



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 11/29/2023

ITEM NO: 1

DESK ITEM

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DATE: November 29, 2023  
TO: Planning Commission  
FROM: Joel Paulson, Community Development Director  
SUBJECT: Consider and Make a Recommendation to the Town Council on the Draft Revised 2023-2031 Housing Element. Location: Town-Wide. General Plan Amendment Application GP-22-003.

**REMARKS:**

Exhibit 10 includes the Response Memorandum to HCD's November 7, 2023, Draft Preliminary Review Matrix, dated November 16, 2023. This document was provided to the Planning Commission on November 16, 2023, and published online as part seven-day public review period that was from November 16, 2023, to November 27, 2023. This document was also included in the November 28, 2023, resubmittal of the Draft Revised 2023-2031 Housing Element (November 2023) to the California Department of Housing and Community Development (HCD).

Exhibit 11 includes a copy of the ABAG "Using ADUs to Satisfy RHNA" Technical Memo, dated March 10, 2022. The income and affordability distribution of ADU's in the Housing Element was based on this technical memorandum. The ABAG information provided by the Los Gatos Community Alliance was a draft version. The Town is utilizing the recommended percentages provided in the final version of the ABAG technical memorandum.

Exhibit 12 includes public comment received between 11:01 a.m., Tuesday, November 28, 2023, and 11:00 a.m., Wednesday, November 29, 2023.

**PREPARED BY:** Erin Walters and Jocelyn Shoopman  
Associate Planners

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Reviewed by: Planning Manager, Community Development Director, and Town Attorney

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SUBJECT: DRAFT REVISED 2023-2031 HOUSING ELEMENT/GP-22-003

DATE: November 29, 2023

EXHIBITS:

Previously received (available online at: [www.losgatosca.gov/HousingElement](http://www.losgatosca.gov/HousingElement)):

1. Environmental Analysis
2. Draft Revised 2023-2031 Housing Element (November 2023)
3. Response Memorandum to the HCD Draft Preliminary Review Matrix

Previously received with the November 29, 2023, Staff Report:

4. Public Comment received between 11:01 a.m., Wednesday, November 15, 2023, and 11:00 a.m., Wednesday, November 22, 2023

Previously received with the November 28, 2023, Addendum Report:

5. Substantial Compliance with Housing Element Law (Government Code Title 7, Division 1, Chapter 3, Article 10.6 [65580–65589.11])
6. Draft Resolution for Adoption of the Draft Revised Housing Element (November 2023)
7. Public Comments Received During the Seven-Day Review Period
8. HCD Cover Letter
9. Public Comment Received on November 21, 2023

Received with this Desk Item Report:

10. Response Memorandum to HCD's November 7, 2023, Draft Preliminary Review Matrix, dated November 16, 2023
11. ABAG "Using ADUs to Satisfy RHNA" Technical Memo, March 10, 2022
12. Public Comment received between 11:01 a.m., Tuesday, November 28, 2023, and 11:00 a.m., Wednesday, November 29, 2023

**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 16, 2023**

Prior HCD Finding	Page #	Preliminary Review	HCD Notes	Staff Response
<b>Affirmatively Furthering Fair Housing</b>				
<p><u>Regional Level Patterns and Trends:</u> 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.</p> <p><u>HCD Prior Review:</u> While the element includes several maps and tables and reports data, it generally must evaluate the data and especially at a regional level, comparing the Town to the broader region. This is particularly important since the Town appears far different from the rest of the region. The analysis should address all components of the assessment of fair housing (e.g., segregation and integration, disparities in access to opportunity) and should focus on race, income, and overall access to opportunity). The analysis should address trends and</p>	A35	Y~	Should be some discussion of trends whether it's at an aggregate level with maps and data tables.	<p>Additional maps and data of the population by protected class at a local and regional level comparison was provided starting on page A-35 through page A-62 of the Draft Revised Housing Element (September 2023) track change version.</p> <p>Additional maps and data related to disparities in access to opportunity at a local and regional level comparison was provided starting on page A-68 through A-100 of the Draft Revised Housing Element (September 2023) track change version.</p> <p>Additional data and maps related to disproportionate housing needs at a local and regional level comparison was provided starting on page A-101 through A-159 of the Draft Revised Housing Element (September 2023) track change version.</p> <p>Additional analysis in yellow highlight was provided on pages A-35 through A-36, A-43 through A-44, A-47, A-60, A-64, A-74 through A-75, and A-91 of the Draft Revised Housing Element (November 2023) track change version.</p>

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incorporate local data and knowledge and other relevant factors (See below).				
<u>Income and Racial Concentration of Affluence (RCAA)</u> : 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.	A63  A150	No	The element now includes actions to promote an inclusive community; however, the element must provide specific analysis of income and RCAA at a regional level (town compared to the broader region). The analysis should at least address trends, conditions, coincidence with other fair housing factors (e.g., race, highest resource, overpayment), effectiveness or absence of past strategies (e.g., lack of publicly assisted housing and lack of multifamily zoning), local data and knowledge and other relevant factors. Please see Los Altos Hills as examples.	Additional analysis, data, and maps describing that all census tracts in the Town are considered to be Racially Concentrated Areas of Affluence (RCAA) was provided on page A-65 through A-67 and page A-151 through A-152 of the Draft Revised Housing Element (September 2023) track change version.  Additional analysis in yellow highlight was provided on page A-69 of the Draft Revised Housing Element (November 2023) track change version.
<u>Disparities in Access to Opportunity</u> : 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.	A76  A89	Yes		
<u>Identified Sites and Affirmatively Furthering Fair Housing (AFFH)</u> : While the element was revised with brief conclusions that identified sites do not exacerbate fair housing conditions, it must also	A144 - 163	Yes		

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<p>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.</p> <p><u>HCD Prior:</u> The element must include data on the location of regional housing need allocation (RHNA) sites by income group relative to all fair housing components. The analysis should address the number of units by income group and location, any isolation of the RHNA by income group, magnitude of the impact on existing concentrations of socio- economic characteristics and discuss how the sites improve fair housing conditions. The analysis should be supported by local data and knowledge and other relevant factors and programs should be added or modified as appropriate to promote inclusive and equitable communities.</p>				
<p><u>Local Data, Knowledge and Other Relevant Factors:</u> 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</p>	A4 A14	No~	The city can utilize staff knowledge and reach out to service providers for local data.	<p>Local knowledge and history were added on page A-14 through A-15 of the Draft Revised Housing Element (September 2023) track change version.</p> <p>Additional information in yellow highlight was provided on page A-19 of the Draft Revised Housing Element (November 2023) track change version.</p>

Prior HCD Finding	Page #	Preliminary Review	HCD Notes	Staff Response
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.				
<u>Contributing Factors to Fair Housing Issues:</u> 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.	A16	TBD	Dependent upon complete analysis.	Analysis of the Town's contributing factors with a priority rating were added on page A-16 through A-19 of the Draft Revised Housing Element (September 2023) track change version.  Additional analysis in yellow highlight was provided on pages A-17 through A-19 of the Draft Revised Housing Element (November 2023) track change version.
<b>Housing Needs Assessment</b>				
<u>Housing Conditions:</u> 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.	B25	Yes		
<u>Special Housing Needs:</u> The element was not revised to address this finding. Please see HCD's January 12, 2023 review for additional information.  <u>HCD Prior Review:</u> While the element quantifies some of the Town's special needs populations, it must also estimate the number of persons experiencing homelessness in the Town. In addition, the element reports data but must also analyze the special housing needs. For a complete analysis of each population group, the element should quantify the needs, evaluate trends and characteristics (e.g., tenure, income) of housing needs, discuss	B40+  C57	~	Commercial Industrial (LM) will permit ES by right; however, program should go beyond reviewing town code and make amendments as necessary to align with all state requirements.	Analysis of the Town's compliance with Assembly Bill 2339 for emergency shelters was added on page C-57 of the Draft Revised Housing Element (September 2023) track change version.  Program AP of the Draft Revised Housing Element (September 2023) includes Implementation Program AP which outlines amendments to the Town Code to better facilitate the provision of a variety of housing types, prioritize special needs housing by allowing for reduced processing times and

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disproportionate challenges faced by the population, the existing resources to meet those needs, assess any gaps in resources or effectiveness of past strategies, describe the magnitude of the remaining need and appropriate propose policies and programs.				streamlined procedures, and include preferential handling of special needs populations in management plans and regulatory agreements of funded projects.  Added language in yellow highlight was provided on pages 10-64 and 10-65 for Implementation Program AP of the Draft Revised Housing Element (November 2023) track change version.
<b>Sites Inventory, Analysis and Adequate Sites</b>				
<p><u>Realistic Capacity:</u> 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 HCDs prior review for additional information.</p> <p><u>HCD Prior Review:</u> The element must include a methodology for calculating the realistic residential capacity of identified sites. The methodology must be adjusted as necessary, based on the land use controls and site improvements and typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction. For example, the element could clearly list other recent projects, the zone, acreage, built density, allowable density, level of affordability and presence of exceptions such as a density bonus.</p>	D2-D5  D13	No	Program BH must clarify by right definition for reuse sites.	<p>Program AS of the Draft Revised Housing Element (September 2023) identifies the reuse sites included in the 6<sup>th</sup> cycle Housing Element.</p> <p>Clarifying language in yellow highlight was provided on pages 10-68 and 10-69 for Implementation Program AS of the Draft Revised Housing Element (November 2023) track change version.</p>
<u>Nonvacant Sites:</u> The element was not revised to address this finding. Please see HCD's January 12, 2023 review for additional information.	D5	Yes~	Utilizes factors: ILV, FAR, Age (40 years), # of stories.	A nonvacant capacity analysis was provided on page D-5 through D-13 of the Draft Revised Housing Element (September 2023) track change version. The characteristics of existing uses

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<p>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.</p> <p><u>HCD Prior Review:</u> The element must include an analysis demonstrating the potential for additional development on nonvacant sites. The element generally provides a description of the properties like location and whether the property owner submitted an interest form but does not describe the results of the form or why the property might redevelop in the planning period. To address this requirement, the element should address the extent to which existing uses may constitute an impediment to additional residential development, the Town's past experience with converting existing uses to higher density residential development, the current market demand for the existing use, an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development, development trends, market conditions, and regulatory or other incentives or</p>				<p>(age, floor area ratio, improvement-to-land value, single vs. multi-story), and whether such characteristics are conducive to future redevelopment were all included in the analysis.</p> <p>Clarifying language in yellow highlight was provided on page D-5 of the Draft Revised Housing Element (November 2023) track change version related to the nonvacant capacity analysis.</p>



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standards to encourage additional residential development on these sites.				
<p><u>Small Sites:</u> The element was not revised to address this finding. Please see HCD's January 12, 2023 review for additional information.</p> <p><u>HCD Prior Review:</u> The element identifies several sites smaller than a half-acre. Sites smaller than a half-acre in size are deemed inadequate to accommodate housing for lower-income housing unless it is demonstrated that sites of equivalent size and affordability were successfully developed during the prior planning period or other evidence demonstrates the suitability of the sites to accommodate housing for lower-income households, including programs as appropriate.</p>	? Elec. SI	No	No revisions made?	<p>The income distribution for sites D-3, D-4, and D-7 were modified as part of Appendix H to place all housing units in the above moderate-income category since each parcel is less than half an acre and deemed inadequate to accommodate housing for lower-income housing.</p> <p>Sites B-1, C-2, D-1, and D-5 are each composed of multiple parcels. The parcels that are less than half an acre in size within each site are identified below in underlined text; however, since they are owned by the same property owner, they have been consolidated in the Sites Inventory based on anticipated future development as one, merged site.</p> <ul style="list-style-type: none"> <li>▪ Site B-1: APN's 52924032, 52924001, and <u>52924003</u>;</li> <li>▪ Site C-2: APN's <u>42419049</u>, 42419048, and 42419069;</li> <li>▪ Site D-1: APN's 42407094, 42407095, <u>42407053</u>, <u>42407009</u>, 42407081, 42407115, and 42407116;</li> <li>▪ Site D-2: 42406115 and <u>42406116</u>; and</li> <li>▪ Site D-5: APN's <u>42407054</u> and 42407063.</li> </ul> <p>Additional language in yellow highlight was provided on page D-13 of the Draft Revised Housing Element (November 2023) track change version to clarify that the aforementioned sites are small parcels, not small sites.</p>
<u>SB 9 Sites:</u> 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	C50	No	Element was revised to include factors utilized such as age, ILV, and lot coverage;	A Senate Bill 9 analysis, including identifying the number of parcels in Town that qualify for a lot split was provided on page D-66 of the Draft

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<p>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.</p> <p><u>HCD Prior Review:</u> The element identifies SB 9 as a strategy to accommodate the part of the Town's RHNA. To support these assumptions, the analysis must include experience, trends and market conditions that allow lot splits. The analysis must also include a nonvacant sites analysis demonstrating the affordability, likelihood of redevelopment and the existing use will not constitute as an impediment for additional residential use. The analysis should describe how the Town determined eligible properties, whether the assumed lots will have turnover, if the properties are easy to subdivide, and the condition of the existing structures or other relevant factors indicating additional development potential. The analysis should also describe interest from property owners as well as experience. The analysis should provide support for the assumption of eligible properties being developed within the planning</p>	D66		<p>however, should relate to site inventory specific for Sb 9 projects, including all four two unit housing development applications, and seven urban lot requests. In addition, the element must discuss trends and likelihood of redevelopment. For example, the town can identify on a site specific analysis owner interest, existing use, and other conditions of the existing infrastructure or relevant factors indicating additional development. Please see HCDs prior review. See the town of Ross as example.</p>	<p>Revised Housing Element (September 2023) track change version.</p> <p>The inclusion of Senate Bill 9 units in the Housing Element towards meeting the Town's RHNA was removed from Table 10-3 on page 10-33, Table D-2 on page D-2, and page D-70 of the Draft Revised Housing Element (November 2023) track change version.</p>

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period. Based on the outcomes of this analysis, the element should add or modify programs to establish zoning and development standards early in the planning period and implement incentives to encourage and facilitate development as well as monitor development every two years with and identify additional sites within six months if assumptions are not being met. The element should support this analysis with local information such as local developer or owner interest to utilize zoning and incentives established through SB 9.				
<u>Zoning for a Variety of Housing Types (Manufactured Housing):</u> The element was not revised to address this finding. Please see HCD's January 12, 2023 review for additional information.  <u>HCD Prior Review:</u> The element must demonstrate zoning permits manufactured housing on a permanent foundation in the same manner and in the same zone as a conventional or stick-built structures are permitted (Government Code Section 65852.3) or add or modify programs as appropriate.	C15	No	Include program to comply with gov code 65852.3.	Narrative describing that manufactured housing is permitted by-right on all residentially zoned parcels was included on page C-14 of the Draft Revised Housing Element (September 2023) track change version.  Additional text in yellow highlight was provided in Implementation Program AQ on page 10-67 of the Draft Revised Housing Element (November 2023) track change version to clarify that the Town will comply with Section 65852.3 of the Government Code to allow the installation of manufactured homes.
<b>Governmental Constraints</b>				
<u>Land Use Controls:</u> 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	C3 C6 D2	~	Medium and High Density Residential would be based on the underlying zone in the 2020 GP?	An evaluation of the North Forty Specific Plan residential development standards was provided on page C-6 of the Draft Revised Housing Element (September 2023) track change version. Development standards for residential and commercial development were provided in Table C-1 on page C-5 of the Draft Revised Housing Element (September 2023) track change version.

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<u>HCD Prior Review:</u> The element must identify and analyze all relevant land use controls impacts as potential constraints on a variety of housing types. For example, the element should analyze all development standards by zoning district for impacts on housing costs and ability to achieve maximum densities. The element should also discuss any local initiatives, referendums, moratoriums or other mechanisms (existing or proposed) that impact housing supply, cost, feasibility, timing and ability to achieve maximum densities. In addition, the analysis should specifically address the development standards in the North Forty Specific Plan, Mixed Use Commercial, and the High-Density Residential zone. The analysis must evaluate the cumulative impacts of land use controls on the cost and supply of housing, including the ability to achieve maximum densities. The Town could engage the development community to assist with this analysis.				The development standards for the CH zone (applicable General Plan land use category of Mixed Use Commercial) and R-M zone (applicable General Plan land use category of High Density Residential) were provided in yellow highlight on pages C-7 and C-8 of the Draft Revised Housing Element (November 2023) track change version.
<u>Fees and Exaction:</u> 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.	C19  C36	No	Revise to include MU unit project Table C-4, but should also list fees for MF projects.	A table summarizing the development and permit fees required for a single-family and mixed-use development were provided in Table C-4 on page C-20 of the Draft Revised Housing Element (September 2023) track change version.  Table C-4 on page C-23 of the Draft Revised Housing Element (November 2023) track change version was revised to include the permitting fees for a multi-family project in yellow highlight.
<u>Local Processing and Permit Procedures:</u> While the element provides additional information on the processing of a typical market rate single or multi-family housing application, it mentions approval is	C37	Yes~	All CUP approval findings should be based on objective	The findings for a housing project which requires a Conditional Use Permit (CUP) was provided on

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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.	C44		design standards to promote certainty.	page C-48 of the Draft Revised Housing Element (September 2023) track change version.  Implementation Program AP on page 10-67 of the Draft Revised Housing Element (November 2023) track change version includes in yellow highlight clarifying text to amend the Conditional Use Permit findings for a multi-family and mixed-use project to make them objective and provide certainty in outcomes.
<u>Housing for Persons with Disabilities</u> : 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.	10-53  C47	No	Program V.  See suggested language in <a href="#">blue below</a> .	Implementation Program V on page 10-53 of the Draft Revised Housing Element (September 2023) track change version includes language to review the Reasonable Accommodation procedure on an annual basis.  Suggested language for Implementation Program V was added in yellow highlight on page 10-53 of the Draft Revised Housing Element (November 2023) track change version.
<u>Inclusionary Zoning Ordinance</u> : 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.	C53	Yes		
<b>Housing Programs: Beneficial Impact</b>				
Programs must demonstrate that they will have a beneficial impact within the planning period. Beneficial impact means specific commitment to	10-45	No	Metrics should not be limited to RHNA.	Implementation Program K on page 10-45 of the Draft Revised Housing Element (September 2023) track change version describes outreach

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<p>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:</p> <p><u>Program M (Lot Consolidation)</u>: 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.</p>				<p>by the Town to property owners to facilitate lot consolidation, including an amendment to the Town Code for development incentives to encourage the parcel merger process in a streamlined and timely manner.</p> <p>Metrics to Implementation Programs were modified in yellow highlight on pages 10-42 through 10-43, 10-45 through 10-48, 10-50 through 10-53, 10-55, 10-59, and 10-61 of the Draft Revised Housing Element (November 2023) track change version.</p>
<p><u>Program S (Affordable Housing Development)</u>: The program should increase the numerical objective to target meaningful outcomes during the planning period.</p>	10-48	No	Program O must be revised to include a timeline when development impact fees will be reduced.	<p>Implementation Program O on page 10-48 of the Draft Revised Housing Element (September 2023) track change version describes incentives for affordable housing development.</p> <p>The timeline of Implementation Program O was modified in yellow highlight on page 10-48 of the Draft Revised Housing Element (November 2023) track change version.</p>
<p><u>Program T (Purchase Affordability Covenants in Existing Apartments)</u>: The element should revise the timeline earlier in the planning period to target a beneficial impact (e.g., by 2026).</p>	10-49	Yes	Program P.	<p>Implementation Program T on page 10-49 of the Draft Revised Housing Element (September 2023) track change version describes a program for the Town to purchase affordability covenants.</p> <p>The timeline of Implementation Program P was modified in yellow highlight on page 10-49 of the Draft Revised Housing Element (November 2023) track change version.</p>

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<u>Program BM (Story Poles and Netting Policy)</u> : 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.	10-69  C36	No	Program AW must be revised to include specific commitment to amend story poles and netting policy. In addition, the City should consider public comments submitted by developer.	Implementation Program AW on page 10-69 of the Draft Revised Housing Element (September 2023) track change version describes that the Story Pole and Netting Policy will be reviewed to reduce the associated costs of installing story poles.  Implementation Program AW on page 10-72 and page C-38 of the Draft Revised Housing Element (November 2023) track change version was modified in yellow highlight to include relevant information regarding the status of this progress by the Planning Commission and Town Council.
<b>Housing Programs: Sites</b>				
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.	10-42	No	Program D+.  Program AR must comply with prior identified sites pursuant to gov code 65583.2 c) to make prior identified sites available, if necessary.	Program AS of the Draft Revised Housing Element (September 2023) identifies the reuse sites included in the 6 <sup>th</sup> cycle Housing Element.  Implementation Program AS on pages 10-68 and 10-69 of the Draft Revised Housing Element (November 2023) track change version was modified in yellow highlight to include the definition of by right development, consistent with Program D.

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<b>Housing Program: Constraints</b>				
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.		TBD	Depends on a complete analysis.	Governmental constraints are identified and analyzed in Appendix C, starting on page C-1 and additional information regarding permitting fees was added in yellow highlight to Table C-4 on page C-23 of the Draft Revised Housing Element (November 2023).
<b>Housing Program: AFFH</b>				
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.		No	Following a complete analysis, the town must revise to include robust suit of actions that provide stronger housing mobility programs beyond RHNA.	<p>An Affirmatively Furthering Fair Housing (AFFH) report and analysis of the Town and at a regional level is provided in Appendix A, starting on page A-1 of the Draft Revised Housing Element (September 2023).</p> <p>An action matrix with the Town's goals and actions to affirmatively further fair housing was added in yellow highlight on page 10-73 of the Draft Revised Housing Element (November 2023).</p>



Prior HCD Finding	Page #	Preliminary Review	HCD Notes	Staff Response
<b>Housing Program: ADU</b>				
<u>Program U Accessory Dwelling Units (ADU)</u> : 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.	10-50	No	Program Q. The city must include a definitive timeline of when alternative actions will be taken. See suggested language in <a href="#">blue</a> .	Implementation Program Q on page 10-49 of the Draft Revised Housing Element (September 2023) track change version describes multiple Town efforts to encourage the creation of Accessory Dwelling Units (ADU).  Suggested language for Implementation Program Q was added in yellow highlight on page 10-50 of the Draft Revised Housing Element (November 2023).
<b>Other Revisions</b>				
<u>Quantified Objectives</u> : 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).	10-34	Yes	Revised objectives.	
<u>Public Participation</u> : 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	10-10  App I and App G	~/No	How were comments submitted by Erick Phillips 7/31/23 addressed?	Appendix I was added to the Draft Revised Housing Element (September 2023) including all verbal and written public comments that have been provided to the Town.  Appendix I of the Draft Revised Housing Element (November 2023) was modified in yellow

Prior HCD Finding	Page #	Preliminary Review	HCD Notes	Staff Response
comments in the element. The Towns 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.				highlight to include a response to the public comment submitted by Eric Phillips.
<u>General Plan</u> : 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.	10-67	Yes	Program AQ.	
<b>Other (HCD use only)</b>				
Public comments	App A	?	5 public comments submitted: Anne Paulson, Phil Koen (2), Maryknol, Eric Phillips.	Appendix I was added to the Draft Revised Housing Element (September 2023) including all verbal and written public comments that have been provided to the Town.  Appendix I of the Draft Revised Housing Element (November 2023) was modified in yellow highlight to respond to the referenced public comments.
Pipeline Projects	D 68	?	Table D-7 pipeline projects included in previous years APRs? Need confirmation of DOF.	On page D-68 of the Draft Revised Housing Element (September 2023) track change version, table D-7 was added to include housing units that were entitled, permitted, under construction, and finalized from June 30, 2022, to January 31, 2023.  The number of units that were entitled, permitted, under construction, and finalized from June 30, 2022, to January 31, 2023, as listed in Table 10-3 on page 10-33, Table D-2 on page D-2, and Table D-7 on page D-72 of the Draft Revised Housing Element (November 2023) were modified in yellow highlight to remove

Prior HCD Finding	Page #	Preliminary Review	HCD Notes	Staff Response
				units that were reported to the California Department of Finance.
Document availability		Yes		
Rezone timing		FYI		
Resolution Received?		NA		
50% nonvacant resolution		FYI		
Electronic sites inventory		FYI		
AB 2339	C57			
Overlay		No	HE Overlay Program AQ.	The rezonings and creation of the Housing Element Overlay Zone (HEOZ) have been recommended by Planning Commission and introduced by Town Council.
Modification Authority		NA		

#### Suggested Program Language (in Blue)

**Program Q:** Annually monitor number of ADU's/ JADUs produced, and affordability levels and make adjustments to accommodate a potential shortfall if determined necessary (i.e. adopt additional incentives or other strategies such as rezoning)

**Timing:** Timeframe: Annually monitor the production and affordability and if necessary, make potential adjustments within six months.

**Program V:** Reasonable Accommodation procedure. Review and revise the Reasonable Accommodation procedure to promote access to housing for persons with disabilities, address potential constraints including subjective approval findings such as "impact on surrounding uses."

**Timing:** Review and Revise RA by December 2024. Annually review and, if necessary, revise the reasonable accommodations procedures.

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# Using ADUs to Satisfy RHNA

## Technical Memo

### Background

Jurisdictions are allowed to use ADUs to help satisfy their RHNA requirements; however, the process is somewhat different than other aspects of the sites inventory. The standard method is to estimate the number of ADUs that will be developed in the planning period, then distribute those estimated units into each of the income categories.

### Estimating Production

The estimate should be based on the average number of ADU building permits issued each year, multiplied by eight (because there are eight years in a housing element cycle). Most cities base their determination of annual ADU permits by averaging the building permits approved each year since 2018, when state law made it easier to construct the units. This is generally considered a safe harbor.

There is a small amount of flexibility in the calculations. If numbers were low in 2018 (or 2019) but were high in 2020, 2021, and 2022, a jurisdiction could *potentially* use 2019-2021 or 2020-2022 as the baseline. Because this is outside the safe harbor, these calculations would need to be bolstered by a logical explanation for the methodology, e.g., the jurisdiction further loosened regulations in 2019.

Projecting a higher number of ADUs than what has been demonstrated through permit approvals in recent years may be possible, but more challenging. A slightly larger number may be warranted if a robust, funded, and clear plan to increase production has been put in place. However, you are strongly encouraged to coordinate with HCD before deviating from the standard methodology.

ADU sites are not listed in the site inventory, rather they are summarized and tallied in their own subsection.

## Determining the Income Distribution

ABAG conducted an analysis of ADU affordability and concluded that in most jurisdictions, the following assumptions are generally applicable. Many jurisdictions are choosing to use these numbers in lieu of conducting their own affordability analysis.

Table 1. Percent of ADUs Affordable to Different Income Categories

Percent	Income Category
30%	Very low income
30%	Low income
30%	Moderate income
10%	Above moderate

Please contact your County Collaborative Technical Assistance Provider for more information on affordability. A few key points are summarized below:

- Use building permits issued for the estimate.
- Jurisdictions do not need to list the addresses for potential ADUs.
- Make sure the assumptions in your Housing Element match the numbers reported in past year APRs.

Please visit the ABAG Housing Technical Assistance page for more information, including a webinar that covers this topic.

## Sample Housing Element Write Up

*The following is what a jurisdiction might include in their sites inventory section of the housing element.*

Since City amended its ordinance in 2019, the number of ADUs permitted has significantly increased. City's ordinance goes beyond state law and allows 1,200 square foot ADUs. Additionally, the City website has an entire section devoted to ADUs with clear information about the standards and approval process. On average, the building department provides comments to completed ADU applications in 10 days. 2018 is not used as a base year because the old ADU standards were very restrictive and the City did not have much information on its website. Production has been consistently higher since the new ordinance went into effect.

Since 2019, the City has issued an average of 12.75 ADU permits per year, as listed below.

Year	Building Permits
2017	2
2018	1
2019	10
2020	15
2021	10
2022	16 (estimate based on first 6 months)

Based on the annual average of 12.75 ADU permits per year since 2019, the City is projecting 102 ADUs being permitted over the eight year planning period and is using ABAG's survey data to distribute the projected units by income category:

Income Category	Percentages	Totals
Very low	30%	30
Low	30%	31
Moderate	30%	31
Above moderate	10%	10

Based on these calculations, the City is able to meet approximately 1/7 of its RHNA through ADUs, and must accommodate another 598 units on the sites detailed in the sites inventory. See table below for a summary:

	V Low	Low	Mod	Above Mod	Total
RHNA	200	200	100	200	700
Pipeline / Approved Units	0	0	0	0	0
ADUs	30	31	31	10	102
<i>Remaining RHNA</i>	170	169	69	190	598

### ADUs and Level of Scrutiny of Other Sites in Housing Elements

Cities that are heavily dependent on redevelopment sites (or technically nonvacant sites) face more scrutiny in their lower income sites inventory. ADUs can help some cities avoid this additional scrutiny/analysis. To simplify: if greater than 50 percent of the lower income RHNA can be satisfied by vacant sites, under construction (pipeline) projects, and projected ADUs, cities can avoid the higher standard.

For example: If the lower income RHNA is 100 and there are ten units under construction and sites for ten vacant units, a jurisdiction can avoid the heightened scrutiny if ADU projections are at least 31 units for the housing element period. (Half of 100 is 50. 10 under construction plus 10 vacant plus 31 ADUs is 51, or greater than 50.)

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**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

---

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**

Town Attorney's Office • 110 E Main Street, Los Gatos, CA 95030

Desk: 408.354.6818 • [gwhelan@losgatosca.gov](mailto:gwhelan@losgatosca.gov)

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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  
[REDACTED]

---

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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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Sacramento, CA 95833  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



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 Towns 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.