

**From:** [REDACTED] <[REDACTED]>  
**Sent:** Tuesday, November 28, 2023 6:30 PM  
**To:** Laurel Prevetti <[LPrevetti@losgatosca.gov](mailto:LPrevetti@losgatosca.gov)>; Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** Fwd: Public Comment - Agenda Item #1 - Planning Commission meeting Nov 29

This was also sent to the Council and Wendy Wood to forward to the PC.

11-28-23

Dear Members of the Planning Commission,

The Los Gatos Community Alliance (LCGA) is a group of residents writing to you regarding the revised draft 2023-2031 Housing Element submitted to HCD on November 16, 2023 (November draft HE) which the Planning Commission is to “consider and make a recommendation to the Town Council on” at your upcoming November 29<sup>th</sup> meeting.

By now the Planning Commission should be fully aware the Town failed to comply with AB 215 and filed the November draft HE prior to completing the mandatory 7-day public comment period. We have attached HCD’s May 30<sup>th</sup> comment letter and specifically draw your attention to Comment D as well as the general discussion regarding AB 215 requirements in HCD’s cover letter. We have also attached two emails from Ms. Whelan dated November 20 and 21 which provide additional background and confirm the Town’s failure to comply with Govt Code Section 65585(b)(1).

We further point out that the accompanying staff memo for agenda item #1 dated November 22, 2023, provides a chronology of events beginning with November 7<sup>th</sup>, but fails to disclose that the November draft HE, which is the draft the Commission will be considering on November 29<sup>th</sup>, was submitted to HCD on November 16, 2023.

This is particularly troublesome because the Planning Commission held a special meeting on November 15, the purpose of which was to, “consider and make a recommendation to the Town Council on the draft of the Revised 2023 -2031 Housing Element.” For the sake of clarity, the Housing Element being considered at the November 15<sup>th</sup> meeting was the “September 2023 draft,” which had already been submitted to HCD on October 2, 2023, after the mandatory 7-day public comment period. We also point out that the public comment period for that draft closed just one business day earlier, on September 29<sup>th</sup>. This gave no time for the Town to reasonably consider and address the public comments it received.

The agenda for the November 15<sup>th</sup> meeting included a Staff report dated November 10, 2023 which stated “the primary purpose of this agenda item is to ask questions of staff and the Town’s Housing Element consultant on the **Revised Draft Housing Element (September 2023)**, discuss potential modifications to the document based on the preliminary feedback provided by the Town’s HCD reviewer, receive public comment and **continue the item** to a date certain.” The agenda also included a link to the Town’s website where the public could review the “September 2023 draft,” of the revised Housing Element.

Additionally, the Staff provided an addendum report dated November 14<sup>th</sup> which included a “draft preliminary review matrix on the draft revised Housing Element, as submitted to HCD on October 2, 2023, received November 7, 2023, with Staff responses as of November 14, 2023”. This was the first time the Planning Commission or the public had seen this document.

At the November 15<sup>th</sup> special PC meeting, Staff never fully disclosed to the Planning Commission or the public the Staff's true intention, which was to submit a completely revised draft Housing Element the very next day. While the HE consultant, Veronica Tam, indicated in her public comments that Staff planned to, "resubmit revisions by the end of the week," the extent of the revisions were not disclosed. The additional changes were described as, "pretty technical in nature." The consultant explained the changes were being made based on her belief that "HCD would incorporate the majority of the revisions" which would "dismiss their concerns" (presumably reported on the matrix) and favorably impact HCD's comment letter on the October 2 submission which was to be received by December 1.

However, it raises the very uncomfortable question as to why Staff did not have the Planning Commission review the proposed revisions the night of November 15<sup>th</sup> since a new draft clearly existed and in fact was submitted the very next day? The stunning problem that the consultant and Staff created was by resubmitting a new draft on November 16, the Town knowingly denied the public the right to comment **BEFORE** any revision was submitted to HCD as required by AB 215 and emphasized in HCD's May 30 comment letter.

On November 16<sup>th</sup>, the Staff posted a link to the newly revised November 2023 draft HE on its website and emailed links to individuals and organizations that had previously requested notifications. The LGCA received such email notification in the afternoon of November 16<sup>th</sup>. The revised November draft contained massive changes (<https://www.losgatosca.gov/DocumentCenter/View/36911/Draft-Revised-2023-2031-Housing-Element-November-2023---Track-Changes-Copy>) and were not limited to "technical revisions".

Furthermore, the email notification also failed to disclose the Town had already submitted the November 2023 draft HE to HCD. Rather the email, in a very purposeful manner, stated that the 7-day public review period for the November 2023 draft had commenced and "will run until 4pm on November 27, 2023", creating the false impression that after 7-day comment period had closed, the November 2023 draft would then be submitted to HCD. That is certainly what would be expected if the Town were to comply with AB 215.

It is against this backdrop of facts that we make the following comments for your review and consideration.

1. The Planning Commission should not take any action at the November 29<sup>th</sup> meeting regarding the November draft HE. This meeting is not a continuation of the November 15<sup>th</sup> meeting, since an entirely new Housing Element (November draft 2023) is now under consideration (e.g., "the item") and was never considered at the prior meeting.
2. To fully comply with AB 215 the Staff must "consider and address" all public comments received **before** the Planning Commission can take up the November draft. The agenda package does not include any public comments let alone any discussion from Staff as to how Staff has considered and addressed these comments.
3. It would be irresponsible and a violation of the Planning Commissioners' fiduciary duty of care to make any recommendation to the Town Council prior to receiving and properly deliberating HCD's comment letter on the October 2, 2023 HE revision. This letter is due no later than December 1, 2023 – just 2 days after your scheduled meeting. This would be repeating the same

mistake the Planning Commission made when it made its recommendation to the Town Council on January 11, 2023, before considering HCD's comment letter received the very next day on January 12, 2023. In our opinion, taking any action which "front runs" HCD's December 1 comment letter borders on an abuse of power and could create potential legal issues for the Town.

4. The Planning Commission needs to clarify with Staff the status of the November draft HE. Since this revised draft was submitted to HCD mid-cycle, it is our understanding that this will start a new 60-day review period, like the mid-cycle submission made on March 31, 2023 which was also considered as a separate submission. If this is correct, HCD's comment letter would be received around January 29, 2024.

In summary, the LGCA is as eager as any group for the Town to obtain HCD certification. But laws matter. The Town needs to fully comply with Housing Element Laws, just as every other ABAG member has done. We appreciate the work the Planning Commission has done in moving the Town closer to certification.

Jak Van Nada, on behalf of

Los Gatos Community Alliance

From: Gabrielle Whelan GWhelan@losgatosca.gov  
Subject: RE: Town of Los Gatos Housing Element  
Date: Nov 21, 2023 at 3:08:54 PM  
To: Rick Van Hoesen [REDACTED]  
Cc: [REDACTED], Laurel Prevetti LPrevetti@losgatosca.gov, Joel Paulson jpaulson@losgatosca.gov, Wendy Wood WWood@losgatosca.gov, jose.jauregui@hcd.ca.gov, Paul.McDougall@hcd.ca.gov, Phil Koen [REDACTED], Maria Ristow MRistow@losgatosca.gov, Mary Badame MBadame@losgatosca.gov, Matthew Hudes MHudes@losgatosca.gov, Rob Moore rmoore@losgatosca.gov, Rob Rennie RRennie@losgatosca.gov

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Hello, Mr. Van Hoesen.

1. I want to make sure we are talking about the same thing. The Town gave proposed revisions to its HCD reviewer for his consideration in response to mid-review cycle comments he provided regarding the Town's 10/2 submittal. This was not the Town's submittal of a revised draft Housing Element. The proposed revisions were submitted to HCD to get HCD's feedback on whether HCD would be prepared to certify a revised draft Housing Element if it were adopted with those edits and then submitted to HCD for certification. Public comments will still be provided to HCD and taken at both the upcoming Planning Commission and Town Council meetings. The Planning Commission meeting is scheduled for 11/29 and the Town Council meeting has not yet been scheduled. Only after the Town Council has received a recommendation from the Planning Commission and held its public hearing will a revised draft Housing Element be adopted and submitted to HCD for certification.
2. Originally, HCD stated that they would not be able to provide the Town with mid-review cycle comments on the 10/2 submission. On October 31<sup>st</sup> (correction: not November 7<sup>th</sup> as indicated in my original email below), the Town's HCD reviewer told the Town that he would be able to meet with Town staff to provide mid-review cycle comments and scheduled a meeting for 11/7 (correction: not 11/14 indicated in my original email below). The 11/15 Planning Commission was noticed before the Town knew that HCD would in fact be able to meet with the Town to provide mid-review cycle comments. As a result, the 11/15 Planning Commission meeting was used to discuss the mid-review cycle comments from HCD and the Planning Commission continued its meeting to 11/29. Staff had not drafted the revisions at the time of the 11/15 Planning Commission meeting so the matrix that was provided stated that the revisions were in progress. The proposed revisions were completed and

posted on 11/16 (correction: not 11/17 as indicated in my original email below).

3. The purpose of the proposed schedule is intended to obtain HCD certification of an amended Housing Element as soon as possible. State law requires that the Planning Commission make a recommendation to the Town Council on adoption. November 29<sup>th</sup> is the last date on which the Planning Commission can make a recommendation and staff can notice a Town Council meeting in 2023. If the Planning Commission makes its recommendation after December 1<sup>st</sup>, the Town Council will vote on the Housing Element mid-January. With the proposed schedule, the Town Council will have the benefit of HCD's 12/1 letter prior to adoption.

Please let me know if you have other questions or would like to meet. Thank you.

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGED



**Gabrielle Whelan • Town Attorney**

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**From:** Rick Van Hoesen <[REDACTED]>

**Sent:** Monday, November 20, 2023 4:38 PM

**To:** Gabrielle Whelan <[GWhelan@losgatosca.gov](mailto:GWhelan@losgatosca.gov)>

**Cc:** [REDACTED]; Laurel Prevetti <[LPrevetti@losgatosca.gov](mailto:LPrevetti@losgatosca.gov)>; Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>; Wendy Wood <[WWood@losgatosca.gov](mailto:WWood@losgatosca.gov)>; [jose.jauregui@hcd.ca.gov](mailto:jose.jauregui@hcd.ca.gov); [paul.mcdougall@hcd.ca.gov](mailto:paul.mcdougall@hcd.ca.gov); Phil Koen <[\[REDACTED\]@com](mailto:[REDACTED]@com)>; Maria Ristow <[MRistow@losgatosca.gov](mailto:MRistow@losgatosca.gov)>; Mary Badame <[MBadame@losgatosca.gov](mailto:MBadame@losgatosca.gov)>; Matthew Hudes <[MHudes@losgatosca.gov](mailto:MHudes@losgatosca.gov)>; Rob Moore <[RMoore@losgatosca.gov](mailto:RMoore@losgatosca.gov)>; Rob Rennie <[RRennie@losgatosca.gov](mailto:RRennie@losgatosca.gov)>

**Subject:** Re: Town of Los Gatos Housing Element

[EXTERNAL SENDER]

Hello Ms. Whelan,

Thank you for your reply.

Yes, the Los Gatos Community Association (LGCA) does have several questions (more may follow).

1. As we know, an important purpose of the public comment period is to provide the public with advance notice of the proposed draft housing element and to give the public the ability to provide comments on the proposed filing. Equally importantly, the public comment process gives the Town the opportunity to consider and, when appropriate, to incorporate those comments into its Housing Element before the HE is filed with HCD. As a community organization planning to make comments on the draft Housing Element, LGCA is greatly concerned that there is no process for such comments to be considered by the Town and incorporated into the draft. It creates the impression that the public comment process is for appearances only, and is simply being given lip service by the Town in an attempt to technically satisfy the public comment period without actually considering or incorporating any resulting comments. Therefore would you please describe how the process you have outlined (changing the date of submittal for the already-submitted revised Housing Element draft to

November 27) provides the ability for Town to receive and consider public comments and then, when appropriate, incorporate any changes resulting from those comments into the draft submittal?

2. While we did not actually ask the second question you posit (namely, why were the most recent HE revisions not taken to the HEAB), we nonetheless wonder how the sequence of events occurred on November 15 and 16. The Planning Commission met on November 15 with the agenda item, "Consider and Make a Recommendation to the Town Council on the Draft Revised 2023-2031 Housing Element." During that meeting it appears that there was discussion of the, "mid-review cycle recommendations from HCD that were received on November 14th." And yet to all outward appearances the Planning Commission was not aware of (and in any event did not publicly discuss) the draft Housing Element that the Town staff was to submit the very next day - at least in part in response to those same "mid-review cycle recommendations." Why was the Planning Commission (and the public) not made aware at that meeting that the very next day a draft Housing Element was to be filed by Town Staff in response to the HCD mid-cycle recommendations that were discussed at that meeting?
3. Of course it is known by the Town that HCD is to provide its comment letter on the September draft Housing Element on or before December 1. Knowing that, why would the Town propose to submit yet another draft HE on November 27, just 4 days before the latest date it is to receive HCD's comments? Further, why would the Planning Commission propose to make a recommendation to the Town Council on November 29, just 2 days before that date? Why not wait to receive HCD's letter on or before December 1 and make all the recommendations and submittals with full knowledge of HCD's latest comments?

Thank you.

Rick Van Hoesen & Jak Van Nada

| On Mon, Nov 20, 2023 at 3:13 PM Gabrielle Whelan <[GWhelan@losgatosca.gov](mailto:GWhelan@losgatosca.gov)> wrote:

Dear Mr. Van Hoesen and Mr. Van Nada:

Thank you for your November 19<sup>th</sup> letter regarding the revised draft Housing Element. I have reviewed Government Code Section 65585(b) and it does provide that a seven-day public review period is required before a draft revision to the Housing Element is sent to HCD. Accordingly, Town staff will be contacting HCD to ask HCD to consider the date of submittal to be November 27<sup>th</sup> rather than November 17<sup>th</sup>. This will provide the public with an opportunity to provide written comment for a seven-day period plus a buffer for the Thanksgiving holiday. Town staff will also update the Town's Housing Element web page with this information. As you may know, the draft revised Housing Element will be coming to the Planning Commission for consideration on November 29<sup>th</sup>. At that meeting, staff will be asking the Planning Commission to make a recommendation regarding adoption of the revised draft Housing Element.

You also asked why the most recent revisions made in response to HCD's mid-review cycle comments were not taken to the Housing Element Advisory Board ("HEAB") for a recommendation to the Planning Commission. The HEAB did review previous drafts of the Housing Element. Most recently, the HEAB made a recommendation to the Planning Commission and Town Council before the Town's October 2<sup>nd</sup> submittal to HCD. The November proposed revisions were made in response to mid-review cycle recommendations from HCD that were received on November 14<sup>th</sup>. Given the interest in adopting, and obtaining certification of, the revised draft Housing Element in a timely manner, it is not practical to return to the HEAB every time revisions are proposed.

Please let me know if you have any follow-up questions.



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From: Gabrielle Whelan GWhelan@losgatosca.gov  
Subject: Town of Los Gatos Housing Element  
Date: Nov 20, 2023 at 3:13:29 PM  
To: Rick Van Hoesen [REDACTED]  
Cc: Laurel Prevetti LPrevetti@losgatosca.gov, Joel Paulson  
jpaulson@losgatosca.gov, Wendy Wood WWood@losgatosca.gov,  
jose.jauregui@hcd.ca.gov, Paul.McDougall@hcd.ca.gov, Phil Koen  
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Please let me know if you have any follow-up questions.



**Gabrielle Whelan • Town Attorney**

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

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May 30, 2023

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

Dear Joel Paulson:

**RE: Town of Los Gatos' 6<sup>th</sup> Cycle (2023-2031) Revised Draft Housing Element**

Thank you for submitting the Town of Los Gatos' revised draft housing element update received for review on March 31, 2023. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by a conversation on May 10, 2023 with yourself, Jennifer Armer, Planning Manager, Jocelyn Shoopman and Erin Walter, associate planners. In addition, HCD considered comments from Phil Koen pursuant to Government Code section 65585, subdivision (c).

The revised draft housing element addresses many statutory requirements described in HCD's January 12, 2023 review; however, revisions will be necessary to substantially comply with State Housing Element Law (Gov. Code, § 65580 et seq). The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government fails to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), then any rezoning to make prior identified sites available or accommodate the regional housing needs allocation (RHNA), including for lower-income households, shall be completed no later than one year from the statutory deadline. Please be aware, if the Town fails to adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until all necessary rezones pursuant to Government Code sections 65583, subdivision (c)(1) and 65583.2, subdivision (c) are completed.

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the Town must continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available while considering and incorporating comments where appropriate. Please be

aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

Chapter 654, Statutes of 2022 (AB 2339), adds specificity on how cities and counties plan for emergency shelters and ensure sufficient and suitable capacity. Future submittals of the housing element may need to address these statutory requirements. For additional information and timing requirements, please see HCD's memo at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/ab2339-notice.pdf>.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the Town will meet housing element requirements for these and other funding sources.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the Town to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: <https://www.opr.ca.gov/planning/general-plan/guidelines.html>.

We are committed to assisting the Town in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Jose Armando Jauregui, of our staff, at [jose.jauregui@hcd.ca.gov](mailto:jose.jauregui@hcd.ca.gov).

Sincerely,



Paul McDougall  
Senior Program Manager

Enclosure

## APPENDIX TOWN OF LOS GATOS

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

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

### **A. Housing Needs, Resources, and Constraints**

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

Regional Level Patterns and Trends: The element includes some data and analysis regarding different patterns for various socio-economic characteristics (race and income). However, a complete analysis should analyze this data for patterns and trends at the regional level, comparing the locality to the broader region, including integration and segregation (race, income, disability, and familial status), disparities in access to opportunity (education, environmental, transportation, economic), and disproportionate housing needs (cost burdened, overcrowded, substandard housing conditions, homelessness, and displacement risks). Please see HCD's January 12, 2023 review for additional information.

Income and Racial Concentration of Affluence (RCAA): The element states that a RCAA does not exist; however, the Town is predominantly a high resource category according to TCAC/HCD Opportunity Maps and is predominantly higher income. These patterns differ from the surrounding region and the element should include specific analysis of the Town compared to the region and should formulate policies and programs to promote an inclusive community. For example, the Town should consider additional actions (not limited to the Regional Housing Needs Allocation (RHNA)) to promote housing mobility and improve new housing opportunities throughout the Town.

Disparities in Access to Opportunity: While the element was revised to include the distances between public schools for each site to a public transit line, it must also evaluate and compare concentrations of protected groups with access to transportation options. In addition, it must also analyze any disproportionate transportation needs for members of protected classes.

Identified Sites and Affirmatively Furthering Fair Housing (AFFH): While the element was revised with brief conclusions that identified sites do not exacerbate fair housing conditions, it must also quantify the number of units by income group and location then evaluate the impact on socio-economic concentrations. Please see HCD's January 12, 2023 review for additional information.

Local Data, Knowledge and Other Relevant Factors: The element included some information about regional history, referenced stakeholder comments and discussed the location of assisted projects and housing choice vouchers. However, the element needs to provide information and analysis that relates, supports, or supplements the existing analysis, fair housing conclusions, or contributing factors. The element must consider other relevant factors that have contributed to certain fair housing conditions. This analysis must consider information that is unique to the Town or region; such as governmental and nongovernmental actions; historical land use and zoning practices (e.g., past redlining/Greenlining, restrictive covenants, planning documents, etc.); disparities in investment to specific communities including transportation investments; seeking investment or lack thereof to promote affordability and inclusion; local initiatives, or other information that may have impeded housing choices and mobility.

Contributing Factors to Fair Housing Issues: The element identifies contributing factors to fair housing issues. However, these issues and goals do not appear adequate to facilitate the formulation of meaningful actions to AFFH. The element should re-assess contributing factors upon completion of analysis and make revisions as appropriate. In addition, the element must prioritize these factors to better formulate policies and programs and carry out meaningful actions to AFFH.

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

Housing Conditions: The element discusses code enforcement violations; however, it must also provide a Town-wide estimate of the number of units in need of rehabilitation and replacement.

3. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

Realistic Capacity: While the element now clarifies that minimum densities are utilized toward the calculation of realistic capacity; it must still address HCD's prior finding regarding the likelihood for 100 percent nonresidential development in zones allowing 100 percent nonresidential uses. Please see HCD's prior review for additional information.

Nonvacant Sites: The element was not revised to address this finding. Please see HCD's January 12, 2023 review for additional information.

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

Small Sites: The element was not revised to address this finding. Please see HCD's January 12, 2023 review for additional information.

SB 9 Sites: The element is projecting 96 units that will be developed based on the passage of SB 9 (Statutes of 2021) to accommodate a portion of its above moderate-income RHNA. To utilize projections based on SB 9 legislation, the element must; 1) include a site-specific inventory of sites where SB 9 projections are being applied; 2) include a nonvacant sites analysis demonstrating the likelihood of redevelopment and that the existing use will not constitute as an impediment for additional residential use. The element should list the four two-unit housing development applications and the seven urban lot splits, and the two development requests on single-family residential zoned parcels; and Program BL should be revised to implement significant incentives to encourage and facilitate development. Please see HCD's January 12, 2023 review for additional information.

Zoning for a Variety of Housing Types (Manufactured Housing): The element was not revised to address this finding. Please see HCD's January 12, 2023 review for additional information.

Electronic Sites Inventory: For your information, pursuant to Government Code section 65583.3, the Town must submit an electronic sites inventory with its adopted housing element. The Town must utilize standards, forms, and definitions adopted by HCD. While the Town has submitted an electronic sites inventory, if any changes occur, the Town should submit the revised inventory to HCD as part of any future re-adoption submittal.

4. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures... (Gov. Code, § 65583, subd. (a)(5).)*

Land Use Controls: The element now lists development standards by zoning district. However, it must also list and evaluate development standards for the North Forty Specific Plan, Mixed-Use Commercial, and the High-Density Residential zones. Please see HCD's January 12, 2023 review for additional information.

Fees and Exaction: The element now compares total fees as a proportion of the total development costs but still must list the fees that comprise that total and particularly impact fees then evaluate those total fees for impacts on development costs.

Local Processing and Permit Procedures: While the element provides additional information on the processing of a typical market rate single or multi-family housing application, it mentions approval is required by the Development Review Committee (DRC) (p. C-29). The element must describe and analyze the DRC process, identify and evaluate approval findings for impacts on housing cost and approval certainty.

Housing for Persons with Disabilities: The prior review found the Town's reasonable accommodation procedure contains constraints. For example, subjective language in approval findings such as "no impact on surrounding uses" can lead to uncertainty of project approval through a discretionary process. In response, the Town commits Program BC to revise subjective language criteria to "minimal impact on surround uses" (p. C-38). However, reasonable accommodation is a unique exception process that should not contain findings similar to a conditional use permit. Program BC should be revised to specifically remove the surrounding uses finding.

Inclusionary Zoning Ordinance: While the element now discusses alternatives for meeting the Town's inclusionary requirements, it should still describe incentives, including relationships with state density bonus law and how the level of affordability is determined.

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

Special Housing Needs: The element was not revised to address this finding. Please see HCD's January 12, 2023 review for additional information.

## **B. Housing Programs**

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

Programs must demonstrate that they will have a beneficial impact within the planning period. Beneficial impact means specific commitment to deliverables, measurable metrics or objectives, definitive deadlines, dates, or benchmarks for implementation. Deliverables should occur early in the planning period to ensure actual housing outcomes. The following programs still must be revised to include specific commitments and definitive timelines as follows:

- *Program M (Lot Consolidation)*: While the program was revised to facilitate four units through the lot consolidation process, it should increase the numerical objective in stride with the need. Specially as the Town is relying on several small sites to accommodate a portion of lower income RHNA.
  - *Program S (Affordable Housing Development)*: The program should increase the numerical objective to target meaningful outcomes during the planning period.
  - *Program T (Purchase Affordability Covenants in Existing Apartments)*: The element should revise the timeline earlier in the planning period to target a beneficial impact (e.g., by 2026).
  - *Program BM (Story Poles and Netting Policy)*: The program now commits to review the story pole and netting policy and explore options to reduce costs affordable housing. However, the program still must commit to an actual outcome, beyond exploring options. In addition, the program should also establish alternatives or modifications that promote approval certainty. For example, the program could remove the requirements or create alternative for meeting the requirement such as visual renderings.
2. *Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. (Gov. Code, § 65583, subd. (c)(1).)*

As noted in Finding A3, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the Town may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types.

As noted in the prior review, if necessary to make appropriate zoning available to accommodate the lower-income RHNA, Program D (Additional Housing Capacity) must be revised to meet all requirements pursuant to Government Code section 65583.2, subdivisions (h) and (i). For example, the Program must commit to permit owner-occupied and rental multifamily uses by-right (without discretionary action) for developments in which 20 percent or more of the units are affordable to lower-income households.

3. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable*



*accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (Gov. Code, § 65583, subd. (c)(3).)*

As noted in Finding A4, the element requires a complete analysis of potential governmental constraints. Depending upon the results of that analysis, the Town may need to revise or add programs and address and remove or mitigate any identified constraints.

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

As noted in Finding A1, the element requires a complete AFFH analysis. Depending upon the results of that analysis, the Town may need to revise or add programs. Actions listed to address AFFH analysis must have specific commitments, milestones, geographic targeting and metrics or numerical targets and, as appropriate; address housing mobility enhancement; new housing choices and affordability in higher opportunity or higher income areas; place-based strategies for community revitalization and displacement protection. For example, the element must add significant and meaningful housing mobility actions to overcome the existing patterns in the Town related to the broader region. Given, among other things, the Town is entirely in the highest category of disparities in access to opportunity and largely does not reflect the socio-economic characteristics of the broader region. The element must include significant actions to promote housing mobility within the Town and relate to the region to promote an overall inclusive community. The element could consider improving existing programs or including new programs.

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

Program U Accessory Dwelling Units (ADU): While the program now commits to annually monitor the production and affordability of ADUs and make adjustments. It should clarify the types of adjustments that will be considered such as rezoning, additional incentives, fee reductions, financing programs.

### **C. Quantified Objectives**

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

The element now includes quantified objectives for new construction and rehabilitation by income group but should also include conservation objectives. Please note, conservation objectives are not limited to at-risk preservation and may include a variety of activities that promote safe and stable housing such as code enforcement and tenant protections. Examples of programs that may be utilized include Programs T (Purchase Affordability

Covenants in Existing Apartments), AE (Rental Dispute Resolution), AF (Rental Assistance), AH (Stabilize Rents) and AQ (Rental Housing Conservation).

#### **D. Public Participation**

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

While the element was revised to include the renters survey results and previous outreach conducted, it must also summarize all public comments and describe how they were considered and incorporated into the element. HCD's future review will consider the extent to which the revised element documents how the Town solicited, considered, and addressed public comments in the element. The Town's consideration of public comments must not be limited by HCD's findings in this review letter. Please see HCD's prior review for additional information.

#### **E. Consistency with General Plan**

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

While the element identifies Program BG (General Plan Amendment) to ensure consistency with the General Plan, it should discuss how consistency will be maintained throughout the entire planning period.