

Public Comments received by HCD between
April 21, 2022, and November 18, 2022, and
reference in HCD finding/comment letter
dated January 12, 2023.



April 21, 2022

Dear Los Gatos City Council:

We are writing on behalf of **YIMBY Law** and **Greenbelt Alliance** regarding Los Gatos's 6th Cycle Housing Element Update. **YIMBY Law** is a legal nonprofit working to make housing in California more accessible and affordable through enforcement of state law. **Greenbelt Alliance** is an environmental nonprofit working to ensure that the Bay Area's lands and communities are resilient to a changing climate.

We are writing to remind you of Los Gatos's obligation to include sufficient sites in your upcoming Housing Element to accommodate your Regional Housing Needs Allocation (RHNA) of **1,993 units**.

In the Annual Progress Reports that Los Gatos submitted to HCD, we observe the following trend of housing units permitted in the last four years:

Year	Housing units permitted
2018	25
2019	31
2020	180
2021	225
Average, 2018–2021	115

To meet the 6th cycle RHNA target, the rate of new housing permits in Los Gatos would need to increase from **115 units per year** in 2018–2021 to **249 units per year** in the next 8 years. This is a 116% increase from recent years. **If the current pace were to continue, Los Gatos would meet only 46% of its new housing target.**

Based on these trends, it is unlikely that Los Gatos's existing realistic zoning capacity is sufficient to meet its 6th cycle RHNA target. According to HCD's Housing Element Site Inventory Guidebook, housing elements must analyze the realistic capacity of their sites, which may include considerations of "[l]ocal or regional track records", "past production trends", and "the rate at which similar parcels were developed during the previous planning period". A housing element that does not include a significant rezoning component is therefore unlikely to be compliant with state law.

We urge Los Gatos to include a major rezoning component in its Housing Element—a rezoning large enough to close the gap between recent housing production trends and the RHNA target. The rezoning should be within existing communities and should comply with the city's obligation to Affirmatively Further Fair Housing. We also urge Los Gatos to ease any other constraints, such as discretionary approval processes or impact fees, that may impede the rate of development on your city's housing sites.

Thank you,

Sid Kapur, East Bay YIMBY [REDACTED]

Rafa Sonnenfeld, YIMBY Law (rafa@yimbylaw.org)

Zoe Siegel, Greenbelt Alliance (zsiegel@greenbelt.org)



August 04, 2022

Dear Los Gatos City Council:

We are writing on behalf of **South Bay YIMBY** regarding Los Gatos's 6th Cycle Housing Element Update. As a regional pro-housing advocacy group, South Bay YIMBY works to ensure cities adopt housing elements that are fair, realistic, and lawful.

Per §8899.50(a)(1) of state code, Los Gatos's housing element must affirmatively further fair housing, which entails 'taking meaningful actions... that overcome patterns of segregation.'

The City of Los Gatos is uniquely positioned to affirmatively further fair housing, as Los Gatos is a wealthy, exclusionary city that researchers with the Othering and Belonging Institute at UC Berkeley identify as highly segregated from the rest of the Bay Area. This socioeconomic segregation is caused by the exclusionary cost of housing in your community, where an average home, as of April 30th, costs \$2,926,000, which is only affordable to someone earning a salary of \$452,000, meaning **only the richest 2% of households can afford to settle down in your community**. To put a finer point on the level of affluence in your city, the average home in your city costs more than French castles. It is thus no coincidence that your city is 64% whiter than the rest of the Bay, as well as 87% less black than the rest of the Bay Area.

In a 2021 report entitled 'Exclusionary Zoning: Its Effect on Racial Discrimination in the Housing Market,' economic advisors for the White House outline how exclusionary zoning, like yours, causes segregation. Your exclusionary zoning pushes low income children to live in less resourced areas, which begets worse life outcomes from health to income. The research is clear: exclusionary zoning violates your duty to further fair housing.

To take meaningful actions that overcome patterns of segregation, we recommend you:

1. **End apartment bans in high opportunity areas.** This will give middle and working class families the opportunity to share in the resources your rich neighborhoods enjoy. As of 2020, **your city banned apartments in over 93.6% of residential areas**, including in 96.7% of high opportunity residential areas.
2. **Accommodate 3423 low income homes in your site inventory.** While substantially larger than the floor of 847 low income homes required by RHNA, 3423 is the number of homes required to bring the proportion of low income families in your city in line with the rest of the Bay Area. While this number is large enough to be politically challenging, it will always be politically challenging to overcome segregation, as AFFH requires.

Thank you,

Salim Damerджи, South Bay YIMBY

Keith Diggs, YIMBY Law



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*

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

keith@yimbylaw.org



September 30, 2022

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STAFF

Regina Celestin Williams
Executive Director

Submitted via email

Mayor Rennie and Councilmembers
Town of Los Gatos
110 E. Main St.
Los Gatos, CA 95030

Dear Mayor Rennie, Vice Mayor Ristow, and Councilmembers Badame, Hudes, and Sayoc:

RE: Housing Element

The 6th Cycle Housing Element Update process is a unique opportunity to fully assess housing needs in Los Gatos and to identify new tools to address these needs and constraints on developing housing. This process is also an opportunity to engage deliberately with the full community to share their housing needs, especially those who are represented from populations that have been historically excluded and are at risk of displacement. This unique opportunity is one that is required to adhere to the clear legal guidance as outlined by HCD in multiple documents interpreting state law.

This is not a simple process, and we appreciate the work that the Town of Los Gatos (hereon as the Town) staff, elected and appointed representatives, and members of the community have done over the last 9-12 months. As you know, however the expectations for this process are high, and jurisdictions throughout the state have struggled to generate compliant housing elements for this cycle.

During this comment period on the current draft, there is still time to receive public input and address concerns prior to submission of the Housing Element Update to the state. Towards that end, SV@Home is submitting the following comments.

Outreach, Community Input, and Targeted AFFH Engagement as the Foundation of the Housing Element Update Process

Los Gatos has invested a wealth of energy and effort into the General Plan Task Force and Update process that began before, and overlapped with the Housing Element Update. The new General Plan captures the City's commitment to equitably meeting the needs of all its residents, including taking action to rectify past racial injustice. The General Plan planning process garnered significant public interest, and a successful Task Force led process. This was a significant accomplishment, and foundation for the Housing Element Update process, but the Housing Element requires a different assessment of needs and a qualitatively different process of community engagement.

Although the Draft Housing Element documents that many groups were invited into the process, it is not clear which of these stakeholder groups participated, what insights they shared about the housing needs of their constituents, or the housing solutions they proposed. Additionally, it is notable that no contact is listed for organizations representing people with physical, intellectual, or developmental disability. We also have questions

September 30, 2022

RE: Housing Element

Page 2 of 7

about how adequate the targeted outreach was to tenants. Affirmatively Furthering Fair Housing (AFFH) requires jurisdictions to do targeted outreach to groups that generally do not access traditional public venues, or receive notifications through commonly used channels. The responsibility for robust and meaningful two-way engagement with all stakeholders goes beyond simply inviting them into the existing process.

We recommend that the Town take the opportunity to reengage and expand on prior community engagement efforts to facilitate a meaningful two-way engagement with all stakeholders to collect input on the current Draft. This process should include a thorough documentation of prior input on housing needs and proposed solutions and a clear record of input received through this additional engagement. These discussions should more clearly inform the housing needs assessment, the constraints analysis, and the policies and programs proposed in response.

The Draft states that the data packet supplied by ABAG was the basis for decisions about housing goals, policies, and implementation programs. This approach fails to meet the central expectation of the Housing Element Update process to integrate a process of consultation and reengagement with the community to fully understand and respond to their housing needs. HCD's guidance documents clearly require substantive incorporation of local knowledge into jurisdictions' foundational understanding of their residents' housing needs, and policies and programs to be responsive to those needs. This is the purpose of the requirement for robust outreach and engagement. We believe much of this local perspective has been collected.

We recommend that the Town reassess the components of the Housing Element to integrate local knowledge gained through robust outreach and community engagement along with data as the foundation for decisions about housing goals, policies, and implementation programs.

Los Gatos' recently adopted General Plan demonstrates that there is real momentum and community support to address racial injustice, but concrete policies and programs to build on this discussion and respond to the real community interest have not been identified in the Housing Element process. Without an articulation of the connection between policy goals and racial segregation or disproportionate housing need for protected classes, the community's intent cannot translate into change. It would be tragic, and a real missed opportunity, for less to come of that work than it deserves.

We recommend that the Town identify and clearly articulate the connection between policy goals and implementation programs, and racial segregation or disproportionate housing needs for protected classes.

Anti-displacement Policies and Programs to Affirmatively Further Fair Housing

The Town is in a unique position of having an existing landlord/tenant mediation and arbitration ordinance. The rent dispute ordinance applies to rentals on properties of 3 or more units and on rent increases at 70% of CPI or 5%. Increases below 5% are considered valid and cannot be disputed. A landlord seeking an increase above 5% must justify the increase if disputed with "pass-through" and other operational costs, but would be capped at 10%. This is a program that is contracted out to Project Sentinel. We are pleased that the continuation of this program has been included in the current Draft Housing Element document. However, we are unaware of any assessment of the success of this ordinance. We generally have found that mediation and arbitration programs have a limited impact on preventing displacement, but do acknowledge that the ordinance is unique. We believe that the protections extended

September 30, 2022

RE: Housing Element

Page 3 of 7

under the existing ordinance should be augmented through additional programs or policies, to provide stability to tenants.

Earlier this year, SV@Home sent a letter outlining anti-displacement policies the Town could adopt to affirmatively further fair housing (AFFH). Some of the policies that SV@Home discussed include:

- **Rent Survey Program:** this will enable metrics for the Town to determine the efficacy of the mediation and arbitration ordinance, identify patterns of displacement, and consider effective policies to address the needs identified;
- **Tenant Relocation Assistance:** this program can help bridge the gap of moving expenses if a tenant is evicted for a no-fault cause, such as the redevelopment of an existing rental community. It can also serve as a tool to mitigate the costs of displacement prompted by a rent increase above a fixed percentage; and
- **Tenant Resource Center:** this program would help the Town achieve its stated goals of reaching more displacement-impacted populations to ensure they have access to the services they need (i.e. the existing rental assistance) while creating a safe location for tenants and landlords to access the mediation and arbitration ordinance, and other policies and programs as they are developed.

We recommend that the Town of Los Gatos build upon its existing mediation and arbitration ordinance to add policies such as a rent survey program, tenant relocation assistance, and a tenant resource center. A clear timeline and process for development of these, or other renter protections, should be set to ensure that the impact will be measurable within the 6th Cycle.

The Town is proposing policies to acquire both private market housing and subsidized housing with expiring affordability restrictions. This would require significant financial resources for acquisition and rehabilitation, and we do not find an explicit mechanism to provide these resources in the current Draft. In our earlier correspondence outlining potential anti-displacement policies to fulfill AFFH requirements, we noted the potential to build a robust preservation program around a Community Opportunity to Purchase Act (COPA).

We recommend that the Town of Los Gatos outline a strategy for expanding local affordable housing development resources. This strategy should begin with a clear list of options to consider, a target goal for funds to be generated, and a timeline for implementation as required.

Meeting RHNA Levels and Housing Opportunity Sites Inventory

The Town's updated General Plan was a significant undertaking, and we believe a turning point in the approach that Los Gatos takes towards responding to the housing needs of the Town and its role in the region. Los Gatos is a net importer of employees. The new General Plan outlines significant steps to increase the number of new homes in the Town, including significant changes to land use designations that will allow for increased densities and the construction of multi-family housing. Much of this detailed land use work remains in progress, but we are confident that the plan will be implemented.

Based on our initial analysis we have concerns with the Town's Sites Inventory. These are described below.

Insufficient Density in North 40 Specific Plan Area and Throughout the Sites Inventory

We are pleased to see that the Town will accommodate roughly 12 percent of its lower-income capacity to the North 40 Specific Plan area. Although there have been ongoing community discussions about this important specific plan, we

are aware of the richness of the area and the community's intent to celebrate its agricultural heritage and hillside views. We acknowledge the Town's efforts to balance the area's small town history and character with the local, and regional importance of increased residential density and affordable housing in the decade ahead. We are concerned, however, that the North 40 Specific Plan's N-40 zoning designation only allows for between 13 and 22 dwelling units per acre, which is well below the required Mullin density minimum of 30 dwelling units per acre per HCD's Housing Element Sites Inventory Guidebook.

In fact, approximately 63 percent of lower-income sites in the entire inventory currently do not meet this minimum density requirement. We know that under the recently adopted General Plan update there are significant plans to upzone portions of the Town, nonetheless, we are concerned that there will remain sites zoned at lower densities than required.

We recommend that the Town rezone all lower-income sites zoned with densities under 30 dwelling units per acre to allow for the HCD-required minimum density of 30 dwelling units per acre.

Overstatement of ADU Production Expectations

Appendix D estimates that 200 new ADUs will be built during the RHNA cycle, and that 40 percent of these (80 ADUs) will count towards the Town's lower-income obligations. This amounts to over 9 percent of the total combined very-low and low-income units, and just under 20 percent of the total low-income category alone.

These forecasts are likely based on the ADU calculation methodology provided to Bay Area cities by the Association of Bay Area Governments (ABAG). While we understand why cities are using this guidance in their Housing Element planning process, we believe that this methodology is flawed in two ways: 1) it assumes significantly lower rents than unpublished local studies have shown and we have found in our analysis that the ABAG methodology subsequently credits far more units to affordable goals than is warranted, and 2) it assumes that all ADUs are used as primary residences, rather than home offices, guest rooms, or play spaces for children. Together, these failings lead to a significant overstatement of ADU impact.

Policies HE-1.7, HE-2.6, and HE-6.5, together with program U, are intended to incentivize with minimal public subsidy the production of lower-income ADUs to meet RHNA targets. We acknowledge the Town's plan to waive building permit fees for deed-restricted lower-income ADUs under program U. However, Program U, including all the aforementioned ADU-related policies need to be assessed for their potential effectiveness, analyzed against current and past development trends, and incorporate input from single-family homeowners. Without this, the effectiveness of the proposed policies and programs are uncertain.

We recommend that the Town schedule an analysis to adequately assess the projected lower-income ADU production and that a system for tracking ADU production and rents be incorporated into annual HE reporting. This would allow for adjustments in current assumptions and provide an opportunity to assess the impact of the proposed policies.

We do note the inclusion of the General Plan land use policy 1.2, as an important step towards facilitating increased intensity of existing land use patterns. This is an important commitment given the nature of residential areas in the Town, and would similarly benefit from a scheduled review of its impact.

Methodology and Supporting Analysis of the Sites Inventory Fail to Conform to HCD Standards

The Housing Element Sites Inventory Guidebook produced by HCD, along with supplemental resources provided by the [Association of Bay Area Governments](#) have a number of requirements and recommendations for lower-income sites. These requirements are very specific for non-vacant parcels identified as lower-income opportunity sites.

Although we found detailed descriptions of several non-vacant sites, and we acknowledge the important effort undertaken through the General Plan process, we believe the draft does not meet key requirements including:

1. Include an explanation of the methodology used to select sites and their development potential;
2. Provide substantial evidence that indicates existing non-residential use will be discontinued or will not be an impediment to future residential development;
3. Demonstrate that there is clear developer interest in redeveloping each site, including consolidating parcels for housing, within the planning period;
4. Clearly describe how the realistic capacity calculations were used to determine the number of units that can be reasonably developed on a site, and
5. Incorporate potential constraints (e.g. environmental, parking, open space, parcel shape etc.) into the inventory's realistic capacity calculations consistent with the Guidebook.

Given the absence in the draft of alternative approaches to addressing these requirements, these details need to be provided on a site-by-site basis in the Sites Inventory.

We also note that approximately 24 percent of the new sites (totaling 211 units) identified for lower-income capacity are projected to accommodate fewer than 50 units. According to the Housing Element Sites Inventory Guidebook, lower-income sites that do not have 50 to 150 units make them less competitive for State and Federal resources to build affordable housing. The viability of financing affordable housing is of utmost importance. If the reasonable likelihood of adequately funding sites for lower-income units is low, then they should either have their realistic capacity assumptions heavily discounted across the inventory, or be removed from the Sites Inventory and be replaced with sites that could accommodate 50-150 unit developments.

We do acknowledge that the Town has prioritized an effort to expand the number of larger, two- and three-bedroom, affordable apartments to support the needs of families. This is an important commitment, even if it may mean fewer apartments in total.

We recommend the Sites Inventory provide a more comprehensive site-specific analysis as described above. We also suggest either heavily discounting the realistic capacity of sites that would produce less than 50 lower-income units or identifying alternative sites that would produce 50 or more affordable units so that they can be more competitive for external funding.

Governmental and Non-Governmental Constraints

The Constraints Assessment in the current Draft generally describes the Town's development review processes and standards rather than providing the required analysis of their cumulative impact on the supply and affordability of housing. For example, there are of course a full menu of taxes and fees which may vary significantly, making it difficult to assess their impact on the costs to development. There are also significant off-site improvement requirements that are costly. The cumulative impact of these factors, and other administrative processes, should be assessed as a potential governmental constraint on development. Market rate development in Los Gatos benefits from very high

rents and sales prices well above the county average, but as the Town commits to supporting affordable housing, the impact of additional costs will be significant.

We recommend that the Town conduct a more detailed assessment of the cumulative costs of governmental constraints and set a schedule for implementing the proposed fee waivers, or other concessions, for affordable housing developments.

We are encouraged by the proposed designation of an “Affordable Housing Overlay Zone.” This tool is very targeted, however, covering a single property. We expect it will facilitate the development of this property as intended. Expanding the overlay zone to other sites in the inventory could greatly enhance other efforts to meet the State’s AFFH guidance to support the development of affordable housing throughout the community. Affordable housing developments struggle to compete with market rate development in jurisdictions like Los Gatos, and AHOZs provide a targeted mitigation of this market constraint.

We recommend the expansion of the Affordable Housing Overlay Zone to additional parcels identified in the inventory.

It cannot be understated how important the State Density Bonus law will be for the Town to reach its housing goals. While we acknowledge and support The Town’s plan to evaluate its own Density Bonus Program, it may be far more efficient to adopt the State Density Bonus program as a local ordinance to avoid confusion. We are concerned that the proposed time frame to conduct the study and adopt recommendations covers nearly the entire planning period, which greatly limit its impact during this cycle.

We recommend the local adoption of the State Density Bonus program parameters and a consideration of additional incentives within a shorter timeline.

Lastly, we believe the Town missed an opportunity when it did not conduct a full assessment of the development review and approval process. In recent years there has been very little residential development in Los Gatos. The plan is to significantly increase development, and this is a moment of opportunity to assess and review current practices to take steps to be prepared for this change. We have found that the pre-application process has become a more significant barrier given the role of State streamlining laws in shaping the process and timeline for entitlements following a completed application.

We recommend a complete analysis of the development approval process, including the creation of a pre-approval process and timeline.

Overall, SV@Home recognizes the work of the Town of Los Gatos to craft policies and programs focused on housing production that reflect the vision of the General Plan and the RHNA requirements. The concerns and recommendations outlined above will strengthen the efforts The Town of Los Gatos has made and ensure its success.

September 30, 2022

RE: Housing Element

Page 7 of 7

SV@Home values its partnership with the Town of Los Gatos and it is in that spirit that we provide our feedback on the Draft Housing Element. We welcome the opportunity to engage in an ongoing dialogue as the Draft Housing Element moves through cycles of review and revision, with the shared goal of addressing the Town's urgent housing need by boosting production of homes at all income levels, preserving existing affordable homes, and protecting the families in them.

Sincerely,



Regina Celestin Williams
Executive Director



From: Kylie Clark <[REDACTED]>
Sent: Friday, November 18, 2022 4:42 PM
To: Housing Elements@HCD <HousingElements@hcd.ca.gov>
Subject: Los Gatos General Plan Referendum

Hello,

I hope this email finds you well! Thank you so much for all of the work you are doing on the Housing Element. As someone who does housing work in a lot of anti-housing cities, I really appreciate the work you are doing to resolve our state's housing crisis. I'm a Los Gatos Planning Commissioner, but I am writing to you just as a concerned citizen.

I am reaching out to make sure you are aware of a [referendum \[losgatosca.gov\]](https://www.losgatosca.gov/referendum) that was recently signed by enough Los Gatos voters to be placed on the ballot. The referendum suspends the town's Land Use and Community Design Elements in our General Plan, which was approved by our Town Council in the last few months. The referendum was fully paid for and passed by a few rich white anti-housing men in our town (they paid the signature gatherers \$10 per signature).

The justification for this referendum is their opposition to our planned housing numbers, as we went above the state mandate (which makes sense, as this is our General Plan looking 20 years out, not just planning for this 8-year HE cycle). The anti-housing group is claiming that the town will build 12,000 new units in the next 8 years (haha I wish).

I have a lot of questions about this referendum, including whether it is even lawful, as it places land use on the ballot, meaning if the town wanted to make any future changes to our land use we would have to take it to the voters. It also might cause some serious problems with our Housing Element, as obviously our Land Use Element is closely tied to it.

I wanted to make y'all aware of this and to see if you would be able to support our town in any way. We put a lot of work into our General Plan, and these are very strong elements. I would hate to see them reformed to allow for less housing just because of a few upset rich residents.

Thank you so much!

In community,

Kylie
(Pronouns: she, her, hers)

[Yes, We Live on Ohlone Land. But What Does That Mean? \[thebolditalic.com\]](https://thebolditalic.com/)

Kylie Clark
Community organizer, nonprofit professional

[REDACTED] / [REDACTED]

From: David Kellogg <[REDACTED]>
Sent: Friday, November 18, 2022 5:07 PM
To: HousingElements@HCD <HousingElements@hcd.ca.gov>
Subject: Public Comment on Housing Element

Nov 18, 2022

On behalf of David Kellogg (a Contra Costa County resident), 350 Contra Costa, Greenbelt Alliance, CaRLA, Scott O'Neil (a resident of Palo Alto), Watson Ladd (a resident of Berkeley), Marven Normal (a resident of San Bernadino), Dara Dadachanji (a resident of San Francisco), and George Grohwin (a resident of San Francisco), we provide the following comment on the Housing Element from LOS GATOS.



Issue

- The Housing Element from LOS GATOS fails to adequately analyze compliance with one of the state's fundamental streamlining laws.
- Under PRC 21080.1 & 21080.2, a lead agency must determine if a housing development is exempt from CEQA within 30 days of completeness, or if an EIR or other CEQA document will be required.
- For CEQA-exempt housing, this CEQA determination then triggers a 60-day approval clock (with deemed approved remedies) under the Permit Streamlining Act. Thus, if state housing laws were followed, CEQA-exempt housing projects should generally receive approvals in about 120 days.
 1. 30 days to determine completeness
 2. 30 days for CEQA review
 3. 60 days for approval.
- LOS GATOS does not appear to issue determinations of CEQA-exemption within 30 days of completeness. As a result, **builders and the public are denied the right to the timely approval of housing**. Additionally, the builders are forced into an unreasonable bargaining position, as they lack the "deemed approved" options they should have. This improperly empowers jurisdictions to treat builders arbitrarily in the entitlement process.
- Moreover, LOS GATOS has no apparent good-faith basis for delaying CEQA-exemption determinations beyond the allowance of Public Resources Code 21080.1 & 21080.2. In the vast majority of instances, these exemptions are uncontested and straightforward.

Recommendation

- The Housing Element from LOS GATOS should include an analysis of compliance in its approval process with PRC 21080.1 & 21080.2.
- The Housing Element from LOS GATOS should add a program to specify (i) who is responsible for making the CEQA determination of PRC 21080.1, specify (ii) that their decision will be made within the timeframe permitted by PRC 21080.2, and specify that (iii), when they determine a project is exempt from CEQA, their determination triggers the Permit Streamlining Act (PSA) 60-day deadline (Gov. Code 65950(a)(5)). If existing local practices or regulations are incompatible with these state laws, the program should commit to enacting reforms necessary to achieve compliance within a reasonable and definite timeline.

HCD Technical Assistance Letter

- The CEQA issues mentioned herein are discussed in the June 3, 2022 Technical Assistance letter sent to Berkeley by Shannan West, Housing Accountability Unit Chief (copy included below).
- In the letter, HCD notes that Berkeley had been issuing “recommendations” of CEQA-exemption and that the actual “determinations” were made more than 30 days beyond the completeness date. HCD notes that such practice was in violation of PRC 21080.1 & 21080.2 and “may act as a governmental constraint on housing.”

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

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Sacramento, CA 95833
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www.hcd.ca.gov



June 3, 2022

Sharon Gong, Senior Planner
City of Berkeley
1947 Center Street, 2nd Floor
Berkeley, CA 94704

Dear Sharon Gong:

RE: Berkeley – Letter of Technical Assistance

The purpose of this letter is to provide technical assistance to the City of Berkeley (City). The California Department of Housing and Community Development (HCD) has become aware of potential conflicts between the practices of the City's Zoning Adjustments Board (ZAB) concerning determinations for projects determined to be exempt from the California Environmental Quality Act (CEQA) and timelines pursuant to Public Resources Code section 21080.1, subdivision (a), and Public Resources Code section 21080.2. HCD is concerned that these actions may act as a governmental constraint on housing development and requests the City review the CEQA determination process in Berkeley's 6th Cycle Housing Element and include programs to mitigate or remove constraints as necessary.

Obligations Under Public Resources Code sections 21080.1 & 21080.2

HCD has been made aware of at least five development applications where the final ZAB determination was made more than 30 days after the relevant permit was determined to be complete. As the City is aware, under the Public Resources Code, a lead agency must make a determination under CEQA for projects exempt from environmental review within 30 days of a project application being deemed complete. These provisions are critical to meeting the Permit Streamlining Act requirement set in Government Code section 65950, subdivision (a) (5), and generally facilitate the processing of housing developments.

6th Cycle Housing Element

As Berkeley is updating its 6th Cycle Housing Element, the City must describe and analyze the permit process from application to approvals, including a discussion on timeframes for each step in the process, impediments, and how it addresses the

application of state law on application processing pursuant to Government Code section 65583, subdivision (a)(5). In addition, the element must also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need and include program actions to remove or mitigate identified constraints pursuant to Government Code section 65583, subdivision (c)(3). Excessive CEQA review timeframes can delay project approval and pose a constraint to the development of housing and should be reviewed as part of the City's housing element update.

Conclusion

HCD understands that the City is currently reviewing its compliance with these provisions and is looking at strategies to transparently document the process to ensure timely approval of CEQA determinations and provide additional transparency. HCD supports these efforts and encourages the City to take meaningful steps to ensure that its processes comply with provisions of state housing law.

If you have questions or need additional information, please contact Kevin Hefner at Kevin.Hefner@hcd.ca.gov

Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" and last name "West" clearly distinguishable.

Shannan West
Housing Accountability Unit Chief

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