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A P P E A R A N C E S:

Los Gatos Planning Commissioners: Jeffrey Barnett, Chair
Steve Raspe, Vice Chair
Susan Burnett
Melanie Hanssen
Kathryn Janoff

Town Manager: Laurel Prevetti

Community Development Director: Joel Paulson

Town Attorney: Gabrielle Whelan

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P R O C E E D I N G S:

CHAIR BARNETT: Under Verbal Communications tonight the public is going to speak on Agenda Item 1, which we'll get to shortly, and I will explain the Town's guidelines pertaining to Verbal Communications when we get to that point in the agenda.

We'll now consider Agenda Item 1, in which we are asked to consider and make a recommendation to the Town Council on the Draft Revised 2023-2031 Housing Element. Location is Town-wide. General Plan Amendment Application GP-22-003. Do we have a Staff Report tonight on this matter? Thank you.

JOCELYN SHOOPMAN: Good evening. The primary purpose of the item this evening is to consider and make a recommendation to the Council on whether to adopt the Draft Revised Housing Element with modifications in response to the HCD Draft Preliminary Review Matrix that the Town received on November 7th.

On November 16th the Draft Revised Housing Element was made available for a seven-day public review period ending on November 27th as required prior to resubmittal to HCD. An addendum report was provided to the Commission yesterday that contained the public comments received

1 during the seven-day review period, as well as the cover
2 letter that was provided to HCD as part of the Town's
3 November 28th resubmittal of the Draft Revised Housing
4 Element.

5 Staff anticipates receiving HCD's comment letter
6 this Friday, December 1st.

7 The Town Council's consideration on the adoption
8 of the Draft Revised Housing Element is tentatively
9 scheduled for December 19th.

10 A Desk Item was also provided to the Commission
11 today with additional public comments received following
12 the publishing of the addendum report, a copy of the
13 response memorandum to the Draft Preliminary Review Matrix
14 provided by HCD; and a copy of the technical memorandum
15 regarding Accessory Dwelling Units that was prepared by the
16 Association of Bay Area Governments.
17

18 This completes Staff's presentation. We are
19 available for any questions, as well as the Town's Housing
20 Element consultant, Veronica Tam.

21 CHAIR BARNETT: Thank you, Ms. Shoopman, and I'll
22 ask my fellow Commissioners if they have questions of you
23 at this time? Commissioner Hanssen.

24 COMMISSIONER HANSEN: Thank you for that, and I
25 did want to compliment Staff. The Housing Element looks as

1 good as it ever has been, and hopefully we're going to be
2 there with HCD.

3 I have some concerns about the timeline of the
4 submissions, and it was also noted in public comments. My
5 question for Staff at this point is the draft without any
6 changes between then and now was submitted to HCD on the
7 16th. They were told to consider the date of submittal
8 today, is that correct?

9
10 JOCELYN SHOOPMAN: There was an informal
11 submittal to HCD that occurred on November 16th providing
12 them with a copy of Draft Revised Housing Element and also
13 making them aware of when the seven-day review period would
14 be occurring; this was offered to the Town by our HCD
15 reviewer to provide them with this informal submittal,
16 knowing that the seven-day review period would be occurring
17 followed by the Town's formal resubmittal to HCD.

18 COMMISSIONER HANSSEN: Thank you for that. My
19 follow up question is if the actual submittal was today, or
20 I guess the 28th was yesterday, the actual submittal was
21 yesterday, given there were a fair amount of items left
22 from the November 7th matrix for them to look at, are they
23 still going to be able to complete their review and get a
24 letter by December 1st? That seems like not a lot of time,
25 given the past history you guys have encountered.

1 JOCELYN SHOOPMAN: Thank you for the question.
2 Yes, obviously we would have liked to get it to them
3 sooner, but with the holiday that did present some
4 challenges in terms of timing. Our hope is that he'll be
5 able to complete that review for the December 1st letter so
6 it does address many of those comments in the matrix, but
7 ultimately we will find out when we receive that comment
8 letter on Friday.

9
10 COMMISSIONER HANSSEN: Is it possible that their
11 comment letter could be we're not ready to make a full
12 comment on the submission?

13 JOCELYN SHOOPMAN: Our consultant may want to
14 also chime in, but once there is a formal submittal to HCD
15 they have very clear timelines that they have to follow, so
16 there will be a comment letter that's provided to the Town
17 on December 1st.

18 COMMISSIONER HANSSEN: Okay, thank you.

19 CHAIR BARNETT: Other questions for Staff?
20 Commissioner Janoff.

21 COMMISSIONER JANOFF: So they're obligated to
22 provide a comment letter on December 1st covering the
23 September submittal. Is it fair to say that the portions of
24 the draft that were resubmitted yesterday may not be
25 considered or included in their December 1st comment letter?

1 JOCELYN SHOOPMAN: Yes, there is that potential.

2 COMMISSIONER JANOFF: Thank you.

3 CHAIR BARNETT: Other questions? Commissioner
4 Burnett.

5 COMMISSIONER BURNETT: Thank you. Question for
6 Staff. Can you go over again why we did have a Planning
7 Commission meeting on the 15th then, since there was a new
8 matrix and there was work being done on the revised Housing
9 Element the next day.
10

11 JENNIFER ARMER: Thank you for that question.
12 When scheduling public hearings they do need to be set and
13 scheduled a significant period of time ahead of time so
14 that we can make sure that we have the required public
15 noticing and ads to the paper, and that takes several weeks
16 in advance of the date of the hearing.

17 In the case of the 15th, we were hoping that we
18 would have the opportunity to meet with the Town's reviewer
19 to get some initial feedback, and so we were hoping to have
20 the discussion on the 15th with some revisions. That didn't
21 occur as early as we had hoped, and so we weren't able to
22 present to Planning Commission the fully revised Housing
23 Element based on that interim feedback. That is why we
24 recommended continuance to this evening, so that you have
25 sufficient time, in this case nearly two weeks, to take a

1 look at the full revisions that have been made in response
2 both to the previous letter from HCD and the interim
3 review.

4 CHAIR BARNETT: Commissioner Hanssen.

5 COMMISSIONER HANSSEN: When we met on the 15th you
6 went through some changes to the sites inventory and some
7 other changes that you're going to make, and I believe they
8 were all positive in terms of the draft that we just saw,
9 and in particular the affordable housing AFFH matrix looked
10 great.

11
12 Now, given what Commissioner Janoff asked,
13 they're commenting primarily on the draft that they
14 received in early October, so given the changes in the
15 sites inventory, although we didn't add any new sites, what
16 is the likelihood that they're going to be able to
17 realistically give a thumbs up on this? They don't have a
18 lot of time to review a couple of really important inputs.

19 JENNIFER ARMER: Thank you for that question. We
20 are still hopeful that these additional changes that were
21 prepared two weeks ago can be incorporated into the review
22 that results in the letter on Friday; there still is a good
23 chance of that.

24 I also invite Veronica Tam, our consultant, if
25 she's available, to turn on her camera and join us to talk

1 about how these interim reviews have worked with her and
2 other agencies in the past.

3 VERONICA TAM: Thank you, Jennifer. They've seen
4 a lot of the revisions that we have made throughout that
5 process, and I think it's based on we try to respond very
6 well with the matrix that they have provided. I think the
7 last set of changes is very specific. I am hoping that he
8 would have the opportunity to review it.

9
10 The reviewer contacted me this morning and asked
11 me to make sure that the City is able to submit the
12 revisions as soon as possible, and so I am again hopeful,
13 along with Staff, because he contacted me and gave us a
14 deadline by the end of the day that he would be able to
15 review those changes and incorporate that into the letter,
16 so there is a good chance. I would not be able to speculate
17 whether he will, but there is a chance, because he did ask
18 and gave us a deadline today.

19 COMMISSIONER HANSSEN: If I could ask a follow up
20 question. Thank you for that explanation; that was helpful.

21 I'm assuming that they're working primarily from
22 the matrix that they gave us on November 7th. Is it typical
23 in your experience that they would limit their review only
24 to those items that weren't covered and not look at new
25 things?

1 VERONICA TAM: Correct, that's what we usually do
2 and that's the reason why we always highlight, and that was
3 the questions that he had asked me a few days before ahead
4 of time too, if the changes would be differentiated from
5 the previous revisions. We usually use different
6 highlighting to illustrate the different stages of the
7 changes that we've made based on different versions of the
8 matrix. The reason why we do that with highlighting is to
9 actually make sure that they focus on the latest revisions
10 that address the latest matrix.
11

12 COMMISSIONER HANSSEN: Okay, thank you very much.

13 CHAIR BARNETT: Other questions? I have a couple
14 for Staff. Has the Town received a response from HCD
15 regarding the inquiry as to whether the Housing Element
16 filing will be deemed to have been received at the end of
17 the day on November 27th? It was a request from Mr. Paulson
18 to HCD on that.

19 JENNIFER ARMER: We did submit yesterday the 28th,
20 and we did receive acknowledgement from our reviewer that
21 it had been received yesterday, so the formal submittal of
22 this interim draft is considered submitted yesterday the
23 28th.
24
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1 CHAIR BARNETT: If I understand correctly, you're
2 saying that HCD has agreed with the Town's position that
3 the submittal was on November 27th?

4 JENNIFER ARMER: It actually was formally
5 submitted on the 28th, so there was the correspondence back
6 and forth about sharing the preliminary draft previously
7 and wanting to make sure that they did not consider the
8 email on the 16th as being a formal submittal, because we
9 had not yet completed the seven-day review. The formal
10 submittal of this interim draft with additional revisions
11 was yesterday the 28th, and they have confirmed that they
12 received it on that date.

14 CHAIR BARNETT: Okay, thank you. One other point
15 here. There was a comment from the public that the mid-
16 cycle submission would start a new 60-day review period. Do
17 you have a comment on that? This was in Exhibit 12, number
18 four on page two.

19 JOCELYN SHOOPMAN: Thank you for the question. In
20 speaking and corresponding with our HCD reviewer, what was
21 provided in an email on the 16th was an informal submittal;
22 it did not constitute an actual formal submittal, and we
23 noted that the seven-day review period would be starting on
24 that day and ending on a certain day, so no, it's not our
25

1 understanding that it constitutes a new 60-day review
2 period.

3 JOEL PAULSON: Through the Chair, just to add,
4 the formal submittal that occurred yesterday does start a
5 new 60-day clock.

6 CHAIR BARNETT: Thank you for that clarification.
7 I might as well take this opportunity to ask Staff about
8 the consequences if this hearing were continued to a date
9 in the future based on the expectation of input on December
10 1st, which is 48 hours away?

12 JENNIFER ARMER: Thank you for that question, and
13 I understand the interest in finding out what's in that
14 letter; I think we're all eager to see it.

15 Staff is recommending that Planning Commission
16 make a recommendation on the Draft Housing Element this
17 evening because of an interest in allowing the Town Council
18 to consider adoption of the Housing Element before the end
19 of the year. Their final meeting is on December 19th. The
20 deadline for submitting an ad to the newspaper for that
21 meeting is actually first thing tomorrow morning, and it is
22 required by State law to include specifically what the
23 Planning Commission recommendation is, so this really is
24 the last date for us to be able to bring this for
25 consideration by Town Council before the end of the year.

1 CHAIR BARNETT: I see some hands up here. We'll
2 start with Vice Chair Raspe.

3 VICE CHAIR RASPE: Thank you, Chair. If I can
4 follow up, because it seems like we're pressing forward in
5 quick fashion, which I take to mean that we're trying to
6 avoid certain consequences. Can you remind us, and the
7 public as well, what the consequences are for failing to
8 timely put into place the Housing Element.
9

10 JENNIFER ARMER: Thank you for that question.
11 I'll start, and the Town Attorney may have something to
12 add. The goal here is to get a Housing Element adopted and
13 certified as early as possible in order to avoid any
14 additional Builder's Remedy applications. There are a lot
15 of reasons that it is beneficial for the Town to have an
16 adopted Housing Element.

17 As the information that was provided to Planning
18 Commission shows, there has been a lot of work that has
19 been done over this last year to bring the Draft Housing
20 Element into compliance with State law. The long chart that
21 was included in your addendum, for example, goes through
22 the State regulations section-by-section to show
23 specifically how this updated Housing Element does address
24 all of those components.
25

1 So while we do not have the final blessing from
2 the State as of yet, the information that we have provided
3 we hope will allow the Planning Commission to make a
4 recommendation this evening.

5 VICE CHAIR RASPE: Thank you for the answer.

6 CHAIR BARNETT: Commissioner Hanssen and then
7 Commissioner Janoff.

8 COMMISSIONER HANSSEN: A related question to
9 that. There has been some misinformation, I think, that has
10 been floating around. What I heard is that we need to go as
11 soon as possible, but there isn't an official deadline, and
12 so I'm asking Staff to confirm the only deadline that I'm
13 aware of is on January 31, 2024, the deadline to have the
14 rezoning completed.

15 JOCELYN SHOOPMAN: That's correct.

16 COMMISSIONER HANSSEN: Which has been done with
17 the exception of one site that is not integral to the
18 success of the sites inventory.

19 CHAIR BARNETT: Commissioner Janoff.

20 COMMISSIONER JANOFF: Thank you. I think we all
21 want to see the letter on December 1st. Before the Planning
22 Commission makes a recommendation it seems prudent that we
23 would have that information in hand before we would
24 recommend the Town Council adopting the current draft.
25

1 However, when I look at the progress that's been
2 made between the original submission, the draft in
3 September, and the relatively minor but specific changes
4 that were in our package today, I feel confident that we
5 have a good document. I did before, but I feel even more
6 confident now.

7 My question to Staff is cant the Planning
8 Commission make a recommendation this evening that Town
9 Council adopt the November draft of the Housing Element
10 with the condition that if the letter from HCD on December
11 1st is a no or noncompliance, that that recommendation would
12 not go forward?

13 ATTORNEY WHELAN: That could be done. An
14 alternative would be to adopt the resolution and if HCD
15 were to recommend significant changes, those changes could
16 either be made before the Town Council meeting, or
17 alternatively the Planning Commission could meet again.

18 COMMISSIONER JANOFF: Thank you.

19 CHAIR BARNETT: My intent was to go forward with
20 the public comment for tonight, and then following that
21 perhaps it would be appropriate for the Commission to
22 consider the procedural status of the hearing before we go
23 into a detailed review of the matrix as a way to proceed.
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1 With that in mind, I'll open the public portion
2 of the meeting where members of the public are allotted up
3 to three minutes to comment on Agenda Item 1, and as at all
4 of our meetings, the public's input is very much
5 appreciated and welcomed and the Planning Commission
6 considers the comments carefully.

7 During tonight's meeting any person may speak
8 after being recognized by the Chair, and no person other
9 than the Commissioners, Staff, and the person having the
10 floor shall be permitted to enter into the discussion. No
11 member of the public is allowed to speak more than one
12 time, and to assure the opportunity for all people to
13 participate there is no yielding of time to another
14 speaker.

15 We have several cards up here, but if you haven't
16 already submitted on, please hand one to Staff and we'll be
17 sure to include you. When your name is called, please come
18 to the microphone and state your name and address, if you
19 would, or you can speak anonymously. Again, in fairness to
20 all speakers the comments are limited to three minutes.
21 I'll begin with Ms. Quintana.

22 LEE QUINTANA: To begin, I'll make some
23 disclosures. I was a member of the GPAC for 2040 and I'm
24
25

1 currently a member of the Historic Preservation Committee,
2 at least until the 31st, and I'm speaking as an individual.

3 I thought about what I was going to say today all
4 day and it kept changing, and I kept coming up with some
5 statements that are just clichés that all seem to fit. One
6 was I feel like I'm in the middle of a skit of Who's on
7 First and What's on Second. I feel like I'm trying to read
8 and make comments on a moving target, and a moving target
9 that isn't even all visible at one time. This is really
10 getting to be ridiculous, and the more these halfway
11 reports come out, the more complicated and bizarre this
12 whole process has become.

14 If as the attorney said, you can meet again
15 before the Town Council after the receipt of the comments
16 from HCD, I would think that's what you would want to do so
17 you weren't just making a decision to approve something, or
18 recommend approval of something, that you didn't even know
19 what it was, so to speak.

20 The other thing I want to say is that HCD
21 comments, to me, said they're focused on about three
22 things.

23 They were focused on the previous Housing
24 Element's evaluation factors that are in the way of
25 achieving, and the AFFH, but there were overlaps with all

1 of them. To me, reading through the revised text, there's a
2 lot of it, but I don't think it adequately addresses HCD's
3 comments and I would be very surprised if they didn't make
4 those comments. They seem to indicate that even the site
5 inventory isn't approved yet; because they need the
6 analysis from those other evaluations before they can even
7 address that.

8
9 One of the things that they commented on was the
10 lack of zoning for multiple-family distributed evenly
11 throughout the Town.

12 I'm out of time, but I have a lot more to say.

13 CHAIR BARNETT: Let's see if the Commissioners
14 have questions for you. I don't see any. We only have one
15 other speaker card, so would you like to speak for another
16 minute?

17 LEE QUINTANA: To me, one of the problems with
18 the analysis in the first place is that like for AFFH it's
19 divided into little pieces. All the way along each piece is
20 answered, each piece compares it to the region and to the
21 county, etc., but there is no point at which all of that
22 information gets reaggregated again and analyzed in a
23 totality, because there are contradictions within each of
24 those different sections; that's the analysis that I think
25 the state is looking for.

1 Also, things that are in the way, so to speak—
2 I've lost the word—we talk about them but we don't give any
3 specific examples. What is the town zoning that the Town
4 has that impeded achieving our goals in the Housing
5 Element? The information is not specific enough.

6 CHAIR BARNETT: Thank you for your comments. They
7 are appreciated. Mr. Fagot.

8 LEE FAGOT: Good evening, and I'm speaking as a
9 citizen of the Town of Los Gatos; I'm not representing any
10 group.
11

12 I did want to commend all of you for the work
13 that you've been doing. It has been very difficult, I know,
14 because of the dynamic changes that are occurring.

15 One of the things I would ask for is that Santa
16 brings everybody a calendar, and that they all use the same
17 calendar for planning, because what we have is one that the
18 town Staff uses, one that HCD uses, one that the Planning
19 Commission uses, the Town Council, and they don't mix
20 together terribly well. For example, the November 15th
21 meeting that you held was actually a very good and
22 informative meeting, I appreciate it, however, we learned
23 that the next day, the 16th, without citizen or Council
24 review, the staff submitted the new draft to HCD that had
25 significant changes, so there wasn't, again, the

1 opportunity to review. The public comment period of seven
2 days is before submission, not after or concurrent with a
3 submission, as you just discussed a few minutes ago. Now I
4 have learned tonight that yesterday another submittal was
5 made.

6 I'm going to skip my notes, because I think Ms.
7 Quintana made a lot of very good points that there needs to
8 be better coordination between the Planning Commission, the
9 Housing Element Advisory Board, the town Staff, then to the
10 Council. The Council needs to give the final review and
11 direction, but the citizens need an opportunity as well, as
12 is outlined in the law.

14 Again, I appreciate the challenges that you face
15 and the work that you've done, but let's work together
16 better going forward. A lot of lessons coming out of this
17 are that trying to do the General Plan and then doing the
18 Housing Element, the sequence was not good. Let's work on
19 one universal calendar that we can all work with together
20 and put it in a logical sequence of feedback from the
21 consultant, which was not provided earlier after her
22 meeting; and the Town Staff meeting with HCD was not given
23 back to this Commission or the Housing Element Advisory
24 Board, or the Town Council after the consultant's meeting
25 with HCD, so changes in the process need to occur, and

1 again, I appreciate all that you've done and wish you well.
2 Thanks.

3 CHAIR BARNETT: Thank you, sir, for your
4 comments, and we have a final card from Mr. Alarcon.

5 TONY ALARCON: Tony Alarcon, (inaudible.) Many of
6 us head up to Tahoe into Truckee quite often. Truckee has a
7 population very similar to ours, a lot of affluent
8 retirees. Like our town, they have a lot of affluent
9 people.
10

11 I want to say thank you for all your hard work
12 from the Planning Commission.

13 I've looked at Truckee's Housing Element plan.
14 They have a master plan called the Truckee Hilltop; it was
15 approved in 2008. It's not yet been built. It's 300 units,
16 54,000 square feet of commercial, and a 60-room hotel. For
17 15 years that project hasn't been built, and looking at
18 their Housing Element plan the last submission from them
19 was 2019. They submitted that plan on August 30th and it was
20 approved on September 16th.

21 I sit back and I look at our town, and we're
22 going through this whole process and I think it echoes what
23 the other speakers have expressed. I sincerely don't
24 understand how this has taken so long, and it feels as
25 though there have been many errors, whether it's not

1 keeping track of the consultants, the communication between
2 departments, or perhaps trying to overachieve and build too
3 many units instead of simply complying with our RHNA
4 numbers.

5 It's mind boggling to me, and I feel for the
6 Planning Commission. I hope that our Town citizens hear
7 what I've said today and ponder that as well when you
8 decide to vote in the next election and look for leadership
9 within our town, that we need to streamline our process and
10 we need to do better. We need to be a leader with other
11 towns instead of having these delays and having citizens
12 not know what's going on.

14 Asking the Planning Commission to approve a plan
15 before they have received a letter of comments from the HDC
16 is not a valid approach. Thank you.

17 CHAIR BARNETT: Thank you, sir. Are there any
18 questions from Commissioners? I don't see any. I don't have
19 any more cards. Do we have anyone on Zoom?

20 JOEL PAULSON: We do, thank you, Chair. The first
21 to speak will be Ron Meyer.

22 RON MEYER: I'm not going to be as complimentary.
23 I'm actually going to call it the way is and the way I've
24 seen this process evolve over the last 12-16 months, and
25 the failure in the ability to inform the public, to manage

1 the previous consultants in their three failed attempts,
2 and the waste of \$180,000 of taxpayer money.

3 I see a level of incompetence in both the Staff
4 and the Planning Commission, because the Planning
5 Commission has not basically taken the recommendations from
6 the Housing Element Advisory Board and the Los Gatos
7 Community Alliance seriously. There is some damn good
8 analysis in both some of the HEAB reports in the previous
9 meetings, and also the latest letter from the Los Gatos
10 Community Alliance.

11
12 The incompetence, the non-transparency, the
13 confusion, the mis-coordination, the oversight by the Town
14 Council, and the usurping of their power by the Town's
15 staff and pieces of the Planning Commission is not
16 favorable, it is not even remotely the way that this
17 process should have been conducted. The citizens of Los
18 Gatos deserve better. They deserve better in the Town
19 Staff, they deserve better in the Planning Commission, and
20 consequently we're not being serviced properly at all.

21 The process has been non-transparent, confusing,
22 and convoluted. The Town Council hasn't been doing their
23 job in terms of exercising their oversight responsibilities
24 over this whole process, so consequently we, this town's
25 citizens, are going to end up paying for this, because of

1 that incompetence, that non-transparency, and the whole
2 screwed up process from the beginning. You folks are
3 reprehensible. I'm finished.

4 CHAIR BARNETT: Thank you, sir. Are there any
5 questions by Commissioners? I don't see any. Thank you once
6 more. Any other callers on Zoom, Mr. Paulson?

7 JOEL PAULSON: Thank you, Chair. Anyone else on
8 Zoom who wishes to speak, please raise your hand. I don't
9 see any hands raised, Chair.

10 CHAIR BARNETT: Thank you very much. I will now
11 close the public portion of the meeting and again propose
12 that the Commissioners first discuss the procedural issues
13 that have been raised by the Los Gatos Community Alliance
14 concerning continuing the meeting to a date following
15 Friday's anticipated receipt of HCD's comments on the
16 submittals of November 16th and 28th, and that the public was
17 not afforded the statutory time to comment on the Housing
18 Element drafts.

19 We haven't discussed that issue yet, and maybe
20 it's a moot point depending on how our discussion goes, but
21 I'd like to open and ask Commissioners to comment on the
22 issue that we've already brought up about a possible
23 continuance to a different date. Commissioner Janoff.
24
25

1 COMMISSIONER JANOFF: Thank you. We have an
2 interesting problem in front of us. We have a timing issue
3 that has been described by Staff with regard to getting
4 adoption of the Housing Element in front of Town Council as
5 soon as possible for the reasons stated, which makes sense,
6 and we also have incomplete feedback from HCD.

7 Personally, I can see a path forward, as I
8 suggested earlier, where we can recommend that the Town
9 Council hear the item on the 19th, understanding that we may
10 get more information. But if HCD on December 1st says yes
11 you are in compliance, I would not want the Planning
12 Commission to be the body that's holding up Town Council
13 being able to hear this, and we will be if we don't
14 recommend to Town Council tonight, so in my mind I'm
15 separating the task before us into making a timely
16 recommendation to Town Council that will be after the
17 Planning Commission has an opportunity to see the HCD
18 comments, as well as public, as well as Council, as well as
19 anyone, and I would feel more comfortable.

21 Assuming HCD says yes you're in compliance, I
22 think that's fine, end of story. If HCD says on December 1st
23 that we have work to do yet, I think we should reconvene
24 the Planning Commission or Housing Element Advisory Board,
25

1 whatever is appropriate, in order to be able to process
2 that information and make recommendations going forward.

3 I feel like we can separate this and still
4 provide a timely path for Council should the letter on
5 December 1st be favorable, but provide a backup in case it's
6 not so that the Planning Commission can review the
7 information provided.

8 CHAIR BARNETT: That sounds like the possible
9 elements of a motion, but I'll ask other Commissioners if
10 they have comments? Commissioner Hanssen.

11 COMMISSIONER HANSEN: As you all know, I was
12 chair of the Housing Element Advisory Board, and we may or
13 may not be meeting again, I'm not sure.

14 As mentioned earlier and as mentioned by
15 commenters, this is a very difficult situation to be in, to
16 try to make a recommendation on something when we know two
17 days later that we're going to get a letter from HCD. I
18 wanted to point out a couple of things.

19 One thing that's really important is irrespective
20 of whatever decision was made before to hire other
21 consultants that might not have been as effective, I've
22 been very impressed with the work that Veronica Tam and her
23 team have done with Staff to move the Housing Element
24 towards the finish line, and when that decision was made to
25

1 hire her the Housing Element Advisory Board, when we had
2 discussions about it, felt that she had the best path
3 forward to know how to take this thing over the finish line
4 versus the members of the Housing Element Advisory Board
5 who had less experience working with HCD; we don't interact
6 directly with HCD at all in our role, and so I think that's
7 important, that she's been very integral to this process
8 over the last few months.

9
10 When I look at the progress of the document, we
11 never have had any comments from HCD that our sites
12 inventory isn't adequate; they just wanted more information
13 on how to develop it. This new law with AFFH has been
14 particularly difficult to deal with, but because of
15 Veronica Tam's experience with other jurisdictions she has
16 a clear directive of how to answer all those questions and
17 do all the analysis that is required.

18 That being the case though, I do remain very
19 uncomfortable with making a recommendation to approve
20 something when I know that two days later it could be one
21 or the other and we have no assurances from anyone that HCD
22 will or won't go forward. We can hope. As I said, the
23 document is in the best shape that it's been in in a long
24 time.
25

1 One change that was made in the sites inventory
2 that I don't know if everyone has been able to observe; we
3 had gotten comments on the 15th. There was a time in this
4 process earlier this year when it was thought that we could
5 add in some sites from the previous cycle, and now there
6 has been more clarity to take some of those out because of
7 the date that you had to count, which I believe was June
8 30th of 2022, and it had to be after that date.

9
10 When those sites were added back in we had quite
11 a bit of a larger buffer relative to our State mandated
12 numbers, and we did get a lot of comments from the public
13 saying that they were very uncomfortable with having more
14 numbers of units planned for, and now those numbers have
15 been backed out as expected and directed by HCD so that our
16 current sites inventory numbers and buffer to RHNA is
17 actually right in the range of what was always expected,
18 which was a 15-20% buffer over the RHNA of 1,993 units.

19 That being the case, there have been a lot of
20 questions from the Los Gatos Community Alliance about
21 projects that are in the sites inventory, and I believe
22 Staff did answer all of those. I read all the materials. I
23 had looked through and saw that Staff did address those
24 concerns about no net loss and when that would be
25 recognized, and some of the other concerns.

1 But I do remain concerned about making a
2 recommendation on something when we know that two days from
3 now it could be one or the other, so it's going to be a
4 scenario of we would go forward and HCD says yes, or they
5 say no, or we continue and they say yes or say no, and the
6 optimal circumstance would be we would go forward and they
7 would say yes, and then everything would be fine and Town
8 Council could go ahead, but we don't know if that is
9 possible.
10

11 I do like Commissioner Janoff's suggestion about
12 modifying how we would approve it. I think that might be
13 better than continuing it and pushing it out into the new
14 year, because there is more of a risk of the additional
15 Builder's Remedy applications.

16 CHAIR BARNETT: Thank you. Other Commissioners?
17 Commissioner Burnett.

18 COMMISSIONER BURNETT: A question for Staff,
19 thank you. What would happen if the Planning Commission did
20 not vote to move it forward to the Town Council?

21 ATTORNEY WHELAN: We just need a recommendation
22 one way or the other, and so the recommendation can be yes
23 we recommend approval, or we don't recommend approval. The
24 law just requires that the Planning Commission make a
25 recommendation.

1 COMMISSIONER BURNETT: What would be the
2 consequence?

3 ATTORNEY WHELAN: It would continue on to the
4 Town Council ultimately for a decision as to whether or not
5 to adopt the Housing Element.

6 COMMISSIONER BURNETT: So the Town Council does
7 not need our recommendation for them to move forward with
8 it?

9 ATTORNEY WHELAN: They need a recommendation in
10 front of them to consider, and the recommendation can be
11 either for approval or rejection.
12

13 I just wanted to follow on about the discussion
14 of having the item returned to the Planning Commission.
15 Just so the Planning Commission is aware, that would mean
16 that we would be back on the schedule of being in front of
17 the Town Council in January, just as a point of
18 information.

19 CHAIR BARNETT: Commissioner Janoff.

20 COMMISSIONER JANOFF: Just to clarify, if we were
21 to recommend Town Council approval with the condition that
22 Planning Commission meets if HCD provides a negative
23 response on December 1st, are you saying that...
24

25 ATTORNEY WHELAN: Yes, because we need the
Planning Commission's recommendation to the Town Council,

1 and so that would necessitate a return to the Planning
2 Commission, meaning that the Town Council would most likely
3 meet on the Housing Element in January.

4 COMMISSIONER JANOFF: But if the Planning
5 Commission should vote to recommend Town Council adopt this
6 draft of the Housing Element with the condition... I guess
7 that would be the problem is the condition, so there's no
8 opportunity for the Planning Commission to reconvene if the
9 response from HCD is negative without restarting the clock
10 and pushing things out into January; that's what I'm
11 hearing.
12

13 ATTORNEY WHELAN: Right.

14 JOEL PAULSON: Through the Chair, I would just
15 add that if we get additional comments on December 1st and
16 we are going to have to make revisions we ultimately are
17 going to have to come back through seven-day review of
18 those revisions, the Planning Commission for a
19 recommendation, and then Council for another adoption.

20 I think the one opportunity this provides, and
21 the Town Attorney can correct me if I'm wrong, is even if
22 we get comments on December 1st that need to be addressed,
23 we imagine there will be far less of them than are
24 currently in the most recent draft matrix, and so that
25 would give an opportunity for the Council to... Even though

1 it might not be the final version, they could be adopting a
2 Housing Element that is much more in substantial compliance
3 than the currently adopted one that was adopted in January.
4 I don't know if the Town Attorney has any additional
5 comments on that.

6 ATTORNEY WHELAN: No, but it looks like there's a
7 question.

8 COMMISSIONER JANOFF: Are you saying that
9 Planning Commission could recommend to Council to adopt the
10 Housing Element November draft, and HCD comments coming to
11 Staff on December 1st could indicate additional work, and
12 Council could consider additional comments if Staff
13 provides responses to HCD on those?
14

15 JOEL PAULSON: No, it would have to go through
16 the same process, so Staff and the consultant would prepare
17 revisions to address those comments in the December 1st
18 letter, and then once those are prepared and completed they
19 would be circulated for the seven-day review period, then
20 we would come back to Planning Commission and you would
21 make a recommendation to Council, so it's just an
22 additional cycle, but this could potentially provide some
23 benefit for a more substantially compliant Housing Element
24 being in place in that December timeframe, but ultimately
25

1 obviously that's a Planning Commission/Town Council
2 decision.

3 COMMISSIONER JANOFF: Just to make sure I'm
4 clear. There is no downside to recommending Council adopt,
5 because there are likely to be changes in more cycles. The
6 purpose for recommending adoption is in case HCD comes back
7 with you're in compliance, then Council can go forward with
8 a formal adoption of a certifiable Housing Element.

9
10 ATTORNEY WHELAN: That's a good summary of the
11 issue that's before the Planning Commission.

12 CHAIR BARNETT: I have a question for Mr.
13 Paulson. If I heard you right you said that the latest
14 submissions did trigger a 60-day public comment period?

15 JOEL PAULSON: That's technically correct,
16 however, our reviewer has provided this opportunity for
17 this interim where he provided the interim matrix, and so
18 he had previously committed—which we're hoping he's going
19 to stand by—that he will incorporate that into his December
20 1st letter, so that is our hope. Obviously we won't know
21 until we see the letter on the 1st, but technically because
22 it is a formal submittal it does trigger a 60-day review,
23 however, that is not our understanding of how they're going
24 to review this at this point.

25 CHAIR BARNETT: I see. Commissioner Janoff.

1 COMMISSIONER JANOFF: I just want to make sure I
2 heard you correctly. It's not a 60-day public review; it's
3 a 60-day HCD review?

4 CHAIR BARNETT: I think I misspoke. Thank you.

5 COMMISSIONER JANOFF: Okay, thank you.

6 CHAIR BARNETT: Other comments? Let me make sure
7 I understand what's being said so far, that if we were to
8 make a recommendation to the Town Council to approve the
9 November 16th and 27th submissions, that in the event HCD has
10 material changes to that it would of necessity come back to
11 the Planning Commission again.

12 JOEL PAULSON: That's correct.

13 CHAIR BARNETT: In light of that, could we have a
14 motion? Commissioner Janoff.

15 COMMISSIONER JANOFF: In light of that, which is
16 pretty important, I think, I move to recommend that the
17 Planning Commission recommend the Town Council adopt the
18 Housing Element Draft that was officially submitted to them
19 on November 28, 2023.

20 JENNIFER ARMER: And if you could please
21 reference the resolution that was provided to you in the
22 addendum report?

23 ATTORNEY WHELAN: The motion would be to adopt a
24 resolution recommending approval.
25

1 COMMISSIONER JANOFF: So stated.

2 VICE CHAIR RASPE: Through the Chair, do we have
3 to add a qualification then about the HCD's response that
4 if they respond with further changes that will trigger some
5 further action as part of the motion?

6 JENNIFER ARMER: Staff would recommend that this
7 be a clean recommendation adoption of the resolution as
8 written with the understanding that if there are
9 significant comments that require additional revisions that
10 we would go through the required process.

11 VICE CHAIR RASPE: Thank you.

12 CHAIR BARNETT: Is Staff suggesting that we
13 specifically refer to the form of the resolution that was
14 included in the Staff packet?

15 JENNIFER ARMER: Yes, adoption of the resolution
16 that has been provided does include the specific references
17 to the November draft.

18 JOEL PAULSON: And for the record, that's Exhibit
19 6, I believe.

20 CHAIR BARNETT: Does the maker of the motion
21 include that?

22 COMMISSIONER JANOFF: Yes, I think it has been
23 included, but thank you.

24
25

1 CHAIR BARNETT: Thank you. Do we have a second?
2 Vice Chair Raspe.

3 VICE CHAIR RASPE: I'll second the motion.

4 CHAIR BARNETT: Is there discussion? If not, I'll
5 call the question. Those in favor, raise you hand. Oh, I'm
6 sorry. Commissioner Hanssen.

7 COMMISSIONER HANSSEN: I'm very uncomfortable
8 with this process. I think I've already said this, and I
9 was okay if we can make a recommendation subject to the HCD
10 approval, but I don't think I'm okay with making a
11 recommendation on something when who knows what's going to
12 happen on Friday, so I don't know if I can vote for it.

14 CHAIR BARNETT: Commissioner Janoff.

15 COMMISSIONER JANOFF: Thank you. I think based on
16 what we just heard from Staff that we will have the
17 opportunity to see HCD comments if they are asking for
18 additional input from the Town, we'll have that
19 opportunity. The recommendation effectively assumes HCD
20 comments... In order for the recommendation to go fully
21 forward to Council it presumes that the response on
22 December 1st will be a positive response, a you're in
23 compliance response; that's what it assumes.

24 I agree that the process is not ideal, it has
25 been confusing, and it is because we have this timeframe of

1 Council meeting and it's the end of the year and we have
2 limited meetings to go forward with this, and the noticing
3 challenges of having weeks in order to make sure that the
4 public is aware of what's on Council agenda, really boxes
5 us in.

6 But as I said before, this recommendation to
7 adopt the resolution presumes HCD will be positive, because
8 we know that if HCD's response on December 1st is send us
9 more information, then Council won't... Well, I guess it
10 could still adopt the Housing Element knowing that there
11 would be more work to do and more cycles to go through, so
12 either way, it will come back to us if there's more work to
13 be done, and I'm comfortable with that.

14 CHAIR BARNETT: Commissioner Burnett.

15 COMMISSIONER BURNETT: My comment is as it stands
16 now as a Planning Commissioner I cannot recommend and adopt
17 the adoption of the Draft Housing Element to Town Council.
18 To make a recommendation two days before we're actually
19 receiving HCD's letter on the October 2, 2023 Housing
20 Element version in my view would be sort of irresponsible,
21 and not being able to properly deliberate HCD's comment
22 letter would be in my opinion a violation of the Planning
23 Commission's fiduciary Duty of Care, so I would not be
24 supporting the motion.
25

1 CHAIR BARNETT: Vice Chair Raspe.

2 VICE CHAIR RASPE: Thank you, Chair. My
3 viewpoint, I think, is largely in accordance with
4 Commissioner Janoff's. I'm voting for what has been
5 submitted, was before us today, was submitted to HCD on the
6 28th; that's what I think is encapsulated in our approval
7 this evening. We would know what that is, and my vote is
8 that I approve of that for Town Council. If HCD comes back
9 with further comments that's not part of our approval, then
10 that becomes part of further discussion either through Town
11 Council or through Planning Commission, but as far as what
12 we're approving this evening, at least with my vote, it
13 will be let's present it to us and Staff tonight and what
14 has been transmitted to HCD as of yesterday; I'm
15 comfortable in that package. I'll reserve further judgment
16 in the event that HCD comes back with anything but a
17 positive, and so I hope that clarifies my position.

19 CHAIR BARNETT: I share the feeling of my fellow
20 commissioners that we've been put in a very, very difficult
21 position tonight. It echoes back to the meeting on the 15th
22 when we were presented the next morning with an entirely
23 new package and matrix. It's good that we're making
24 progress on these issues, but I think the public
25

1 perception, partly of which we've heard tonight, is that
2 there is some chaos in the process.

3 I'm sympathetic to those who are against the
4 motion, because it demonstrates to the public that we are
5 inserting a more deliberate and focused consideration of
6 the issues rather than presenting the scenario where HCD
7 comes back with something negative in two days and then
8 we'll have to revisit, where as today we're seeming to
9 approve it. That doesn't sit well with me in terms of
10 public relations.
11

12 But as a practical matter, I think that the
13 motion makes complete sense. I think that there's no reason
14 to delay. There is some certain interest that we have in
15 preventing more Builder's Remedy applications; we already
16 have plenty of those, so I would be in support of the
17 motion, and if there are no other comments we'll take the
18 roll. Commissioner Hanssen.

19 COMMISSIONER HANSSEN: Is it okay to ask more
20 questions? There's a letter in the Desk Item from the Los
21 Gatos Community Alliance in which they made several
22 recommendations, and one of them was partially cited by
23 Commissioner Burnett, saying it would be irresponsible and
24 a violation of the Planning Commission's fiduciary Duty of
25 Care to make any recommendation to the Town Council prior

1 to receiving and properly deliberating HCD's comment letter
2 on the October 2, 2023 version since the new letter is
3 expected two days after the meeting, and they go on to say
4 they feel that it was a mistake that we made the
5 recommendation on January 11th, and so on and so forth.

6 They made several recommendations in there, and
7 while Staff did respond to the comments from their letter
8 on the 27th, there was no time to comment on this because it
9 came in the Desk Item. What is Staff's opinion on this
10 statement that it's an irresponsible violation of our
11 fiduciary Duty of Care to make this recommendation?
12

13 ATTORNEY WHELAN: From my perspective the
14 Planning Commission is being asked to decide whether the
15 revised Draft Housing Element that's been presented to the
16 Planning Commission substantially complies with all the
17 government code requirements, and so if a Planning
18 Commissioner is able to make a decision that it does, then
19 that's not a violation of the Planning Commissioner's
20 fiduciary duty.

21 COMMISSIONER HANSSEN: Okay.

22 CHAIR BARNETT: We still have a motion on the
23 table. Does the resolution that is on the table for
24 approval include the findings in terms of compliance on all
25 Housing Element requirements?

1 ATTORNEY WHELAN: Yes.

2 CHAIR BARNETT: Okay, I thought so. Any further
3 discussion? Commissioner Hanssen.

4 COMMISSIONER HANSEN: I have one other question.
5 I do appreciate all the analysis that Staff has done; I
6 want to make sure I say that. The response in the matrix is
7 excellent, it looks to me like everything is covered, and
8 then there was the statement that was submitted a couple of
9 days ago from Staff about all the things with the State
10 law, but the problem that I have with that is it's coming
11 from us relative to our work versus HCD, which has been
12 holding this over not just our heads, but over other
13 jurisdiction's heads. So we can say it's in substantial
14 compliance based on our opinion, but it's really HCD that's
15 going to make the ultimate recommendation, so it seems like
16 a hollow kind of recommendation, because we have these
17 charts that are coming from us, not from HCD.

18
19 CHAIR BARNETT: Commissioner Janoff.

20 COMMISSIONER JANOFF: While it's true that the
21 matrix has been prepared by Staff, it's been deeply
22 informed by our expert consultant, and so I do respect that
23 the work of Ms. Tam and her team is foundationally aware
24 and informed of these metrics of compliance, and I'm
25 comfortable that that oversight that the compliance matrix

1 has presented—which is excellent by the way, it’s exactly
2 what I was hoping to see—satisfies for me that the document
3 is in substantial compliance, and not just because it’s
4 been self-developed, but it has had external review.

5 CHAIR BARNETT: Thank you. Other discussion? I
6 don’t see anything, so I’m going to call the question on
7 the motion. Those in favor, raise your hand, please. And
8 those against? So the motion passes 5-1.

9 JENNIFER ARMER: The vote was 4-1, for the
10 record, with Commissioner Burnett voting no.

11 CHAIR BARNETT: Thank you. That’s not the first
12 time I’ve miscounted.

13 (END)

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