



November 19, 2023

Laurel Prevetti, Town Manager
Town of Los Gatos
110 E Main St
Los Gatos, CA 94050
Via email: LPrevetti@losgatosca.gov

Dear Ms. Prevetti:

The Los Gatos Community Alliance (LGCA) has been made aware that on November 16, 2023, the Town submitted a newly revised draft 2023-2031 Housing Element (dated November 2023) to the California Department of Housing and Community Development (HCD) for review. This latest revision incorporates substantive changes from the prior draft. This revised draft Housing Element was not reviewed or discussed by the Town's Housing Element Advisory Board (HEAB) or the Town's Planning Commission prior to being submitted to HCD. It also was not made available to the public prior to submission to HCD.

On November 15, the night before the Town submitted the revised Housing Element draft, the Planning Commission held a special meeting for which the only agenda item was, "Consider and Make a Recommendation to the Town Council on the Draft Revised 2023-2031 Housing Element." Because the newly revised November draft was not on the agenda and was unknown to the public at the time, the Planning Commission and the public were denied any opportunity to review and comment on the draft that was submitted to HCD the very next day.

We remind you of California Government Code Section 65585(b)(3) (annotated copy attached) which explicitly states, "**For any subsequent draft revision, the local government shall post the draft revision on its internet website and shall email a link to the draft revision 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 the department**" (emphasis added).

The required communications were not made 7 days prior to submitting the newly revised draft to HCD, in direct contravention of the aforementioned Code section. Instead, the Town posted the November 2023 Housing Element revision on its website on November 16, 2023, the same day it was submitted to HCD. Also on that day, the Town sent email links to individuals who had requested notices.

HCD has stated on every Housing Element comment letter received by the Town, "*public participation in the development, adoption and implementation of the housing element is essential to effective housing planning.*" Furthermore, every HCD comment letter reminded the Town of the obligatory 7-day public comment period. We direct your attention to appendix E "Public Participation" on page 11 of HCD's comment letter of January 12, 2023 (annotated copy attached), for an example of HCD's explicit guidance on this topic.

Los Gatos Community Alliance
Facts Matter; Transparency Matters; Honesty Matters
www.lgca.town

In addition, on its website at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements>, HCD imposes the following requirement for revised submittals: *"in the element or in a cover letter, please indicate compliance with AB 215 requirements to post the draft revision on the local government's website and to 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. Please note, any revisions received during the course of HCD's review are also subject to the seven-day posting requirement prior to submittal to HCD."*

We therefore request the Town to:

1. provide us via return email with a copy of the cover letter or other materials submitted to HCD that meet the above-referenced obligation to indicate compliance with the AB 215 notice requirements
2. advise HCD of the Town's failure to observe Government Code Section 65585(b)(3) and inform HCD the Town is rescinding its submission of the draft Housing Element in order properly to provide the required 7-day public review period and consider public comment prior to submitting a revised draft Housing Element.

Lastly, this is to inform you that the LGCA plans to submit comments on the November 2023 draft of the housing element once it is made available to the public with the mandated 7 day public comment period.

Thank you for your attention to this very important matter.

Rick Van Hoesen

Jak Van Nada

Los Gatos Community Alliance

Attachments

HCD comment letter to the Town of Los Gatos dtd Jan. 12, 2023 (annotated)

Cal. Gov. Code § 65585 (annotated)

Copies via email to

Wendy Wood, Town Clerk

Los Gatos Town Council members:

Maria Ristow, Mayor

Mary Badame, Vice Mayor

Matthew Hudes

Rob Moore

Rob Rennie

Joel Paulson, LG Planning Commission

Gabrielle Whelan, Los Gatos Town Attorney

California Department of Housing and
Community Development (HCD)

Paul McDougall

Jose Jaurequi

Los Gatos Community Alliance:

Phil Koen

Cal. Gov. Code § 65585

Section 65585 - Draft element or draft amendment submitted to department

(a) In the preparation of its housing element, each city and county shall consider the guidelines adopted by the department pursuant to Section 50459 of the Health and Safety Code. Those guidelines shall be advisory to each city or county in the preparation of its housing element.

(b)

(1) At least 90 days prior to adoption of a revision of its housing element pursuant to subdivision (e) of Section 65588, or at least 60 days prior to the adoption of a subsequent amendment to this element, the planning agency shall submit a draft element revision or draft amendment to the department. The local government of the planning agency shall make the first draft revision of a housing element available for public comment for at least 30 days and, if any comments are received, the local government shall take at least 10 business days after the 30-day public comment period to consider and incorporate public comments into the draft revision prior to submitting it to the department. For any subsequent draft revision, the local government shall post the draft revision on its internet website and shall email a link to the draft revision 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 the department.

(2) The planning agency staff shall collect and compile the public comments regarding the housing element received by the city, county, or city and county, and provide these comments to each member of the legislative body before it adopts the housing element.

(3) The department shall review the draft and report its written findings to the planning agency within 90 days of its receipt of the first draft submittal for each housing element revision pursuant to subdivision (e) of Section 65588 or within 60 days of its receipt of a subsequent draft amendment or an adopted revision or adopted amendment to an element. The department shall not review the first draft submitted for each housing element revision pursuant to subdivision (e) of Section 65588 until the local government has made the draft available for public comment for at least 30 days and, if comments were received, has taken at least 10 business days to consider and incorporate public comments pursuant to paragraph (1).

(c) In the preparation of its findings, the department may consult with any public agency, group, or person. The department shall receive and consider any written comments from any public agency, group, or person regarding the draft or adopted element or amendment under review.

(d) In its written findings, the department shall determine whether the draft element or draft amendment substantially complies with this article.

(e) Prior to the adoption of its draft element or draft amendment, the legislative body shall consider the findings made by the department. If the department's findings are not available within the time limits set by this section, the legislative body may act without them.

(f) If the department finds that the draft element or draft amendment does not substantially comply with this article, the legislative body shall take one of the following actions:

(1) Change the draft element or draft amendment to substantially comply with this article.

(2) Adopt the draft element or draft amendment without changes. The legislative body shall include in its resolution of adoption written findings which explain the reasons the legislative body believes that the draft element or draft amendment substantially complies with this article despite the findings of the department.

(g) Promptly following the adoption of its element or amendment, the planning agency shall submit a copy to the department.

(h) The department shall, within 90 days, review adopted housing elements or amendments and report its findings to the planning agency.

(i)

(1)

(A) The department shall review any action or failure to act by the city, county, or city and county that it determines is inconsistent with an adopted housing element or Section 65583, including any failure to implement any program actions included in the housing element pursuant to Section 65583. The department shall issue written findings to the city, county, or city and county as to whether the action or failure to act substantially complies with this article, and provide a reasonable time no longer than 30 days for the city, county, or city and county to respond to the findings before taking any other action authorized by this section, including the action authorized by subparagraph (B).

(B) If the department finds that the action or failure to act by the city, county, or city and county does not substantially comply with this article, and if it has issued findings pursuant to this section that an amendment to the housing element substantially complies with this article, the department may revoke its findings until it determines that the city, county, or city and county has come into compliance with this article.

(2) The department may consult with any local government, public agency, group, or person, and shall receive and consider any written comments from any public agency, group, or person, regarding the action or failure to act by the city, county, or city and county described in paragraph (1), in determining whether the housing element substantially complies with this article.

(j) The department shall notify the city, county, or city and county and may notify the office of the Attorney General that the city, county, or city and county is in violation of state law if the department finds that the housing element or an amendment to this element, or any action or failure to act described in subdivision (i), does not substantially comply with this article or that any local government has taken an action in violation of the following:

(1) Housing Accountability Act (Section 65589.5).

(2) Section 65863.

(3) Chapter 4.3 (commencing with Section 65915).

(4) Section 65008.

(5) Housing Crisis Act of 2019 (Chapter 654, Statutes of 2019, Sections 65941.1, 65943, and 66300).

(6) Section 8899.50.

(7) Section 65913.4.

(8) Article 11 (commencing with Section 65650).

(9) Article 12 (commencing with Section 65660).

(10) Section 65913.11.

(11) Section 65400.

(12) Section 65863.2.

(13) Chapter 4.1 (commencing with Section 65912.100).

(k) Commencing July 1, 2019, prior to the Attorney General bringing any suit for a violation of the provisions identified in subdivision (j) related to housing element compliance and seeking remedies available pursuant to this subdivision, the department shall offer the jurisdiction the opportunity for two meetings in person or via telephone to discuss the violation, and shall provide the jurisdiction written findings regarding the violation. This paragraph does not affect any action filed prior to the effective date of this section. The requirements set forth in this subdivision do not apply to any suits brought for a violation or violations of paragraphs (1) and (3) to (9), inclusive, of subdivision (j).

(l) In any action or special proceeding brought by the Attorney General relating to housing element compliance pursuant to a notice or referral under subdivision (j), the Attorney General may request, upon a finding of the court that the housing element does not substantially comply with the requirements of this article pursuant to this section, that the court issue an order or judgment directing the jurisdiction to bring its housing element into substantial compliance with the requirements of this article. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If a court determines that the housing element of the jurisdiction substantially complies with this article, it shall have the same force and effect, for purposes of eligibility for any financial assistance that requires a housing element in substantial compliance and for purposes of any incentives provided under Section 65589.9, as a determination by the department that the housing element substantially complies with this article.

(1) If the jurisdiction has not complied with the order or judgment after 12 months, the court shall conduct a status conference. Following the status conference, upon a determination that the jurisdiction failed to comply with the order or judgment compelling substantial compliance with the requirements of this article, the court shall impose fines on the jurisdiction, which shall be deposited into the Building Homes and Jobs Trust Fund. Any fine levied pursuant to this paragraph shall be in a minimum amount of ten thousand dollars (\$10,000) per month, but shall not exceed one hundred thousand dollars

(\$100,000) per month, except as provided in paragraphs (2) and (3). In the event that the jurisdiction fails to pay fines imposed by the court in full and on time, the court may require the Controller to intercept any available state and local funds and direct such funds to the Building Homes and Jobs Trust Fund to correct the jurisdiction's failure to pay. The intercept of the funds by the Controller for this purpose shall not violate any provision of the California Constitution.

(2) If the jurisdiction has not complied with the order or judgment after three months following the imposition of fees described in paragraph (1), the court shall conduct a status conference. Following the status conference, if the court finds that the fees imposed pursuant to paragraph (1) are insufficient to bring the jurisdiction into compliance with the order or judgment, the court may multiply the fine determined pursuant to paragraph (1) by a factor of three. In the event that the jurisdiction fails to pay fines imposed by the court in full and on time, the court may require the Controller to intercept any available state and local funds and direct such funds to the Building Homes and Jobs Trust Fund to correct the jurisdiction's failure to pay. The intercept of the funds by the Controller for this purpose shall not violate any provision of the California Constitution.

(3) If the jurisdiction has not complied with the order or judgment six months following the imposition of fees described in paragraph (1), the court shall conduct a status conference. Upon a determination that the jurisdiction failed to comply with the order or judgment, the court may impose the following:

(A) If the court finds that the fees imposed pursuant to paragraphs (1) and (2) are insufficient to bring the jurisdiction into compliance with the order or judgment, the court may multiply the fine determined pursuant to paragraph (1) by a factor of six. In the event that the jurisdiction fails to pay fines imposed by the court in full and on time, the court may require the Controller to intercept any available state and local funds and direct such funds to the Building Homes and Jobs Trust Fund to correct the jurisdiction's failure to pay. The intercept of the funds by the Controller for this purpose shall not violate any provision of the California Constitution.

(B) The court may order remedies available pursuant to Section 564 of the Code of Civil Procedure, under which the agent of the court may take all governmental actions necessary to bring the jurisdiction's housing element into substantial compliance pursuant to this article in order to remedy identified deficiencies. The court shall determine whether the housing element of the jurisdiction substantially complies with this article and, once the court makes that determination, it shall have the same force and effect, for all purposes, as the department's determination that the housing element substantially complies with this article. An agent appointed pursuant to this paragraph shall have expertise in planning in California.

(4) This subdivision does not limit a court's discretion to apply any and all remedies in an action or special proceeding for a violation of any law identified in subdivision (j).

(m) In determining the application of the remedies available under subdivision (l), the court shall consider whether there are any mitigating circumstances delaying the jurisdiction from

coming into compliance with state housing law. The court may consider whether a city, county, or city and county is making a good faith effort to come into substantial compliance or is facing substantial undue hardships.

(n) Nothing in this section shall limit the authority of the office of the Attorney General to bring a suit to enforce state law in an independent capacity. The office of the Attorney General may seek all remedies available under law including those set forth in this section.

(o) Notwithstanding Sections 11040 and 11042, if the Attorney General declines to represent the department in any action or special proceeding brought pursuant to a notice or referral under subdivision (j) the department may appoint or contract with other counsel for purposes of representing the department in the action or special proceeding.

(p) Notwithstanding any other provision of law, the statute of limitations set forth in subdivision (a) of Section 338 of the Code of Civil Procedure shall apply to any action or special proceeding brought by the Office of the Attorney General or pursuant to a notice or referral under subdivision (j), or by the department pursuant to subdivision (o).

Ca. Gov. Code § 65585

Amended by Stats 2022 ch 657 (AB 2653),s 2.3, eff. 1/1/2023.

Amended by Stats 2022 ch 647 (AB 2011),s 2, eff. 1/1/2023.

Amended by Stats 2022 ch 459 (AB 2097),s 1, eff. 1/1/2023.

Amended by Stats 2021 ch 363 (SB 478),s 2.5, eff. 1/1/2022.

Amended by Stats 2021 ch 342 (AB 215),s 1, eff. 1/1/2022.

Amended by Stats 2020 ch 370 (SB 1371),s 174, eff. 1/1/2021.

Amended by Stats 2019 ch 668 (SB 113),s 3, eff. 10/9/2019.

Amended by Stats 2019 ch 159 (AB 101),s 4, eff. 7/31/2019.

Amended by Stats 2017 ch 370 (AB 72),s 1, eff. 1/1/2018.

Amended by Stats 2016 ch 271 (AB 2685),s 1, eff. 1/1/2017.

Amended by Stats 2000 ch 471 (AB 2008), s 2, eff. 1/1/2001.

APPENDIX TOWN OF LOS GATOS

The following changes are necessary to bring the Town's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on HCD's website at <https://www.hcd.ca.gov/planning-and-community-development/hcd-memos>. Among other resources, the housing element section contains HCD's latest technical assistance tool, *Building Blocks for Effective Housing Elements (Building Blocks)*, available at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks> and includes the Government Code addressing State Housing Element Law and other resources.

A. Review and Revision

Review the previous element to evaluate the appropriateness, effectiveness, and progress in implementation, and reflect the results of this review in the revised element. (Gov. Code, § 65588 (a) and (b).)

The review requirement is one of the most important features of the element update. The review of past programs should describe progress in implementation of previous actions, including results compared to objectives and evaluate the effectiveness of actions to make appropriate adjustments in the current planning period. In the most cases, the element does not describe any progress in implementation and particularly housing related outcomes and then simply concludes to continue or modify programs. For example, the prior element had a program to implement the below market rate program and evaluate the program as a constraint. The element reports the program was implemented. There is no discussion of outcomes or an evaluation of constraints. Then, the element concludes the program will be modified but the new program does not appear to adjust on past efforts. The element must fully describe past commitments, progress in implementation, evaluate effectiveness and then discuss appropriate adjustments in the current planning period.

In addition, the element must provide an evaluation of the cumulative effectiveness of past goals, policies, and related actions in meeting the housing needs of special needs populations (e.g., elderly, persons with disabilities, large households, female-headed households, farmworkers, and persons experiencing homelessness) and revise programs as appropriate.

B. Housing Needs, Resources, and Constraints

1. *Affirmatively further[ing] fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2...shall include an assessment of fair housing in the jurisdiction. (Gov. Code, § 65583, subd. (c)(10)(A).)*

Regional Level Patterns and Trends: While the element includes several maps and tables and reports data, it generally must evaluate the data and especially at a regional level, comparing the Town to the broader region. This is particularly important since the Town appears far different from the rest of the region. The analysis should address all components of the assessment of fair housing (e.g., segregation and integration, disparities in access to opportunity) and should focus on race, income, and overall access to opportunity). The analysis should address trends and incorporate local data and knowledge and other relevant factors (See below).

Income and Racial Concentration of Affluence (RCAA): The element briefly mentions incomes in the Town compared to the region and notes it is safe to speculate the Town has neighborhoods that are RCAAs; however, the entire Town is a RCAA and the element should incorporate this information. Please see HCD's Affirmatively Furthering Fair Housing (AFFH) Data Viewer at <https://affh-data-resources-cahcd.hub.arcgis.com/>. The element should include specific analysis of income and RCAA at a regional level (Town compared to the broader region). The analysis should at least address trends, conditions, coincidence with other fair housing factors (e.g., race, highest resource, overpayment), effectiveness or absence of past strategies (e.g., lack of publicly assisted housing and lack of multifamily zoning), local data and knowledge and other relevant factors. The element must add or modify meaningful programs based on the outcomes of this analysis, including actions to improve housing mobility within and beyond Town boundaries.

Disparities in Access to Opportunity: While the element provided a general analysis of opportunity areas, and high-level conclusions about the Town's disparities in access to opportunity, it should analyze trends and patterns related to access to transportation on a local and regional level.

Disproportionate Housing Needs, Including Displacement Risk: The element includes some information on cost burden and overcrowding but should also discuss local patterns of housing conditions. For example, the element should discuss areas of the Town where proportions of housing units needing rehabilitation may be higher than other areas and may utilize local knowledge such as qualitative information from code enforcement staff.

Identified Sites and Affirmatively Furthering Fair Housing (AFFH): The element must include data on the location of regional housing need allocation (RHNA) sites by income group relative to all fair housing components. The analysis should address the number of units by income group and location, any isolation of the RHNA by income group, magnitude of the impact on existing concentrations of socio-economic characteristics and discuss how the sites improve fair housing conditions. The analysis should be supported by local data and knowledge and other relevant factors and programs should be added or modified as appropriate to promote inclusive and equitable communities.

Local Data and Knowledge: The element must include local data, knowledge, and other relevant factors to discuss and analyze any unique attributes about the Town related to

fair housing issues. The element should complement federal, state, and regional data with local data and knowledge where appropriate to capture emerging trends and issues, including utilizing knowledge from local and regional advocates and service providers, Town staff and related local and County planning documents.

Other Relevant Factors: While the element includes some general background on exclusionary practices, it should relate these situations to the Town and complement data and mapping with other relevant factors that contribute to fair housing issues in the Town. For instance, the element can analyze historical land use; zoning and barriers to housing choices such as past denials of affordable housing, local land use initiatives or proposed referendums; investment practices; seeking investment or lack of seeking investment to promote affordability and inclusion; information about redlining/greenlining, restrictive covenants and other discriminatory practices; land use related lawsuits; local land use initiatives; demographic trends, or other information that complements the state and federal data.

Contributing Factors to Fair Housing Issues: Upon a complete AFFH analysis, the element must assess and prioritize contributing factors to fair housing issues and add or modify programs as appropriate.

2. *Include an analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition. (Gov. Code, § 65583, subd. (a)(2).)*

Housing Conditions: The element provides some information on age of the housing stock. However, it must estimate the number of units in need of rehabilitation and replacement. For example, the analysis could include estimates from a recent windshield survey or sampling, estimates from the code enforcement agency, or information from knowledgeable organizations. For additional information, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/housing-stock-characteristics>.

3. *An 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. (Gov. Code, § 65583, subd. (a)(3).)*

Pipeline Projects: The element includes a list of 176 units through pipeline projects on page D-38. While the element may utilize pipeline and potential development projects toward the RHNA, it must also demonstrate their affordability and availability in the planning period. Affordability must be demonstrated based on actual sales price, rent level or other mechanisms ensuring affordability (e.g., deed restrictions). Availability should account for the likelihood of project completion in the planning period and should address the status, necessary steps to issue permits, any barriers to development and other relevant factors.

Sites Inventory: The element must clarify what the allowable density is for the North Forty Specific Plan identified in Table A. The inventory indicates sites zoned under the North Forty Specific Plan where the minimum and maximum densities is the same (i.e., 30 units per acre). If the densities are the same, the element should include a specific analysis of the range as a potential constraint.

Realistic Capacity: The element must include a methodology for calculating the realistic residential capacity of identified sites. The methodology must be adjusted as necessary, based on the land use controls and site improvements and typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction. For example, the element could clearly list other recent projects, the zone, acreage, built density, allowable density, level of affordability and presence of exceptions such as a density bonus.

In addition, the element must also account for the likelihood of 100 percent nonresidential development. The element lists recent trends for residential development in non-residential zones but should also consider the development activity of 100 percent nonresidential uses. For example, the element could analyze all development activity in these nonresidential zones, how often residential development occurs and adjust residential capacity calculations, policies, and programs accordingly. This analysis may incorporate any proposed policies such as residential performance standards and prohibition of commercial uses.

Nonvacant Sites: The element must include an analysis demonstrating the potential for additional development on nonvacant sites. The element generally provides a description of the properties like location and whether the property owner submitted an interest form but does not describe the results of the form or why the property might redevelop in the planning period. To address this requirement, 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, 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.

For your information, if the housing element relies upon nonvacant sites to accommodate more than 50 percent of the RHNA for lower-income households the housing element must demonstrate existing uses are not an impediment to additional residential development and will likely discontinue in the planning period. (Gov. Code, § 65583.2, subd. (g)(2).) Absent findings (e.g., adoption resolution) based on substantial evidence, the existing uses will be presumed to impede additional residential development and will not be utilized toward demonstrating adequate sites to accommodate the RHNA.

Replacement Housing Requirements: The element identifies sites with existing residential uses. Absent a replacement housing program, these sites are not adequate sites to accommodate lower-income households. The replacement housing program

that has the same requirements as set forth in Government Code section 65915, subdivision (c), paragraph (3). The housing element must be revised to include such analysis and a program, if necessary.

Small Sites: The element identifies several sites smaller than a half-acre. Sites smaller than a half-acre in size are deemed inadequate to accommodate housing for lower-income housing unless it is demonstrated that sites of equivalent size and affordability were successfully developed during the prior planning period or other evidence demonstrates the suitability of the sites to accommodate housing for lower-income households, including programs as appropriate.

Zoning for Lower-Income Households: The element must demonstrate zoning appropriate to accommodate housing for lower-income households. The sites inventory includes zones with densities of 14 to 22 units per acre (Medium Density Residential R-M) that allocate units for lower income. However, the element does not include an analysis evaluating the adequacy of the R-M zone to encourage and facilitate the development of units affordable to lower-income households. For communities with densities that meet specific standards (allow at least 30 units per acre for Los Gatos), no analysis is required. Otherwise, the element must include an analysis based on, including but not limited to, factors such as market demand, financial feasibility and development experience within identified zones demonstrating how the adopted densities can accommodate housing for lower-income households.

SB 9 Sites: The element identifies SB 9 as a strategy to accommodate the part of the Town's RHNA. To support these assumptions, the analysis must include experience, trends and market conditions that allow lot splits. The analysis must also include a nonvacant sites analysis demonstrating the affordability, likelihood of redevelopment and the existing use will not constitute as an impediment for additional residential use. The analysis should describe how the Town determined eligible properties, whether the assumed lots will have turnover, if the properties are easy to subdivide, and the condition of the existing structures or other relevant factors indicating additional development potential. The analysis should also describe interest from property owners as well as experience. The analysis should provide support for the assumption of eligible properties being developed within the planning period. Based on the outcomes of this analysis, the element should add or modify programs to establish zoning and development standards early in the planning period and implement incentives to encourage and facilitate development as well as monitor development every two years with and identify additional sites within six months if assumptions are not being met. The element should support this analysis with local information such as local developer or owner interest to utilize zoning and incentives established through SB 9.

Availability of Infrastructure: The element must demonstrate sufficient existing or planned water and sewer capacity to accommodate the Town's RHNA for the planning period.

Zoning for a Variety of Housing Types:

- *Transitional and Supportive Housing:* Transitional housing and supportive housing are permitted as a residential use and only subject to those restrictions that apply to other residential dwellings of the same type in the same zone. The element must demonstrate compliance with this requirement or include a program if necessary.
- *Permanent Supportive Housing:* By right permanent supportive housing shall be a use by-right in zones where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses pursuant to Government Code section 65651. The element must demonstrate compliance with this requirement and include programs as appropriate.
- *Employee Housing:* The element should clarify if there are any zones that allow agriculture uses. If there are zones that allow agriculture uses, then the town must comply with California Health and Safety Code Section 17021.6. Section 17021.6 requires employee housing consisting of no more than 12 units or 36 beds to be permitted in the same manner as other agricultural uses in the same zone.
- *Manufactured Housing:* The element must demonstrate zoning permits manufactured housing on a permanent foundation in the same manner and in the same zone as a conventional or stick-built structures are permitted (Government Code Section 65852.3) or add or modify programs as appropriate.

Electronic Sites Inventory: For your information, pursuant to Government Code section 65583.3, the Town must submit an electronic sites inventory with its adopted housing element. The Town must utilize standards, forms, and definitions adopted by HCD. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements> for a copy of the form and instructions. The Town can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance.

4. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), 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, subd. (a)(5).)*

Land Use Controls: The element must identify and analyze all relevant land use controls impacts as potential constraints on a variety of housing types. For example, the element should analyze all development standards by zoning district for impacts on housing costs and ability to achieve maximum densities. The element should also discuss any local initiatives, referendums, moratoriums or other mechanisms (existing or proposed) that impact housing supply, cost, feasibility, timing and ability to achieve maximum densities. In addition, the analysis should specifically address the development standards in the North Forty Specific Plan, Mixed Use Commercial, and the High-Density Residential zone. The analysis must evaluate the cumulative impacts of land use controls on the cost and supply of housing, including the ability to achieve

maximum densities. The Town could engage the development community to assist with this analysis.

Fees and Exaction: While the element lists the total fees per units for single-family and multifamily development, it should also list the fees that comprise that total and particularly impact fees then evaluate those total fees for impacts on development costs.

Local Processing and Permit Procedures: The element must describe and analyze the types of permits, extent of discretionary review including required approval findings, number of public hearings and processing time required for a typical single family and multifamily development that meets zoning requirements.

Housing for Persons with Disabilities: The element indicates the Town adopted a procedure for requesting reasonable accommodation for persons with disabilities (p. C-23) and describes the procedure; however, the element should address criteria related to: “There would be no impact on surrounding uses” and include a program to address the constraint. In addition, residential care facilities for seven or more require a conditional use permit (CUP). The element should evaluate the CUP as a constraint and add a program to allow group homes in all residential zones with an objective and certain process similar to other residential uses.

Density Bonus: The element states the Town adopted a state density bonus program in June 2012. The Town’s current density bonus program should be reviewed for compliance with current State Density Bonus Law (SDBL). (Gov. Code, § 65915.). The element should include a program to update density bonus program. Program V is conducting a study to evaluate the existing Density Bonus Ordinance and recommend changes to increase the number of units constructed, however it should specifically commit to update the ordinance in compliance with state law.

Inclusionary Zoning Ordinance: The element mentions the Town’s inclusionary zoning ordinance, but it must also analyze the Town’s inclusionary housing requirements, including its impacts as potential constraints on the development of housing for all income levels. The analysis must evaluate the inclusionary broader policy’s implementation framework, including the percentage of new residential construction that is dedicated to affordable housing, the types of options and incentives offered, relationships with SDBL and any other factors that may impact housing costs.

Zoning and Fees Transparency: The element must clarify its compliance with new transparency requirements for posting all zoning, development standards and fees for each parcel on the jurisdiction’s website.

5. *Analyze any special housing needs such as elderly; persons with disabilities, including a developmental disability; large families; farmworkers; families with female heads of households; and families and persons in need of emergency shelter. (Gov. Code, § 65583, subd. (a)(7).)*

Special Housing Needs: While the element quantifies some of the Town's special needs populations, it must also estimate the number of persons experiencing homelessness in the Town. In addition, the element reports data but must also analyze the special housing needs. For a complete analysis of each population group, the element should quantify the needs, evaluate trends and characteristics (e.g., tenure, income) of housing needs, discuss disproportionate challenges faced by the population, the existing resources to meet those needs, assess any gaps in resources or effectiveness of past strategies, describe the magnitude of the remaining need and appropriate propose policies and programs.

For additional information and a sample analysis, see the Building Blocks at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks>.

C. Housing Programs

1. *Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the Housing Element... (Gov. Code, § 65583, subd. (c).)*

To have a beneficial impact in the planning period and achieve the goals and objectives of the housing element, programs should have specific commitment toward housing outcomes and discrete and early timing (e.g., at least annually or by Jan 2025). Examples of programs to be revised include:

- *Program K Small Multi-Unit Housing*: The Program should include a timeline of when zoning code will be updated.
- *M Lot Consolidation*: The Program should include a quantification of approximately how many lot consolidations the town plans to facilitate.
- *Program R Development Impact and Permit Fees*: The Program should include a completion timeline.
- *Program S Affordable Housing Development*: The Program should include quantification of approximately how many units will be incentivized.
- *Program T Purchase Affordability Covenants in Existing Apartments*: The element should clarify the timeline to establish and implement the program (e.g., by 2024 and at least annually).
- *Program AC Housing Opportunities for Persons Living with Disabilities*: The Program must include a completion timeframe.
- *Program AK Housing Conditions Survey*: Program should be revised to include a specific timeline for when the housing condition survey will be conducted. Additionally, the element should describe how often funding will be applied for (e.g., annually).

- *Program AR CDBG and Other Housing Rehabilitation Programs:* The Program should clarify how often the Town will participate in the County of Santa Clara Community Development Block Grant Joint Powers Authority (e.g. annually, biannually).
- *AS Countywide Home Repair Programs:* The Program should include a numerical target (e.g., how many minor home repairs).
- *AU Residential Rehabilitation Program:* The Program should include a timeline commitment.

2. *Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. (Gov. Code, § 65583, subd. (c)(1).)*

As noted in Finding B3, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the Town may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element should be revised as follows:

Program D Additional Housing Capacity: Currently the element identifies a shortfall of adequate sites to accommodate the RHNA within the planning period. Program D appears to be intended to rezone sites to accommodate a shortfall of sites for the lower-income- RHNA. However, the Program must be revised to meet all requirements pursuant to Government Code section 65583.2, subdivisions (h) and (i). For example, the Program must commit to permit owner-occupied and rental multifamily uses by-right (without discretionary action) for developments in which 20 percent or more of the units are affordable to lower-income households.

Replacement Housing Requirements: The housing element must include a program to provide replacement housing. (Gov. Code, § 65583.2, subd. (g)(3).) The replacement housing program must adhere to the same requirements as set forth in Government Code section 65915, subdivision (c), paragraph (3).

3. *The Housing Element shall contain programs which assist in the development of adequate housing to meet the needs of extremely low-, very low-, low- and moderate-income households. (Gov. Code, § 65583, subd. (c)(2).)*

Program S (Affordable Housing Development): While the program targets extremely low income and other special needs groups, it should also include very low- and low-income

households. The Program should be revised to include outcome-oriented commitments such as annual outreach with developers and identification of development or housing opportunities.

4. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (Gov. Code, § 65583, subd. (c)(3).)*

As noted in Finding B4, the element requires a complete analysis of potential governmental constraints. Depending upon the results of that analysis, the Town may need to revise or add programs and address and remove or mitigate any identified constraints.

5. *Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics... (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding B1, the element requires a complete AFFH analysis. Depending upon the results of that analysis, the Town may need to revise or add or modify goals and actions. Goals and actions must specifically respond to the analysis and to the identified and prioritized contributing factors to fair housing issues and must be significant and meaningful enough to overcome identified patterns and trends. Actions must have specific commitment, milestones, geographic targeting and metrics or numerical targets and, as appropriate, address housing mobility enhancement, new housing choices and affordability in higher opportunity or higher income areas, place-based strategies for community revitalization and displacement protection. For example, the element must add significant and meaningful housing mobility actions to overcome the existing patterns in the Town related to the broader region.

6. *Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent... (Gov. Code, § 65583, subd. (c)(7).)*

Program U Accessory Dwelling Units (ADU): While the element includes a program to incentivize ADU development by waiving fees when an ADU is deed restricted for very low-, and low-income households, it should also provide other incentives that incentivize and promote the creation of ADUs that can be offered at affordable rent. The element could consider other ADU incentives such as exploring and pursuing funding, modifying development standards, and reducing fees beyond state law, pre-approved plans, and homeowner/applicant assistance tools. Finally, the program should commit to monitor the production and affordability of ADUs (e.g., every other year) and make adjustments, if necessary, by a date certain (e.g., within six months).

D. Quantified Objectives

Establish the number of housing units, by income level, that can be constructed, rehabilitated, and conserved over a five-year time frame. (Gov. Code, § 65583, subd. (b)(1 & 2).)

The element did not address this requirement. The element must include quantified objectives to establish an estimate of housing units by income category, including extremely low-income households, that can be constructed, rehabilitated, and conserved over the planning period.

E. Public Participation

Local governments shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the Housing Element, and the element shall describe this effort. (Gov. Code, § 65583, subd.(c)(9).)

While the element described various efforts to achieve public participation in the preparation of the housing element update, **it should also describe how comments were considered and incorporated into the element.**

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. During the housing element revision process, the Town must continue to engage the community, especially organizations that represent lower-income and special needs households, including local neighborhood groups and commenters on this review such as Silicon Valley@Home, by making information regularly available while considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and to 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 to HCD.

F. General Plan Consistency

The Housing Element shall describe the means by which consistency will be achieved with other general plan elements and community goals. (Gov. Code, § 65583, subd. (c)(7).)

The Town must discuss how internal consistency will be maintained and achieved with other elements of the general plan throughout the planning period.

November 14, 2023

Dear Members of the Planning Commission,

The Los Gatos Community Alliance is writing to you as a group of concerned residents regarding the draft Revised 2023-2031 Housing Element. We have specific comments regarding Table 10-3 which is found in the Staff report for tonight's meeting.

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 “finaled, 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 2) nor the HCD comment letter issued to SCAG dated May 21, 2012 (see attachment 3).

According to both HCD comment letters, “local governments may take RHNA credit for “new” units approved, permitted, or produced to accommodate “new” housing projected **since the start date** of the “new” RHNA projection period.” Furthermore, the comment letters state, “units approved, permitted, or produced before the “new” RHNA projection period relate to the previous housing need and can only be credited and reported for the previous RHNA and HE update cycle.” For Los Gatos, the “new” RHNA projection period started June 30, 2022.

Of the 227 units claimed as a credit toward the 6th cycle RHNA, 225 units were permitted prior to the start date of the projection period of June 30, 2022. This includes the 49 below market rate units on the North 40 Phase 1 parcel (APN 424-07-100). In addition, all 225 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 225 units need to be excluded from Table 10-3 and deducted from the total credits.

To further remove any doubt about how units “approved, permitted or produced” since the start of the 6th cycle RHNA should be counted, we have attached pages from the adopted and certified 6th cycle Housing Element for the City of Long Beach (see attachment 4). It is clearly disclosed in Long Beach’s Housing Element that “housing developments that have been proposed or have received entitlements but are not expected to be issued building permits until after July 1, 2021 (this is the start date for SCAG’s 6th cycle projection period) can be credited toward the 2021 – 2029 RHNA”. We find it hard to imagine that HCD would allow Los Gatos to double count units in both the 5th and 6th cycle while not allowing other jurisdictions in the State to also do so.

Removing the double counted 225 units reduces the surplus to 490 units from the 715 units shown on Table 10-3 and will provide a buffer of 39% above the RHNA 1,993 units. Additionally, the surplus of 206 units for very low-income category will be reduced to 157 units or 29% of RHNA 537 very low-income units.

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 (see attachment 5) 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 and has been adopted by other ABAG jurisdictions. This distribution is further 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. Furthermore, we find it hard to believe HCD will approve the distribution in Table 10-3 given the fact that there is no evidence in the record to support the distribution assumption and it was changed from prior submissions of Table 10-3 made to HCD.

Adopting the distribution recommended for jurisdictions with AFFH concerns, 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. Making this adjustment would further reduce the 206 surpluses for very low-income category to 107 units (taking into consideration the 49 units discussed above) which represents only a 20% buffer above the RHNA 537 very low-income units.

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.

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.

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 2,370 units developed during the 6th cycle which will provide a 19% buffer above the RHNA 1,993. In addition, reflecting the above adjustments the income distribution will be 374 very low units, 373 low units, 295 moderate units and 1,328 above units (see attachment 1).

Given this level of development, the Town will fail to meet the 6th cycle RHNA of 537 very low units and 320 moderate units. 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 for all income categories. Only the above moderate-income group meets this program's goal with a 61% buffer.

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 outcome – a Housing Element that fully complies with State Housing Law and is certified by HCD as quickly as possible.

Los Gatos Community Alliance

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) | (175) | (225) |
| 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) | 197 | (338) |
| Adjusted Total Credits and HEOZ sites | 374 | 373 | 295 | 1,328 | 2,370 |
| RHNA | 537 | 310 | 320 | 826 | 1,993 |
| Surplus/(Deficit) over RHNA | (163) | 63 | (25) | 502 | 377 |
| % Surplus/(Deficit) | (30.4) | 20.3 | (7.8) | 60.8 | 18.9 |

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

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January 12, 2022

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

Dear Executive Director Therese W. McMillan:

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

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

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

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

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

Sincerely,

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

Tyrone Buckley
Assistant Deputy Director

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

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May 21, 2012

Ms. Huasha Liu
Planning Director, Land Use & Environmental Planning Department
SCAG
818 West 7th Street
Los Angeles, CA 90017

RE: Clarification of Housing Element (HE) Planning Period and Due Date, Regional Housing Need Assessment (RHNA) Projection Period, and Eligibility of Jurisdictions to Take RHNA Credit

Dear Ms. Liu:

The Department is responding to your recent request, on behalf of some members of the Southern California Association of Governments (SCAG), for the Department (HCD) to address (a) specific statutory changes regarding the HE "planning" period and due date and the RHNA "projection" period applicable to SCAG jurisdictions for the 5th RHNA and HE update cycle, and (b) jurisdictions' eligibility to take RHNA credit for housing units approved, permitted, or produced.

The brief answers to your questions are that SCAG's RHNA "projection" period is from January 2014 through October 2021, whereas the HE due date is October 15, 2013 for the "planning" period from October 2013 through October 2021. The anomaly of the HE due date for SCAG jurisdictions (October 2013) preceding the RHNA start date (January 2014) by three (3) months is due to (a) legislative changes and statutory definitions described below and (b) the date that SCAG adopted its Regional Transportation Plan. Statutory changes applicable for the 5th and subsequent HE update cycles specify the HE due date to be 18 months from the RTP adoption date. The October 2013 HE due date for SCAG jurisdictions follows 18 months from SCAG's April 5, 2012 RTP adoption date.

Regarding jurisdictions taking RHNA credit, nothing has changed. The jurisdiction authorized to permit a particular housing development can take RHNA credit for "new" units approved, permitted, or produced to accommodate "new" housing need projected since the start date of the "new" RHNA projection period. Units approved, permitted, or produced before the start of the "new" RHNA projection period relate to the previous housing need and can only be credited and reported for the previous RHNA and HE update cycle.

Legislative Changes to RHNA Projection Period and HE Planning Period and Due Date

Senate Bill 375 (Steinberg, Chapter 728, 2008 Statutes and Senate Bill 575 (Steinberg, Chapter 354, 2009 Statutes) added Government Code (GC) Sections defining HE planning period and due date and RHNA projection period per below italicized text:

RHNA Projection Period

The new projection period shall begin on the date of December 31 or June 30 that most closely precedes the end of the previous projection period.” [GC 65588(e)(6)]

“Projection Period” shall be the time period for which the regional housing need is calculated. [GC 65588(f)(2)]

Note: HCD uses January 1 or July 1 dates for RHNA determination start date purposes as these are the effective dates used by Department of Finance (DOF) in updating DOF housing estimates and population projections. Also, once HCD has determined the RHNA, there is no statutory authority to make any revision to the RHNA projection period or RHNA determination.

HE Planning Period and Due Date

“Planning Period” shall be the time period between the due date for one housing element and the due date for the next housing element. [GC 65588(f)(1)]

For purposes of determining the existing and projected need for housing within a region pursuant to Sections 65584 to 65584.08, inclusive, the date of the next scheduled revision of the housing element shall be deemed to be the estimated adoption date of the regional transportation plan update described in the notice provided to the Department of Transportation plus 18 months. [GC 65588(e)(5)]

Note: For HE due dates falling before and after the 15th day of a month, HCD rounds “up” the HE due date to fall on either the 15th day or last day of a month. Also, while a change in the “actual” adoption date of the RTP from the “estimated” adoption date of the RTP (after HCD has determined the RHNA and identified the HE due date) can subsequently cause a change to the HE due date and HE “planning” period, it would not change the RHNA determination or “projection” period.

Ms. Huasha Liu
Page 3

Thank you for the opportunity to address questions raised by SCAG's membership. If SCAG or its members have questions, please contact Anda Draghici, Housing Policy Specialist, by email (adraghici@hcd.ca.gov) or telephone (916.327-2640).

Sincerely,



Glen A. Campora
Acting Deputy Director



Appendix

7

"This plan needs to address homelessness, walkability, public transit, job opportunities near new developments, and neighborhood protections from the effects of gentrification."

Long Beach Resident - Housing Element
Community Meeting





In 2020 SCAG prepared a Regional Accessory Dwelling Unit Affordability Analysis based on a rent survey of ADUs across the region. This Affordability Analysis has been approved by HCD for use in the SCAG region to establish the potential affordability levels of ADUs expected to be constructed during the Housing Element planning period. Long Beach belongs to the Los Angeles County II subregion in this study, which consists of ADUs with the following income/affordability distribution:

- » Extremely Low Income: 15.0 percent
- » Very Low Income: 8.5 percent
- » Low Income: 44.6 percent
- » Moderate Income: 2.1 percent
- » Above Moderate Income: 29.8 percent

C.2.2 Entitled and Proposed Developments

Because the RHNA for this 2021-2029 Housing Element begins on June 30, 2021, housing developments that have been proposed or have received entitlements but are not expected to be issued building permits until after July 1, 2021 can be credited toward the 2021-2029 RHNA.

Table C-1 lists the projects that have received approval or entitlement but are not yet permitted. In addition, pipeline residential projects (proposed or upcoming) are also included. All of the approved/proposed/pipeline projects will provide affordable housing units to lower income households, including those with special needs. HOME and Housing Asset Funds are used as leverage to improve the feasibility of these affordable housing projects. Recent non-residential entitlement projects have also been reviewed against the inventory, and properties for which approvals entitling substantial improvements that have been identified as having the potential to lessen the likelihood of development have been removed from the inventory.

Table C-1: Approved, Entitled, and Proposed Developments

| Name | Address | Developer | Units | Very Low | Low | Moderate | Upper | Target Population |
|-----------------------------------|---------------------|--------------------------------|-------|----------|-----|----------|-------|-------------------|
| Approved | | | | | | | | |
| Anaheim/Walnut | 1500 E. Anaheim | Bridge Housing | 88 | 53 | 34 | 1 | 0 | Family |
| Proposed/Pipeline Projects | | | | | | | | |
| Union Apartments | 1401 LB Blvd | Skid Row Housing | 160 | 88 | 71 | 1 | 0 | Family/ |
| Long Beach Senior Housing | 901-941 E. PCH | Mercy Housing | 68 | 58 | 9 | 1 | 0 | Senior |
| 26 Point 2 Apartments | 3590 E. PCH | Excelerate Housing Group | 77 | 61 | 15 | 1 | 0 | Homeless |
| The Cove | 2121 W. William St. | Century Affordable Development | 90 | 72 | 17 | 1 | 0 | Homeless Vet |
| Armory Arts Collective | 854 E. 7th Street | Daylight/Gundry/Howard | 65 | 14 | 49 | 2 | 0 | Family |
| Subtotal: | | | 460 | 293 | 161 | 6 | 0 | |
| Total: | | | 548 | 346 | 195 | 7 | 0 | |



DRAFT Affordability of Accessory Dwelling Units

A report and recommendations for RHNA 6

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

9/8/2021

1. Overview

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

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

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

Figure 1: Affordability of ADUs

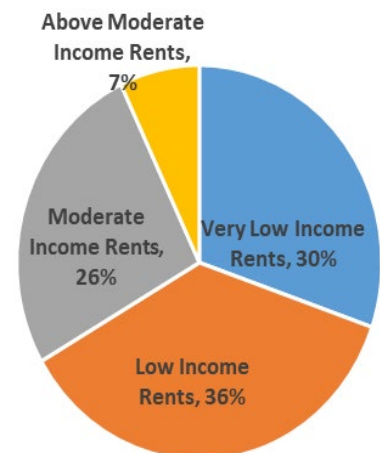




Figure 1 presents a summary of ADU affordability and Table 1 presents a recommendation for assumptions for Housing Elements. See the main body of the report for more information on methodology and assumptions.

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

Table 1: Affordability Recommendations for ADUs for Housing Elements

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

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

Affirmatively Furthering Fair Housing Concerns

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

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

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

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

Handwritten red marks: two crossed-out 'X' symbols.



Further Outreach and Data

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

2. UC Berkeley Survey

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

Key takeaways include:

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

3. Methodology

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

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

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

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

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



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

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

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

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

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

4. Summary of ADU Use

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

Table 3. Usage of Accessory Dwelling Units

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

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

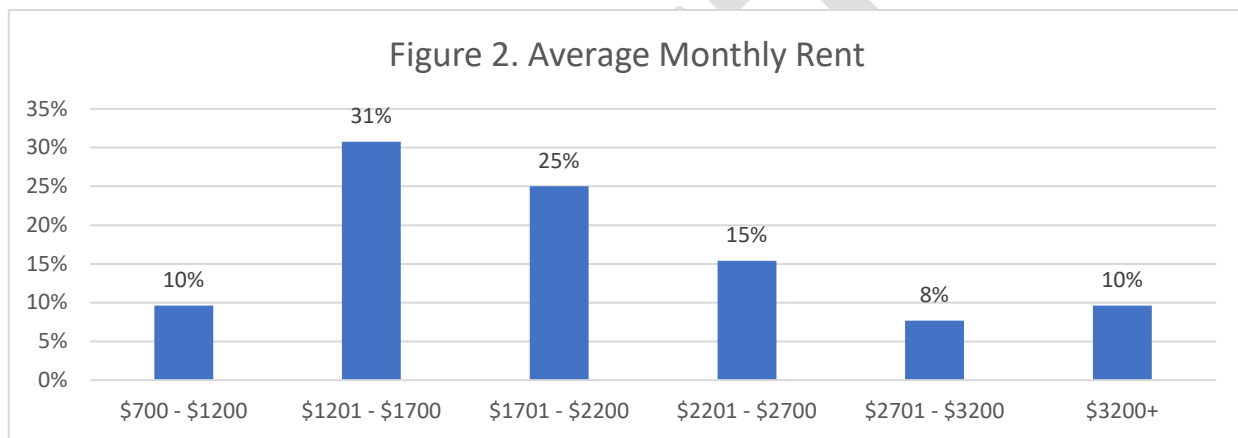


5. Affordability of ADUs

Rental Data

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

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



Assigning ADUs to Income Categories

This report's affordability analysis has two parts:

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

Market Rate ADUs

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

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



The data is summarized in the chart below.

Table 4. Affordability of Market Rate Units

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

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

Discount Rate ADUs

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

Combined Market and Affordable ADUs

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

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

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

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

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



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

Table 6. Affordability Including Family/Friends Rentals

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

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

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

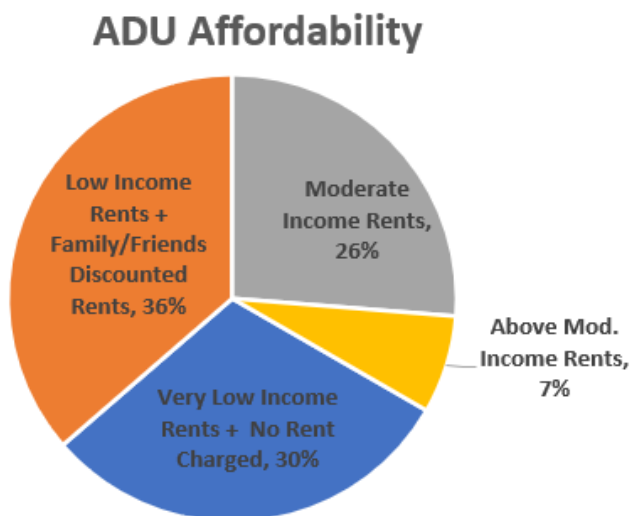


Figure 2: Results shown for 9-county Bay Area. "Very low" rents include units available to family or friends at no cost. "Low" rents include discounted family rentals.



6. Additional Research and Considerations

In general, ADUs are affordable for several reasons:

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

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

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

7. Notes

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

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

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

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

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