

**From:** [REDACTED] <[REDACTED]>

**Sent:** Monday, December 18, 2023 12:21 PM

**To:** Mary Badame <[MBadame@losgatosca.gov](mailto:MBadame@losgatosca.gov)>; Matthew Hudes <[MHudes@losgatosca.gov](mailto:MHudes@losgatosca.gov)>; Rob Rennie <[RRennie@losgatosca.gov](mailto:RRennie@losgatosca.gov)>; Rob Moore <[RMoore@losgatosca.gov](mailto:RMoore@losgatosca.gov)>; Maria Ristow <[MRistow@losgatosca.gov](mailto:MRistow@losgatosca.gov)>

**Cc:** Town Manager <[Manager@losgatosca.gov](mailto:Manager@losgatosca.gov)>; Gabrielle Whelan <[GWhelan@losgatosca.gov](mailto:GWhelan@losgatosca.gov)>; Wendy Wood <[WWood@losgatosca.gov](mailto:WWood@losgatosca.gov)>; Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>; Phil Koen <[REDACTED]>; David Weissman <[REDACTED]>; Rick Van Hoesen <[REDACTED]>; Paul [Mcdougal@hcd.ca.gov](mailto:Mcdougal@hcd.ca.gov) <[paul.mcdougall@hcd.ca.gov](mailto:paul.mcdougall@hcd.ca.gov)>; Jose Jauregui <[Jose.Jauregui@hcd.ca.gov](mailto:Jose.Jauregui@hcd.ca.gov)>

**Subject:** Item 15 - Desk Item for Council meeting 12-19-23

[EXTERNAL SENDER]



December 18, 2023

RE: Agenda item 15 – Town Council Meeting December 19, 2023

Dear Town Council,

The staff report for Agenda Item 15 is inaccurate in that it fails to disclose that on November 16, 2023 Staff submitted a November draft of the revised Housing Element to HCD for official review in violation of Government Code Section 65585. We find it hard to understand why Staff would intentionally not disclose this.

In our opinion, the lack of transparency and full disclosure has been a consistent theme for the past two years, spanning the development of the Housing Element. The cumulative effect of this behavior has led to a growing loss of confidence in Staff and the Town's latest consultant, Veronica Tam, by the public. The current process needs to be overhauled beginning with the Town Council taking direct control over the development of the Housing Element. For too long the Town Council has delegated its legal responsibility for the development of the Housing Element to Staff and a dizzying number of consultants.

This process has resulted in the Town failing to meet the statutory deadline of Housing Element certification by January 31, 2023, the spending of over \$300,000 in consulting fees, the submission of 5 draft Housing Elements, all of which have been rejected by HCD, and the filing of numerous Builder's Remedy development applications as a result of non-certification, which include a 7 story building on the site of the current post office.

Furthermore, we are concerned that certain members of the Town Council have publicly blamed HCD for the Town's failure to obtain certification, claiming HCD has "moved the goal posts on us." We do not subscribe to this view and see this as an attempt to whitewash the process and deflect accountability

away from the very body that is accountable – namely our elected Town Council and the Town Staff that works for them. We believe all of this is self-inflicted, as demonstrated by the latest stunt of intentionally violating the public comment requirements of Government Code Section 65585 and AB 215. We will now detail what happened.

## **Legal Background**

Government Code Section 65585(b)(3) requires, “For any subsequent draft revision, the local government shall post the draft revision on its website and shall email a link to the draft revision to all individuals and organizations that have previously requested notices relating to the local government’s housing element at least seven days before submitting the draft revision to the department.”

In addition, in every comment letter HCD has provided the Town, they have included a “Public Participation” paragraph that specifically discussed the importance of public participation in the development of the Housing Element and noted the requirement of an advance seven-day review period for the public. The Town and the Town’s consultant, Veronica Tam were fully aware of the Town’s legal obligation under this government code section and AB 215.

## **Timeline**

- On November 15, 2023, the Planning Commission reviewed a “matrix” provided by HCD and augmented by Town Staff and continued the meeting until November 29<sup>th</sup>
- Staff and the Town Consultant did not at that time disclose their intention to submit a revised draft of the Housing Element to HCD the very next day.
- On November 16, 2023, Staff submitted to HCD a massive re-write of the September draft of the revised Housing Element that had been submitted to HCD for the mandatory 60-day review period on October 2, 2023. The cover letter (attachment 1) stated the Town is transmitting a “draft revised 2023-2031 Housing Element,” and is requesting HCD’s review and feedback, “that would assist the Town... to bring the Housing Element into a compliance status by or before the end of the 60-day review period (e.g., December 1, 2023).”
- No one in the public was aware of this submission. It is unclear if anyone on the Town Council was aware of this submission.
- On November 19, 2023, LGCA wrote a letter to the Town Manager stating that LGCA has been made aware of the November 16 submission and reminding the Town Manager of Government Code Section 65585 and attached the government code section.
- On November 20, 2023, LGCA received an email from the Town Attorney (attachment 2) confirming government code section 65585 applies and stated, “Town staff will be contacting HCD to ask HCD to consider the date of submittal to be November 27th rather than November 17th ”.
- On November 20, 2023, LGCA sent an email to the Town Attorney (attachment 2), among other items, pointing out the importance of the public comment period and the Town’s requirement to consider the public comments before submitting a draft to HCD.
- On November 21, 2023, LGCA received an email from the Town Attorney (attachment 2), now claiming the November 16th submittal, “was not the Town’s submittal of a revised draft Housing Element”.

- The email also stated, “staff had not drafted the revisions at the time of the November 15 th Planning Commission meeting so the matrix that was provided stated the revisions were in progress”. Essentially this email claimed that the Staff didn’t know about the fact that they would be submitting a significant rewrite of the Housing Element the very next day, so how could they be expected to disclose it to the Planning Commission or the public? This speaks for itself and illustrates the point regarding the lack of transparency and full disclosure.
- On November 21, 2023, LGCA replied to the Town Attorney’s email (attachment 2) pointing out numerous inconsistencies with the Town Attorney’s email and requested the Town to notify HCD immediately of the failure to comply with government code section 65580 and to rescind the November 16th submittal.
- On November 28, 2023, the Town transmitted a “resubmittal” of a draft revised 2023-2031 Housing Element. The cover letter stated the Town had complied with government code section 65585 and the “draft housing element was posted November 16 th , 2023” on the Town’s website “consistent with AB 215 requirements”.
- The Staff dismissed out of hand all comments it had received from LGCA [and others?] and simply submitted the same draft that was submitted to HCD on November 16 th . The very same draft that the Town Attorney previously claimed in her email of November 21 was not a revised draft of the Housing Element.

## **Conclusion**

It is deeply troubling that Staff has failed to disclose these events and be fully transparent in its Staff Report to the Town Council. Furthermore, we remain concerned Staff does not fully understand the requirement under Government Code Section 65585. The code requires, “for any subsequent draft revision,” there is a mandatory 7-day public review period prior to submitting a draft to HCD. The Staff seems to draw a distinction between a “formal submittal,” versus some other type of submittal. To be clear, there is no other type of submittal, and all submittals fall under the purview of Government Code Section 65585.

This Council has a mess on its hands. We truly hope for all our sakes that the Council takes control over this process going forward, including reviewing, and approving all subsequent Housing Element Drafts prior to submission to HCD.

At the end of the day, we all want the same goal – a timely certification of the Town’s 2023 – 2031 Housing Element that fully complies with State Housing Element Law.

*Los Gatos Community Alliance*  
*Facts Matter; Transparency Matters; Honesty Matters*  
[www.lgca.town](http://www.lgca.town)  
[Jak@lgca.town](mailto:Jak@lgca.town)

From: [REDACTED]  
Subject: Re: Town of Los Gatos Housing Element  
Date: Nov 21, 2023 at 10:17:29 PM  
To: Gabrielle Whelan GWhelan@losgatosca.gov  
Cc: [REDACTED], Laurel Prevetti LPrevetti@losgatosca.gov, Joel Paulson jpaulson@losgatosca.gov, Wendy Wood WWood@losgatosca.gov, jose.jauregui@hcd.ca.gov, Paul.McDougall@hcd.ca.gov, Phil Koen [REDACTED] Maria Ristow MRistow@losgatosca.gov, Mary Badame MBadame@losgatosca.gov, Matthew Hudes MHudes@losgatosca.gov, Rob Moore rmoore@losgatosca.gov, Rob Rennie RRennie@losgatosca.gov

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Dear Ms. Whelan,

Yes, agreed. We do need to be talking about the same thing. If the "proposed revisions" you refer to are the documents that were filed with HCD on November 16, then we are talking about the same thing. However, your assertion that, "This was not the Town's submittal of a revised draft Housing Element," rings hollow. In fact the footer on every page of the submittal says, "HCD Draft Revised 2023-2031 Housing Element." Further, the HCD website is clear that there are only four types of submittals:

1. First draft submittals
2. Draft revised submittals
3. Draft adopted submittals
4. Adopted Housing Elements

These are set forth on HCD's website at: <https://www.hcd.ca.gov/planning-and-community-development/housing-elements> under the Housing Element Submittal topic.

It seems clear that the Town's November 16 submittal was a Draft revised submittal. Accordingly, the documents submitted were subject to the public comment period,

as made clear on the same web page, "any revisions received during the course of HCD's review are also subject to the seven-day posting requirement prior to submittal to HCD" (emphasis added).

The requirement to conduct the seven-day public comment period prior to submittal is essential to the public comment process. It is the only way for the public to comment on the document and, if appropriate, for the Town to incorporate such comments into the document prior to its submission to HCD. The intent of the public comment period is not (only) to provide the public's comments to HCD, but also for those comments to be provided to the Town for possible revisions to the document before it is submitted to HCD. The course of action adopted thus far by the Town to, "ask HCD to consider the date of submittal to be November 27th," makes a sham of the public comment process. In essence it presupposes that the document will not be changed as the result of any public comments because the already-submitted document would automatically be re-submitted on the same day the public comment period ends.

Accordingly, we again request that the Town notify HCD it is rescinding the November 16 submittal and (presumably) that the Town intends to make a submittal after the public comment period has lapsed and the Town has had an opportunity to receive and consider any public comments and, if appropriate, to incorporate public feedback into the draft HE. At a minimum, this will enable the Town to include any public comments along with the submittal at the time it is submitted.

We understand that the Town is behind where it wants to be with respect adopting its new Housing Element. That unfortunate result was set in motion many months ago when the Town Staff elected to focus their efforts on a new General Plan before a Housing Element was formulated, much less adopted. But shortcutting the process in pursuit of a quick result cannot trump the laws and regulations that govern the process.

Also, in our LGCA letter two days ago to Ms. Prevetti (the letter you responded to) we asked that a copy of the cover letter accompanying the November 16 submittal be provided. We still have not received that letter. I have since filed a public records request with the Town requesting that letter, but would appreciate it if you could provide it as soon as possible.

Finally, the claim that, “Staff had not drafted the revisions at the time of the 11/15 Planning Commission meeting,” strains credulity – at least as formulated. The sheer number and bulk of redlines in the draft that was submitted to HCD the day after the Planning Commission meeting simply would not have been possible to draft in less than 24 hours. Might it be more accurate to say that Staff had not finalized the drafting of the revisions at the time of the Planning Commission meeting? Either way, the question remains as to why it was not disclosed to the PC – and the public – at that meeting that a submittal was to be made the very next day.

Thank you.

Rick Van Hoesen, for Los Gatos Community Alliance

On Tue, Nov 21, 2023 at 3:08 PM Gabrielle Whelan  
<[GWhelan@losgatosca.gov](mailto:GWhelan@losgatosca.gov)> wrote:

Hello, Mr. Van Hoesen.

1. I want to make sure we are talking about the same thing. The Town gave proposed revisions to its HCD reviewer for his consideration in response to mid-review cycle comments he provided regarding the Town's 10/2 submittal. This was not the Town's submittal of a revised draft Housing Element. The proposed revisions were submitted to HCD to get HCD's feedback on whether HCD would be prepared to certify a revised draft Housing Element if it were adopted with those edits and then submitted to HCD for certification. Public comments will still be provided to HCD and taken at both the upcoming Planning Commission and Town Council

meetings. The Planning Commission meeting is scheduled for 11/29 and the Town Council meeting has not yet been scheduled. Only after the Town Council has received a recommendation from the Planning Commission and held its public hearing will a revised draft Housing Element be adopted and submitted to HCD for certification.

2. Originally, HCD stated that they would not be able to provide the Town with mid-review cycle comments on the 10/2 submission. On October 31<sup>st</sup> (correction: not November 7<sup>th</sup> as indicated in my original email below), the Town's HCD reviewer told the Town that he would be able to meet with Town staff to provide mid-review cycle comments and scheduled a meeting for 11/7 (correction: not 11/14 indicated in my original email below). The 11/15 Planning Commission was noticed before the Town knew that HCD would in fact be able to meet with the Town to provide mid-review cycle comments. As a result, the 11/15 Planning Commission meeting was used to discuss the mid-review cycle comments from HCD and the Planning Commission continued its meeting to 11/29. Staff had not drafted the revisions at the time of the 11/15 Planning Commission meeting so the matrix that was provided stated that the revisions were in progress. The proposed revisions were completed and posted on 11/16 (correction: not 11/17 as indicated in my original email below).
3. The purpose of the proposed schedule is intended to obtain HCD certification of an amended Housing Element as soon as possible. State law



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

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

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGED



**Gabrielle Whelan ● Town Attorney**

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

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

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

**Cc:** [REDACTED]; Laurel Prevetti <[LPrevetti@losgatosca.gov](mailto:LPrevetti@losgatosca.gov)>; Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>; Wendy Wood

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**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 14th. 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.



**Gabrielle Whelan ● Town Attorney**

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November 16, 2023

Paul McDougall  
State Department of Housing and Community Development  
C/O Land Use and Planning Unit  
2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833

Re: Town of Los Gatos Draft Revised 2023-2031 Housing Element

Dear Mr. McDougall,

This letter serves to transmit the Town of Los Gatos' Draft Revised 2023-2031 Housing Element implementing changes in response to comments in the preliminary review matrix provided by Jose Jauregui.

**Previous Submittal – October 2, 2023**

On October 2, 2023, the Town resubmitted a Draft Revised Housing Element to HCD for review and comment based on the remaining comments from the May 30, 2023 comment letter. A preliminary review matrix was received from HCD on November 7, 2023.

**Draft Revisions**

This Draft Revised Housing Element responds to the preliminary comments provided by HCD in the November 7, 2023, letter. The Town has made several modifications to the Housing Element, detailed in the "Staff Response" column of the attached Draft Preliminary Review Matrix with Responses.

**Public Review**

Pursuant to Government Code 65585(b)(1), the Town will post the modifications to the Town's Housing Element website and provide notification to all individuals and organizations that previously requested notices, as well as all parties on the Town's notification list, including those who have previously commented on the Housing Element. The Draft Revised Housing Element will be posted on November 17, 2023, and public comments will be accepted through 4:00 p.m. on Monday, November 27, 2023, consistent with seven-day public review requirements of AB 215.

Included in this resubmittal is the Town's response added to HCD's November 7, 2023, Draft Preliminary Review Matrix, the Draft Revised Housing Element showing the track changes of the October 2, 2023 draft, as well as additional changes which are highlighted in yellow. Any written comments submitted to the Town during the seven-day public review period, will be provided on November 28, 2023.



On behalf of the Town of Los Gatos, thank you for the review of the Town of Los Gatos' Draft Revised Housing Element. The Town looks forward to direction and feedback from HCD that would assist the Town in the evaluation and decision-making process to bring the Housing Element into a compliance status by or before the end of the 60-day review period. Staff has requested to meet with Jose Jauregui on either November 28<sup>th</sup> or November 29<sup>th</sup> to discuss the Draft Revised Housing Element prior to the December 1<sup>st</sup> HCD comment letter deadline.

Questions or comments on the Housing Element may be directed to:

Joel Paulson, Community Development Director  
[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)  
408-354-6879

Sincerely,



Joel Paulson  
Community Development Department  
Town of Los Gatos

Enclosures:

- November 7, 2023 Draft Preliminary Review Matrix with Responses
- Town of Los Gatos November 2023 - Draft Revised 2023-2031 Housing Element with highlighted track changes