comments provided on the November 2023 Draft Revised 2023-2031 Housing Element, implementing changes in response to comments in the Draft Preliminary Review Matrix provided by HCD on November 7, 2023, and the response to comments are presented on the following pages.

Comment Letter #1



November 27, 2023

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

RE: November revised draft of Los Gatos 2023-2031 Housing Element

Dear Mr. Paulson:

The Los Gatos Community Alliance (LGCA) is a group of concerned residents writing to you regarding the revised draft 2023-2031 Housing Element submitted to HCD on November 16, 2023 (the "November draft HE").

Pursuant to AB 215, the Town is required, at least seven days before submitting to HCD any draft revisions, to post any proposed revisions on its internet website and to email a link to such revisions to all individuals and organizations that have previously requested notices relating to the Town's housing element. In a November 13 email and subsequent clarifying email sent on November 14, 2023 to the LGCA, Ms. Whelan, Town Attorney, confirmed that the seven-day public review period did not occur as required by AB 215. Ms. Whelan also stated that the Town staff would contact HCD to request HCD to consider the date of the submittal to be November 27th rather than November 17th. We have not received confirmation that the Town has made this request of HCD; however for the purposes of this public comment letter we have assumed such a request was made.

This is not the first time we have raised concerns regarding the Town's obligations under Govt Code Section 65585(b)(1). One of the purposes of the public review process is to allow the Town to discover public concerns and, when appropriate, to incorporate public comments into its draft revised Housing Elements prior to submission to HCD. In a public comment letter dated September 28, 2023 commenting on the September draft of the revised 2023-2031, LGCA raised specific concerns regarding double-counting of permitted units in both the 5th and 6th cycle. To substantiate this concern, we submitted Table B from the 2022 Annual Element Progress Report along with a comment letter issued by HCD to ABAG dated January 12, 2022 which discussed this very point. Yet the Town ignored the LGCA comment and proceeded to submit the September draft to HCD on Monday October 2, 2023, the very next business day after closing the 7-day public comment period on September 29th without disclosing why it chose to do so.

Then apparently the Town saw the light. In the November draft HE the Town revises the figures to eliminate the inappropriate double-counting of permitted units. Yet instead of crediting the changes to the comment letter provided by LGCA, the Town attributes the changes to, "further clarification from HCD," that permitted units could not be double counted in both 5th and 6th cycle RHNA. We point this out to draw your attention to the Town's legal obligation to consider and act, if appropriate, upon public comments when they are received. The fact that the Town ignored the LGCA comment and submitted the September draft double-counting permitted units in both the 5th and 6th cycle despite the overwhelming information provided to the Town that this was not allowed implies that the Town ignored

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Appendix I. Public Comments

Town of Los Gatos

November 27, 2023

Page 2

the comments and filed the Housing Element revision without giving any consideration to the public comments it received.

The fact that the Town submitted the most recent draft HE on November 17, and subsequently asked HCD to consider the submittal date to be November 27 appears to formalize the Town's policy to ignore public comments. If permitted, it would also make it impossible for the Town to comply with HCD's prior admonishment to, "summarize all public comments and describe how they were considered and incorporated into the element." This comment, among others related to Public Comments, was included HCD's comment letter of May 30, 2023.

On November 22 we requested of the Town's attorney that the Town rescind its inappropriate submission of the November draft HE, and resubmit it to HCD only after it receives and gives appropriate consideration to these and any other public comments. As of this writing, the Town has not responded to that request.

We also note that the Town's posting of the revised Housing Element on November 17 did not include a copy of the transmittal letter that accompanied the submittal. As we know, HCD has asked that such transmittal letters include information regarding any public comments that have been received, as well as how the Town has considered and, if appropriate, incorporated such comments into the submittal. Of course it was not possible to include such information in the submittal of November 17 because the public comment period had not yet commenced.

In light of these facts, and by copy of these comments to HCD, we are requesting HCD to reject (or to require the Town of Los Gatos to rescind) the draft revised Housing Element the Town originally submitted to HCD on November 17, and further to direct the Town to give due consideration to these comments and to any other comments it receives in the public comment period and to, "summarize all public comments and describe how they were considered and incorporated into the element," before resubmitting the draft Housing Element to HCD.

With this background, LGCA is submitting this public comment letter regarding the November draft of the revised 2023-2031 Housing Element, even though such draft has previously – and inappropriately – been submitted to HCD in violation of Govt Code section 65585 (b) (1).

1. Table 10-3 incorrectly computes the RHNA "buffer" percentage and overstates % RHNA surplus

Table 10-3 in the November draft shows a "% Surplus" which is meant to show the surplus or deficit as a percentage of units above the 6th cycle RHNA by income category. However, the percentage has been computed using a "Remaining RHNA" figure that reflects "credits" for projected ADU production and pipeline projects netted against the RHNA. By using "Remaining RHNA" the "% Surplus" is materially overstated (24% vs 19%).

While at first glance this might seem like a minor error, it is important to note HCD has discussed the importance of having a sufficient "buffer" in percentage terms to ensure sufficient capacity exists in the Housing Element to accommodate shortfall of sites to accommodate its remaining RHNA especially in very low- and low-income categories. This is discussed in Govt Code Section 65863 – No Net Loss Law.

There is no reason to compute the % surplus using a “Remaining RHNA” figure except to mislead the reader into believing there is a larger surplus buffer percentage than actually exists.

This creates confusion regarding Program AS – Provide Adequate Sites for Housing, RHNA Rezoning, Lower Income Households on Nonvacant and Vacant Sites Previously Identified. This program calls for rezoning sites to accommodate a 25% buffer above RHNA (not “Remaining RHNA”) to allow for compliance with the No Net Loss Provisions of SB 166.

The following table shows the buffer percentages as presented in the Town’s draft revised November HE submission, as well as the corrected buffer percentages calculated using the appropriate RHNA figures:

	Very Low-Income	Low-Income	Moderate Income	Above-Moderate Income	Total
Single-Family Units & Housing Projects	0	0	0	2	2
ADUs	0	3	11	9	23
Pipeline Projects	0	1	0	190	191
Projected ADUs	60	60	60	20	200
Total	60	64	71	221	416
RHNA	537	310	320	826	1,993
Remaining RHNA	477	246	249	605	1,577
HEOZ Sites	634	357	340	624	1,955
Owner Interest / Conceptual Development Plans	480	283	264	304	1,331
Additional Sites	154	74	76	320	624
Surplus above Remaining RHNA	157	111	91	19	378
% Surplus [vs “Remaining RHNA” as presented in the Town’s November 17 submission]	33%	45%	37%	3%	24%
% Surplus [corrected - vs RHNA]	29%	36%	28%	2%	19%

As noted in this table, based on the proper calculation, the total surplus buffer of 19% is less than the 25% goal outlined in program AS.

The Town should change the calculation of the % Surplus to reflect the excess or deficit over the RHNA units by income category and properly reflect this throughout the Housing Element, including Table 10-3. This will also make Los Gatos consistent with every other ABAG jurisdiction’s calculation of a buffer percentage over RHNA.

2. Projected ADU Affordability is inappropriately optimistic

On page D-60 of the November draft Housing Element it is disclosed that the income distribution for projected ADU production is assumed to be 30% very low, 30% low, 30% moderate and 10% above moderate income. This distribution is overly optimistic with reference to the production of very low-income and is not supported by the Town’s actual experience of issued building permits for ADUs

Appendix I. Public Comments

Town of Los Gatos

November 27, 2023

Page 4

between the years 2020 to 2022. Over this time a total of 98 building permits were issued and none of them were for very low- or low-income units. This fact is not disclosed in the November draft.

If we include the 23 ADU units permitted from June 30, 2022 to January 31, 2023 there were zero very low-income units and 3 low-income units out of a total of 23 issued building permits. That would bring the total over the 3½ years to 121 ADUs permitted with zero being very low income and 3 low-income units for a total of less than 3%. In light of this history, it does not appear that the Town has adopted a reasonable assumption that over the 6th cycle, 60% of projected ADU production would be very low- or low-income units.

LGCA made this same comment on the September draft HE, which had the same ADU income distribution assumption. The Town's reply was that the ADU income distribution was based on guidance provided in the, "Using ADUs to Satisfy RHNA," Technical memo provided by ABAG.

However, the technical memo cited by the Town was prepared to help jurisdictions justify the use of ADUs to help satisfy their RHNA requirements by income category. It was not a study of affordability levels of ADUs. ABAG, however, did complete a study of ADU affordability levels. It published draft results on September 8, 2021 in a technical assistance memo entitled, "Affordability of Accessory Dwelling Units." We now refer to that study (copy attached). This study is highly relevant to establishing a projection of ADU production by affordability level.

The study included a specific recommendation for income distribution of ADUs 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, and has been adopted by other ABAG jurisdictions. This distribution is further validated by data in the survey showing the following distribution of ADU market rate units on the Peninsula: 6% very low, 31% low, 48% moderate and 15% above.

By overestimating the production of very low-income ADU units, the Town is inappropriately reducing its 6th cycle RHNA requirement for this income category to a level not supported by the evidence. This is unfair to all other jurisdictions in ABAG with similar affordable housing concerns, such as the City of Los Altos, which adopted the more appropriate income distribution assumption. We hypothesize the Town used this more aggressive assumption in order to reduce the amount of land required to be rezoned to achieve the Town's 6th cycle very low income RHNA units. By our calculation the Town would need to rezone approximately 10% more land if the study recommendation had been adopted. This is fundamentally wrong and needs to be corrected.

Adopting the distribution recommended for jurisdictions with affordable housing concerns would result in the number of projected ADU units shown in Table 10-3 being adjusted to 10 units for very low income, 60 units for low income, 100 units for moderate and 30 units for above moderate-income categories. More importantly the surplus above RHNA for very low-income units would be reduced to 107 units from 157, reducing the buffer over RHNA from 29% to 20%.

Combining the corrections from Item 1 above with these adjustments, Table 10-3 should be presented as follows:

	Very Low-Income	Low-Income	Moderate Income	Above-Moderate Income	Total
Single-Family Units & Housing Projects	0	0	0	2	2
ADUs	0	3	11	9	23
Pipeline Projects	0	1	0	190	191
Projected ADUs	10	60	100	30	200
Total	10	64	111	231	416
RHNA	537	310	320	826	1,993
Remaining RHNA	527	246	209	595	1,577
HEOZ Sites	634	357	340	624	1,955
Owner Interest / Conceptual Development Plans	480	283	264	304	1,331
Additional Sites	154	74	76	320	624
Surplus above RHNA	107	111	131	29	378
% Surplus above RHNA	20%	36%	41%	4%	19%

3. SB 330 impact on development densities should be added to Section D. 4 – Appropriate Density/Default Density

Section D. 4 discusses default density and development trends. The discussion is out of date and fails to fully disclose the number of SB 330 development applications that have been filed and the potential impact on development densities.

Since December 1, 2022 there have been 8 SB 330 pre-applications filed compared to none over the past 3 years. Two of the 8 applications (405 Alberto Way-52 units and 14859 Los Gatos Blvd-437 units) were final applications as of the date the November draft was submitted to HCD and a third (50 Los Gatos-Saratoga Road-158 units) will be finalized by January 4, 2024 before the January 31, 2024, statutory deadline for rezoning of parcels in the HEOZ. None of the remaining 5 SB 330 applications will be finalized by January 31, 2024. All three of the applications noted above are for parcels included in the Housing Element Site Inventory.

SB 330 applications which allow for the development of parcels at densities below those anticipated in the Housing Element act as a constraint to housing development and an impediment to achieving its RHNA. None of the parcels noted above will be developed at the minimum development density of 30 DU/acre established by the HEOZ. Rather the parcels will be developed at densities ranging from 17.9 DU/acre to 28.8 DU/acre.

As a result of the vested lower densities, these three parcels will reduce the projected development units from the HEOZ from 1,955 to 1,842 units and the total net capacity will be reduced to 2,258 units which is RHNA of 1,993 units plus 265 units for a 13.3 percent buffer, not the 24 percent reported in Table 10-3.

Appendix I. Public Comments

Town of Los Gatos

November 27, 2023

Page 6

As a result, Programs AQ and AS will not accomplish the goal to accommodate the Town's RHNA and a 25 percent buffer by the end of January 31, 2024.

4. No Net Loss Buffer of 33% for Very-Low-income category is wrong and does not comply with Govt Code Section 65863 – No Net Loss Law

Recent changes to state law require jurisdictions to continually maintain adequate capacity in their site inventories to always meet their RHNA by income category throughout the entire planning period. On page 10-32 the Housing Element discusses the need to maintain a HCD recommended buffer of 15 percent above RHNA to provide a "cushion" if a site is developed below the density projected in the Housing Element or at a different income than projected. This cushion provides the Town with additional sites available to accommodate the remaining balance of the RHNA. Table 10-3 reports a % Surplus of 33% for very-low-income units which we believe is incorrectly determined.

In our September 2023 comment letter, we raised concerns regarding the No Net Loss Law. The Town never responded to that letter. In the November draft submitted to HCD, the Town stated "the Town has received direction from HCD that No Net Loss Law is only applicable once a project has been approved. The preliminary and formal SB 330 applications that the Town has received have not been approved".

The Town's position is based on Govt Code Section 65863 (c) (2) which does address the approval of a development project resulting in fewer units by income. However, Govt Code Section 65863 (a) also requires the Town "shall ensure that its housing inventory" or "its housing element programs to make sites available" which "can accommodate at all times throughout the planning period, its remaining unmet share of regional housing need".

Adopting a site inventory, which is an administrative action, that is known to be unable to accommodate the Town's RHNA units for very low-income category because existing regulatory conditions present a barrier to development violates this requirement. The Town intentionally ignores the impact of SB 330 applications on Program AQ and on sites included in the Housing Element site inventory. The Town fails to determine if SB 330 sites finalized before January 31, 2024, which are subject to vested development rights, are sufficient to provide for the Town's share of RHNA need for all income levels.

We also direct you to the flow chart "No Net Loss Law Decision Flow Chart" in HCD's No Net Loss comment letter dated October 2, 2019. The flow chart's first step is to determine what type of action is being considered. The second step is to determine if the location of the proposed development is included in the Housing Element site inventory. The third step is to determine "would approval of the proposed project result in a lower density than was assumed in the housing element or create a shortfall of capacity to accommodate the RHNA by income group".

Using this flowchart as our basis for analysis, it is clear the SB 330 applications for 14859 Los Gatos Blvd (437 units) and 50 Los Gatos-Saratoga Road (158 units) would result in a shortfall of HEOZ capacity to accommodate the very low income RHNA category as explained in Program AS. Based on the SB 330 applications, 14859 Los Gatos Blvd would have 184 less very low income units and 50 Los Gatos-Saratoga Road would have 86 less very low income units than projected in the site inventory for a total "net loss" of 270 very low income units.

In comparing the 270 unit “net loss” for very low-income category and adjusting for the overstatement of ADU projection for very low-income units discussed above, the site inventory does not have a 157-unit surplus or 33% buffer as shown in Table 10-3 but rather has a 163 units shortfall of capacity for very low-income category for a deficit of 30%. The “net loss” impact of SB 330 on the projected development of very low-income units is well known by Staff and was openly acknowledged by the Town’s Housing Element consultant at the most recent Planning Commission meeting held November 15, 2023.

The lack of sites to accommodate the Town’s RHNA represents a fundamental alteration to the Town’s ability to meet Housing Element Law. To ensure that sufficient capacity exists in the Housing Element to accommodate the RHNA throughout the planning period, a much larger buffer than 15% of very low-income sites needs to be created and more importantly the 30% deficit eliminated.

5. Programs I, N, P and AJ create an obligation to provide financial assistance from the Town’s Affordable Housing Fund (BMP Programs funds) which has over the past three years realized less than \$100,000 “in lieu fees” paid in.

The programs noted above create an obligation for the Town to provide financial assistance, monetary subsidies, funding of home repairs and purchasing affordability covenants for the 6th cycle which the Town has not analyzed as to the financial viability of the programs. The only funding source for these programs is “in lieu fees” that the Town collects only if a developer elects to pay these fees in lieu of building affordable housing under the Town’s BMP program. In limited circumstances, the Town can solely determine payment. Over the past 3 years less than \$100,000 has been paid into the Towns Affordable Housing Fund (BMP Program funds) and as of June 30, 2023 the Affordable Housing Fund had a balance \$3.7m.

Without knowing whether these programs are financially viable, it is inappropriate for the Town to include these programs in the Housing Element. Creating programs where it is unknown whether sufficient financial resources to implement the programs exist is a meaningless paper exercise and does not affirmatively further fair housing in the Town.

This issue was raised in another resident comment letter dated September 29, 2023. The Town’s response that “BMP Housing in-lieu fees were allocated as directed by Town Council through the Town’s annual strategic priorities” does not address the fundamental lack of income received from “in-lieu fees” to fund the financial obligation created by the above-mentioned programs. The financial viability of these programs must be fully analyzed before a commitment can be made.

Summary

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

Los Gatos Community Alliance

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Appendix I. Public Comments



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Technical Assistance
for Local Planning
IMPLEMENTATION

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. Given HCD's workload, it is unlikely we will receive additional guidance.

Figure 1: Affordability of ADUs

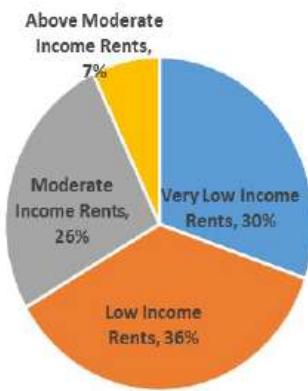




Figure 1 presents a summary of ADU affordability and Table 1 presents a recommendation for assumptions for Housing Elements. See the main body of the report for more information on methodology and assumptions.

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%

Appendix I. Public Comments


 Association of Bay Area Governments

 Technical Assistance
 for Local Planning

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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 the 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.



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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 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.

Appendix I. Public Comments



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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.

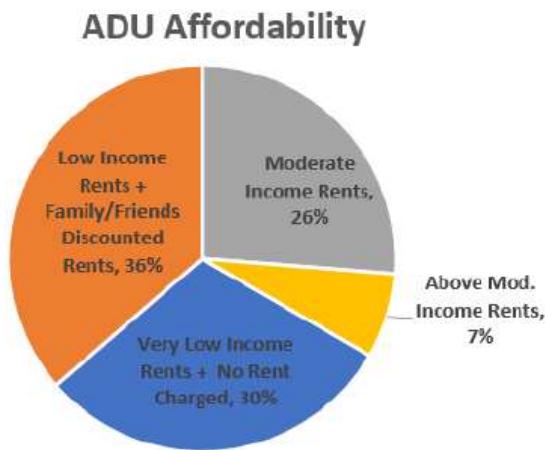


Figure 2: Results shown for 9-county Bay Area. "Very low" rents include units available to family or friends at no cost. "Low" rents include discounted family rentals.

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>

Appendix I. Public Comments

Response to Comment #1

- RHNA Surplus
 - The method for calculating the percentage of the surplus is consistent with other Santa Clara County jurisdictions who have received certification of their Housing Element. Additionally, this method has been utilized by the Town's Housing Element consultant with approximately 40 jurisdictions who have received certification of their Housing Element. The buffer of 25 percent, as identified in Implementation Program AS is a reflection of the March 2023 version of the Draft Revised Housing Element and could be revised to reflect the November 2023 version of the Draft Revised Housing Element, which provides a 24 percent buffer.
- Projected ADU Affordability
 - The income and affordability distribution of ADU's in the Housing Element was based on a technical memorandum prepared by the Association of Bay Area Governments (ABAG), titled 'Using ADU's to Satisfy RHNA Technical Memo.' The ABAG information provided by the LGCA was a draft version. The Town is utilizing the recommended percentages, provided in the final version of the ABAG technical memorandum.
- SB330 Impact
 - The Town has received direction from HCD that No Net Loss law is only applicable once a project has been approved. The preliminary and formal SB 330 applications that the Town has received have not been approved. If and when a formal application is submitted and the project is approved that will trigger the "no net loss" requirements, and the Town will comply with the "no net loss" requirements.
- No Net Loss Buffer
 - As discussed in the response to comment #3, the Town has received direction from HCD that No Net Loss law is only applicable once a project has been approved. The preliminary and formal SB 330 applications that the Town has received have not been approved. If and when a formal application is submitted and the project is approved that will trigger the "no net loss" requirements, and the Town will comply with the "no net loss" requirements.
- Program References to Town's Affordable Housing In Lieu Fund
 - The Below Market Price (BMP) housing in-lieu fees must be used for affordable housing purposes and are allocated as directed by the Town Council as part of the budgeting process. Every year the Town Council identifies their strategic priorities as an initial step in the budget development process. The Town Council has made affordable housing partnerships a 2023-2025 Strategic Priority.

Summary Modifications to the November 2023, Draft Revised 2023-2031 Housing Element in Response to Public Comments

Pursuant to AB215, public comments provided during the seven-day public comment period above were considered prior to resubmitting to HCD and it was determined that no revisions were required to the Draft Revised 2023-2031 Housing Element (November 2023).