

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

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



August 25, 2016

The Honorable Barbara Spector, Mayor
and Members of the Town Council
Town of Los Gatos
110 E. Main St.
Los Gatos, CA 95030

RE: North 40 Specific Plan and Housing Element and Related Requirements

Dear Mayor Spector & Members of the Town Council:

The purpose of this letter is to provide guidance and assist the Town of Los Gatos in its decision making regarding the Grosvenor, SummerHill Homes and Eden Housing development application (development application). The Department understands the Town is considering this development application which includes 320 residential units of which, 49 homes will be affordable to very low income senior households. The development application uses State Density Bonus Law pursuant to Government Code Section 65915. The Department further understands the development application is proposed on a site previously rezoned for a capacity of 270 units to permit multifamily uses by right (without discretionary action) and to provide adequate sites to accommodate its regional housing need for lower income pursuant to GC Section 65583(c)(1) and 65583.2(h) and (i). The development application will meet a variety of the Town's housing needs and appropriately conducted approval will meet statutory requirements.

California's high housing cost and lack of housing supply compromise the ability to access opportunity (jobs, health, stability) for families and individuals, including working families and persons with special needs. Homeownership rates are the lowest since the 1940s and the State has not met its projected needs for new housing in the last fifteen years. The State disproportionately has 21 percent of the Nation's homeless population and over half of all households overpay for shelter.

With that context, the Department, among other things, is responsible for administering State housing element law (Article 10.6 of the Government Code), including reviewing local housing elements. In May 2015, the Department found the Town's housing element in compliance with State law. The element contains many important programs to address critical housing needs and fulfill statutory requirements. The Department offers the following to assist the Town in the implementation of its housing element and decision-making consistent with the General Plan.

Rezoned Sites: The housing element includes Action HOU-1.7 to rezone 13.5 acres and provide adequate sites to accommodate the regional housing need for lower income households. The Department understands the Town has rezoned acreage to implement Action HOU-1.7, including permitting multifamily uses by-right. This rezoned capacity must meet several specific requirements pursuant to

Government Code Sections 65583(c)(1) and 65583(h) and (i). Most prominently, rezoned sites must permit multifamily uses by right which means without discretionary action and shall not constitute a “project” for purposes of the California Environmental Quality Act. While design review is allowed under the statute, by right decision making must follow development standards that are objective, fixed, predictable, clear, quantifiable, written, warrant little to no judgement and should be applied in a manner that affirmatively facilitates development. An application for development on sites rezoned by right to accommodate the Town’s regional housing need should not be subject to excessively burdensome conditions of approval and generally should not be subject to a public hearing or public comment.

While the development application being subject to public hearings is concerning and potentially inconsistent with by right requirements, the Department encourages the Town to apply its decision making consistent with statutory requirements. Otherwise, actions would be inconsistent with the Town’s General Plan and statutory requirements and could require an amendment to the housing element.

No Net Loss: As the Department understands the circumstances, the development application does not trigger a need to rezone additional sites under No Net Loss Law (GC Section 65863) even though less units affordable to lower income households are proposed in the development application than identified in the housing element. While the intent of No Net Loss Law is to maintain sites to accommodate the regional housing need by income group throughout the planning period, the law is triggered by a reduction in residential density. The development application does not propose a reduction in density on the proposed site. However, the Department encourages the Town to continue its policies and programs, such as Policy HOU-2.4, Actions HOU-1.1, HOU-1.6, HOU-2.1, HOU-2.2 and HOU-8.1 to continue identifying and modifying opportunities to meet the Town’s housing needs. The Department welcomes the opportunity to assist identifying strategies for meeting the Town’s housing goals, including encouraging additional affordability and housing types.

Future Regional Housing Need Allocation (RHNA) Cycles: Approving the development application consistent with the various by right requirements would be consistent with the housing element and result in no carryover of capacity to the future RHNA cycle pursuant to GC Section 65584.09. Denying the development application may or may not have an impact on future RHNA cycles. For example, the future RHNA will be subject to methodology processes and factors (GC Section 65584.04) and there is potential for sub-regional delegation (GC Section 65584.03).

State Density Bonus Law (SDBL): The intent of State Density Bonus Law (GC Section 65915) is to contribute significantly to the feasibility of development for lower income households. Once an applicant meets eligibility criteria, a density bonus and concessions and incentives are entitled and should, in and of themselves, not require discretionary action (GC Sections 65915(f)(5) and (j)(1)). Specifically, no denial process is available for a density bonus. Based on the Department’s understanding, the development application meets eligibility criteria

under GC Sections 65915(b) and (c). Applicants meeting multiple eligibility criteria (Section 65915(b)(1)) may select which criteria to use (Section 65915(b)(2)). For example, the development application could select to use the density bonus under Very Low income households or Seniors. To interpret and require the density bonus under the senior criteria (GC Section 65915(b)(1)(C)) would be inconsistent with the intent of statute. Also, applicants may request a density bonus over the maximum allowable density under the general plan or zoning (Sections 65915(f) and (o)(2)).

Housing Accountability Act: The Town must consider the Housing Accountability Act (GC Section 65589.5) and at least subdivision (j) which applies to all development regardless of the level of affordability.

RHNA Progress: Approving and permitting the development application would be considered progress toward the Town's regional housing need and can be reported as RHNA credit in the annual report on implementation of the general plan, as required, pursuant to Government Code Section 65400.

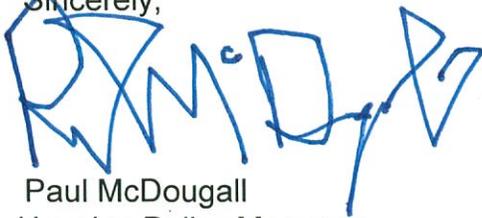
Various Other Statutes: The Town is encouraged to consider various statutory requirements such as:

- GC Section 65913 (Least Cost Zoning) requires local governments to make a diligent effort to reduce development costs through land use controls.
- GC Section 65008 declares any action null and void that denies residence to individuals or groups of individuals and prohibits discrimination against housing based on method of financing or intended occupancy by lower income persons.

Funding Incentives: Taking action consistent with housing element policies and programs can assist the Town in meeting requirements for a variety of funding programs. For example, the Department's Housing Related Parks Program provides financial incentives to cities and counties permitting housing affordable to lower income households. More prominently, the One Bay Area Grants utilize scoring criteria related to meeting housing objectives through the housing element and approval of housing for all income levels.

The Department wishes Los Gatos success in implementing the goals and objectives of its housing element. The Department appreciates the opportunity to provide comments. If you have any questions, please contact Paul McDougall, of our staff, at (916) 263-7420.

Sincerely,



Paul McDougall
Housing Policy Manager