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

Dear Mr. Paulson,

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

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

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

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

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

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

Thank you,
Phil Koen

ATTACHMENT 4

## PART A: IDENTIFICATION OF SITES

### Step 1: Identification of Developable Sites

*Government Code section 65583.2(a)*

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

Types of sites include:

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

Pending, approved, or permitted development:

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

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

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

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

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

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY GAVIN NEWSOM, *Governor*

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**
**DIVISION OF HOUSING POLICY DEVELOPMENT**
2020 W. El Camino Ave
Sacramento, CA 95833-1829
(916) 263-2911 FAX: (916) 263-7453
www.hcd.ca.gov

January 12, 2022

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

Dear Executive Director Therese W. McMillan:

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

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

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

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

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

Sincerely,

Tyrone Buckley

Tyrone Buckley
Assistant Deputy Director

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

# ANNUAL ELEMENT PROGRESS REPORT
## Housing Element Implementation

This table is auto-populated once you enter your jurisdiction name and current year data. Past year information comes from previous APRs.

Please contact HCD if your data is different than the material supplied here

### Table B
### Regional Housing Needs Allocation Progress
### Permitted Units Issued by Affordability

| | | 1 | | 2 | | | | | | | | | 3 | 4 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Income Level** | | **RHNA Allocation by Income Level** | | **2015** | **2016** | **2017** | **2018** | **2019** | **2020** | **2021** | **2022** | **2023** | **Total Units to Date (all years)** | **Total Remaining RHNA by Income Level** |
| Very Low | Deed Restricted | 201 | - | - | - | - | - | - | 49 | - | - | - | 49 | 152 |
| | Non-Deed Restricted | | - | - | - | - | - | - | - | - | - | - | | |
| Low | Deed Restricted | 112 | - | - | 2 | - | - | - | 1 | - | - | - | 3 | 109 |
| | Non-Deed Restricted | | - | - | - | - | - | - | - | - | - | - | | |
| Moderate | Deed Restricted | 132 | - | - | - | - | - | - | 1 | 2 | - | - | 156 | |
| | Non-Deed Restricted | | - | 2 | 3 | 4 | 16 | 28 | 28 | 36 | 36 | - | | |
| Above Moderate | | 174 | - | 13 | 38 | 9 | 7 | 3 | 75 | 185 | 145 | - | 475 | |
| Total RHNA | | 619 | | | | | | | | | | | | |
| Total Units | | | - | 15 | 43 | 13 | 23 | 31 | 154 | 223 | 181 | - | 683 | 261 |

**Progress toward extremely low-income housing need, as determined pursuant to Government Code 65583(a)(1).**

| | 5 | | | | | | | | | | | 6 | 7 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | **Extremely low-Income Need** | | **2015** | **2016** | **2017** | **2018** | **2019** | **2020** | **2021** | **2022** | **2023** | **Total Units to Date** | **Total Units Remaining** |
| Extremely Low-Income Units* | 101 | | - | - | - | - | - | - | - | - | - | - | 101 |

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

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

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

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

**Table 10-3 RHNA Credits and Sites Strategies**

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

Source: Town of Los Gatos

### 10.3.3 Summary of Quantified Objectives

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

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

**Table 10-4 2023-2031 Quantified Objectives**

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

Source: Town of Los Gatos

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

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

29 September 2023

Dear Town of Los Gatos and HCD reviewers,

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

**Programs**

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

> **Program E, Affordable Development on Town-Owned Property.** The Town says it will make an "ongoing effort" to "pursue opportunities" for affordable housing on Town-owned properties. This is a commitment to nothing. If the Town wants to build housing on its own property, it merely has to commit to a date where the Town will release the RFP for affordable developers, and it should do so.
>
> **Program G, Study Detached Single-Family Condominium Option.** The Town commits to "study[ing]" a new floor area ratio (FAR) standard for multifamily development for detached condos by December 2024, but not actually changing anything. It's not clear what problem this is supposed to solve. Apparently the FAR is thought to be too small for these units. If that is so, instead of studying the issue with no promise about doing anything, the Town should commit, right in the housing element, to increasing the FAR, by a specified amount, by a date certain. The time for study is over; that's what the planning period was for. Housing Elements should have actions, with deadlines.
>
> **Program J, Small Multi-Unit Housing.** The Town commits to updating the Zoning Code to facilitate low rise multi-family structures in a certain zone, but what the update might be, and why it would facilitate more housing, is absent from the document. The Town needs to commit to specific actions by specific dates.
>
> **Program O, Affordable Housing Development.** The Town commits to providing incentives for affordable housing, but doesn't commit to any particular incentives. This program needs more details, and deadlines. The Town commits to reviewing impact fees, by January 2026, but doesn't commit to lowering them. The deadline is too far away, and the commitment to action is missing.

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

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

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

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

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

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

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

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

For that reason, the Town should have a prompt and robust plan to replace those potentially missing SB 9 units with other RHNA units. Instead, the Town offers, "Evaluate effectiveness of SB 9 approvals every year beginning in 2023; and identify additional incentives and/or site capacity, if needed by 2025" and "consider additional efforts to incentivize SB 9 applications and reassess and revise the overall sites strategy for the RHNA within one year through adjusting SB 9 capacity assumptions with actual permitted units, and/or identifying additional sites to expand site capacity to the extent necessary to accommodate the RHNA." This is not a plan; it is a notion to wait until the middle of the cycle, and then possibly make a plan, and then possibly implement the plan some time before the end of the cycle. Or maybe after the cycle ends. It's remarkably non-committal.

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

**Below Market Program in-lieu funding**

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

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

Program I, assist low income seniors with money for home repairs
Program N*, subsidize extremely low income housing
Program O*, reduce fees for affordable housing development
Program P*, purchase affordability covenants to create affordable units or make already affordable units more deeply affordable
Program Q, waive building fees for low income ADUs
Program AI, fund county efforts for home repairs and accessibility improvements
Program AJ*, assist lower income homeowners with funding for home repairs and improvements (expansion of existing Program I?)
* = new or expanded program

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

**Affirmatively Furthering Fair Housing**

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

Program A: Establish an annual meeting between staff and developers.
Program U: Continue to support the County of Santa Clara's Continuum of Care plan. This "support" doesn't include any money; the funding source is listed as "County CDBG."
Program V: Make some zoning changes for people with disabilities. Most of the changes are required by state law.
Program W: Rental dispute resolution program
Program X: Work with the local and regional partners to provide rental assistance for people with developmental challenges. This assistance doesn't include money; the funding source is listed as "none required."
Program Y: Supportive Services for the Homeless: Support (in some unspecified way that doesn't seem to include money or transfer of property) community and nonprofit organizations, continue to fund local nonprofits with an annual grant
Program Z: Stabilize rents: The Town commits to nothing specific, merely "study[ing] and implement[ing] recommendations."

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

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

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

Sincerely,

Anne Paulson

November 27, 2023

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

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

Dear Mr. Paulson:

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

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

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

Then apparently the Town saw the light. In the November draft HE the Town revises the figures to eliminate the inappropriate double-counting of permitted units. Yet instead of crediting the changes to the comment letter provided by LGCA, the Town attributes the changes to, "further clarification from HCD," that permitted units could not be double counted in both 5th and 6th cycle RHNA. We point this out to draw your attention to the Town's legal obligation to consider and act, if appropriate, upon public comments when they are received. The fact that the Town ignored the LCGA comment and submitted the September draft double-counting permitted units in both the 5th and 6th cycle despite the overwhelming information provided to the Town that this was not allowed implies that the Town ignored the comments and filed the Housing Element revision without giving any consideration to the public comments it received.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**2. Projected ADU Affordability is inappropriately optimistic**

On page D-60 of the November draft Housing Element it is disclosed that the income distribution for projected ADU production is assumed to be 30% very low, 30% low, 30% moderate and 10% above moderate income. This distribution is overly optimistic with reference to the production of very low-income and is not supported by the Town's actual experience of issued building permits for ADUs between the years 2020 to 2022. Over this time a total of 98 building permits were issued and none of them were for very low- or low-income units. This fact is not disclosed in the November draft.

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

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

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

The study included a specific recommendation for income distribution of ADUs for jurisdictions with fair housing concerns, which Los Gatos clearly has. **This distribution is 5% very low, 30% low, 50% moderate and 15% above.** This distribution more accurately reflects open market rentals, excluding units made available to family and friends, and has been adopted by other ABAG jurisdictions. This distribution is further validated by data in the survey showing the following distribution of ADU market rate units on the Peninsula: 6% very low, 31% low, 48% moderate and 15% above.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Summary**

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

Los Gatos Community Alliance

# 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***

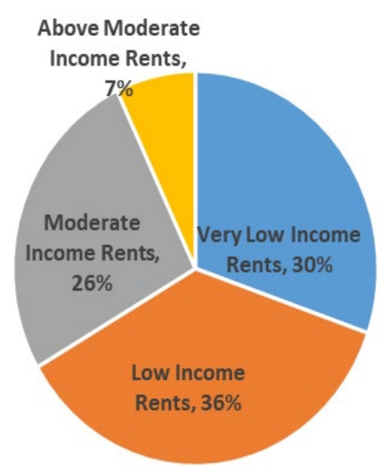


Figure 1 presents a summary of ADU affordability and Table 1 presents a recommendation for assumptions for Housing Elements. See the main body of the report for more information on methodology and assumptions.

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% |

**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 2019[1]. 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% |

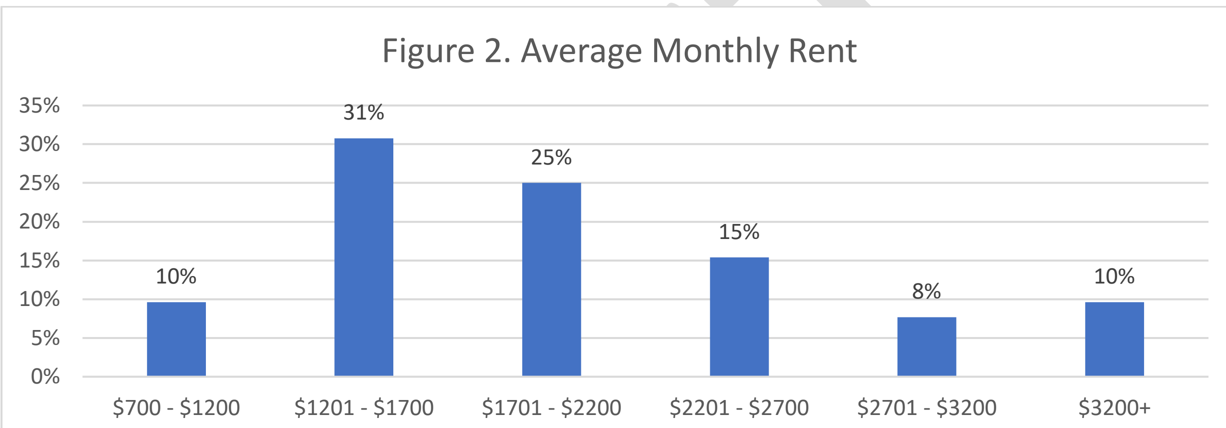
Other includes homeowners who live in the ADU, needs repairs, empty, used as extra bedroom, etc. The response rate in San Francisco was too low for meaningful comparison so it is not presented separately, but is included in the Bay Area total. East Bay includes Alameda and Contra Costa Counties, Peninsula 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 income[3].

*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 Are Total.

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

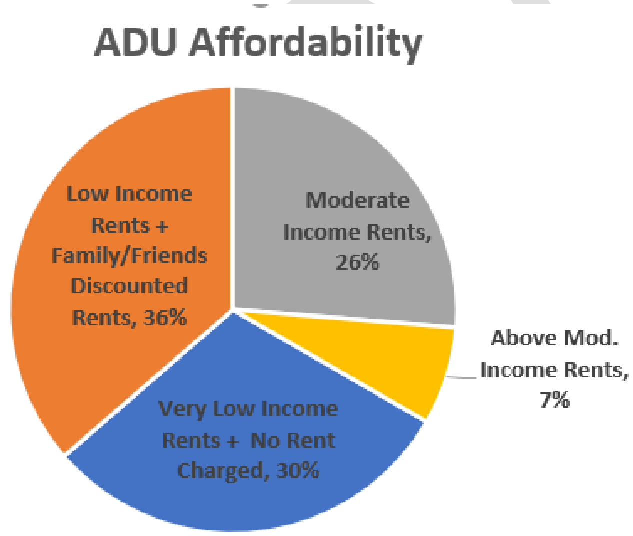



**Figure 2:** Results shown for 9-county Bay Area. “Very low” rents include units available to family or friends at no cost. “Low” rents include discounted family rentals.

## 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.

[4] https://communityinnovation.berkeley.edu/sites/default/files/scaling_up_secondary_unit_production_in_the_east_bay.pdf?width=1200&height=800&iframe=true
[5] http://ternercenter.berkeley.edu/uploads/ADU_report_4.18.pdf
[6] https://accessorydwellings.files.wordpress.com/2014/06/adusurveyinterpret.pdf

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

[EXTERNAL SENDER]
Dear Town Council Members,

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

Thank you,

**Eric S. Phillips | Partner**
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July 31, 2023

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

**Re: Agenda Item 15: Story Pole Policy Modifications**

Dear Honorable Mayor and Council Members:

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

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

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

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

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

The Planning Commission recommended that the Story Pole Policy continue to require height poles and netting for proposed residential and non-residential buildings "[i]f proposed project includes a variance or exception to the physical characteristics of the primary structure." The language referencing an "exception to the physical characteristics of the primary structure" could be interpreted to apply to projects that are legally entitled to incentives, concessions, or waivers under the State Density Bonus Law. This would impose a requirement specifically on projects that include affordable housing, and it creates an economic and political barrier discouraging use of the State Density Bonus Law. The Story Pole Policy should be amended so that receipt of incentives, concessions, or waivers under the State Density Bonus Law does not trigger height pole and netting requirements.

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

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

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

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

Sincerely,

Eric S. Phillips

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