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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

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

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

September 30, 2022

RE: Housing Element

Page 4 of 7

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

September 30, 2022

RE: Housing Element

Page 6 of 7

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

