

**From:** Phil Koen

**Sent:** Wednesday, December 01, 2021 12:43 PM

**To:** Shelley Neis; Marico Sayoc; Rob Rennie; Matthew Hudes; Mary Badame; Maria Ristow

**Cc:** jvannada; Rick Van Hoesen; David Weissman

**Subject:** Letter to the Town Council - December 7 Study Session - 2040 General Plan

Dear Shelley,

Please include the attached letter and supporting attachments in the Town Council packet for the upcoming December 7, 2021 Council Study - 2040 General Plan. Please confirm receipt of this email.

Thank you.

Phil Koen

December 1, 2021

Dear Town Council Members,

At the October 19 Town Council meeting, Council Member Hudes requested that the following items be discussed at a subsequent meeting:

- An analysis of the impact of SB 9 on assumptions about housing capacity
- An alternative to the additional housing capacity in the current draft of the 2040 GP that could be presented to the Planning Commission for their consideration

Considering this request, we, the LGCA, have reviewed the land use element and are writing to share our specific recommendations. We respectfully request that the Council discuss our recommendations at the upcoming Study Session scheduled for December 7 and adopt the recommendations at its next Council meeting.

### **Recommendations for Changes to the Land Use designations and standards**

The Draft 2040 General Plan Land Use Element contains several changes from the existing 2020 General Plan Land Use Element in goals, policies, and implementation programs. The LGCA will provide the Town Council additional comments on the proposed changes soon, but for now we are solely focused on the changes being proposed to land use designation and standards as presented in section 3.4 of the Land Use Element.

Recommendation #1 – Any increase in land use densities through zoning and land use changes should be very targeted, not Town-wide, with the goal of providing the minimum additional development capacity necessary to meet the total RHNA allocation (plus a 15% buffer) and to provide for the development capacity of **1,167 below market rate (affordable) housing units** as mandated by the 6<sup>th</sup> cycle RHNA. The best opportunity to achieve the development capacity for affordable housing is to increase densities for mixed-use, and high-density residential land uses in targeted areas within ½ mile of existing infrastructure, retail services, and transportation. This will also promote the concept of “walkability”.

Recommendation #2 – Increase the housing development capacity of the Town by approximately 1,000 dwelling units by making targeted changes in density and intensity for selective land uses. Based on the Town’s analysis, there is development capacity under the existing zoning code to add 1,013 (reference Attachment A) dwelling units (excluding existing projects under development and ADUs). The 6<sup>th</sup> cycle RHNA allocation is 1,993. Reducing the RHNA allocation by 75 existing projects in development (these units will count toward the RHNA allocation) and 200 ADUs that are assumed to be developed over the next 8 years (25 per year for 8 years), the Town needs development capacity to build 1,718 units. If we add a 15% buffer to this number, the Town needs to have the capacity to develop 1,975 units over the next 8 years through development of vacant land and the redevelopment of lots with existing infrastructure (infill redevelopment). To accomplish this, the Town needs to increase the Town’s current development capacity by approximately 1,000 units. Increasing the development capacity of the Town by 1,000 units will increase the maximum potential development capacity to 2,013 dwelling units, which is sufficient to accommodate the 6<sup>th</sup> cycle net RHNA allocation plus a 15% buffer, totaling 1,975 units. Assuming all 2,013 units are developed, as well as the 200 ADUs and 75 existing projects, the Town’s population would increase approximately 5,491 people over the next 8 years. This is an 18% increase over the 2018 baseline population of 30,299. Allowing for population growth over this amount would be excessive and not supportable. It would result in higher Vehicle Miles Traveled (VMT) and higher

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Greenhouse Gas (GHG) emissions, further preventing the Town from achieving State mandated reductions in GHG. Additionally, given the very low employment growth forecasted for the Town, the development of an excessive number of homes means the Town is “exporting” housing to surrounding cities that are experiencing substantial employment growth while not providing the growth in housing to support their growth in employment.

Recommendation #3 – Given the passage and reality of SB 9, no changes in land use description or zoning density or intensity should be made to Hillside Residential and Low-Density Residential land uses. The Town should follow State law and not make any changes to these land use designations, especially until the reality of the implementation of SB 9 becomes more apparent.

Recommendation #4 – To encourage the development of Missing Middle Housing, the Town should establish a new Low-Medium Density Residential Land Use that would allow for the development of duplexes and triplexes at density range of between 5 and 15 dwelling units per acre. This new land use designation would be between low density residential used for single family and medium density residential which is used for multi-family residential. This new land use designation should target transitional areas from single-family land uses to higher-density land uses and/or lots adjacent to a commercial corridor. Given very high land costs (approximately \$7 million per acre), much higher development densities are required to achieve the unit development economics to incentivize the development of Missing Middle Housing. To be specific, it is very unlikely that the development of a stacked duplex or stacked fourplex as shown in Figure 3-5 of the 2040 General Plan would ever be built given the land cost for a typical 10,000 sq. ft lot zoned for single family residential. It is for this reason, that a new low-medium density land use should be established in appropriate areas. It is important to also understand that given the high land costs, the development of Missing Middle Housing will not be affordable housing. Affordable housing is generally defined when households do not have to spend more than 30% of their income on housing. At best, this housing type may have the ability to create “attainable” housing. But even then, it will be “attainable” only for families with income levels substantially higher than the region’s AMI.

### **Background**

On February 6, 2018, the Town Council began the process of updating the 2020 General Plan with a discussion of the scope and process for the General Plan update. At that meeting, the Town Council indicated that the **current 2020 General Plan is serving the community well**, and an update provides the opportunity to **refine** the General Plan, address emerging trends and recent State Laws, and consider new issues.

The Town’s first newsletter on the General Plan Update, published in September 2019 went even further and described the update process as follows (emphasis added):

“While the **existing General Plan is serving the community well**, the Town is doing an update to **refine** the General Plan, address emerging trends and recent changes in State law, and consider new issues. This effort is intended to be **a fine-tuning of the existing General Plan**, rather than a **comprehensive overhaul** of the document”.

These words have consistently been repeated in subsequent public updates and staff reports, we believe with the specific intent of shaping the public’s view regarding the magnitude of change

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contemplated by the 2040 General Plan. We are deeply troubled by this, because the actual changes proposed in land use designations and standards are so massive that no reasonable person would conclude that the changes are “fine-tuning” or an “update to refine” the current 2020 General Plan. In fact, they are a comprehensive overhaul that completely changes the nature of the 2020 General Plan Land Uses and will have a major impact on the very character of Los Gatos.

### **Discussion**

The Town currently (2018 is baseline) has 13,299 housing units with an estimated population of 30,250. The ABAG growth forecast for the horizon year 2040 projects a population increase of 1,578 which would require an additional 658 dwelling units to be developed over the next 20 years. This represents the additional units to be developed under normal growth. The additional housing required to meet ABAG’s growth forecast can easily be achieved under the current 2020 General Plan Land Uses and existing zoning ordinance given the 1,013-development capacity (reference Attachment A).

Throughout the process there has been an understanding that the updated Land Use Element would need to create housing capacity to allow the Housing Element update to accommodate the development over the next 8 years of the 6<sup>th</sup> cycle RHNA allocation of 1,993 dwelling units, plus a 15% - 30% buffer recommended by the HCD.

Under the current 2020 General Plan and existing zoning ordinance, there is the potential to develop an additional 1,013 housing units, which includes 116 units in Hillside Residential. This number excludes all pending approved projects and future ADUs that might be developed. The 6th cycle RHNA allocation for the Town is 1,993 units. Reducing this allocation by the 75 pending approved projects that will be counted toward the allocation and 200 ADUs that are assumed to be developed over the next 8 years, the “net” RHNA allocation is 1,718 units. Adding the recommended 15% buffer to this net number, the adjusted RHNA allocation is 1,975 units. The existing development potential for new housing of 1,013 units is 962 units below the adjusted RHNA allocation of 1,975. The 962 units is the “capacity gap” that needs to be filled by selectively increasing zoning densities in areas that are close to transit points, jobs, and retail services.

Given the current maximum development potential is only 1,013 units, the Town would need to increase housing capacity through targeted land use changes to allow for the development of additional units beyond existing allowable development capacity. The question is should the Town make the minimum changes to the Land Use Element to meet only the 6<sup>th</sup> cycle RHNAs requirement, or should it go beyond this requirement? If the Town goes beyond this requirement, what is the maximum growth capacity the Land Use Element should allow?

This brings us to the core problem, namely the draft 2040 General Plan Land Use Element is proposing massive increases in the densities and intensities (up-zoning) across all residential land uses, Town-wide. These changes will allow for the development potential of nearly 75,000 housing units at maximum allowable densities. This number is computed by multiplying the proposed maximum housing densities for each land use by the total acreage designated by the 2040 General Plan for each land use. We recognize that this is a “theoretical” maximum potential buildout, but it illustrates the impact of the proposed changes in the draft Land Use Element.

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This potential buildout of approximately 75,000 units was originally highlighted in a comment letter from Rutan and Tucker on the 2040 General Plan DEIR. We have attached the letter (see Attachment B) for the Town Council's consideration and inclusion in the public record for the December 7 study session. Please refer to Appendix A in the letter, entitled "Maximum Buildout Potential under 2040 General Plan" for a detailed explanation of the 75,000 housing units.

The DEIR states on page 2-15 that "in accordance with CEQA, a program-level EIR is obligated to analyze the **maximum potential buildout allowed** under the subject plan or program". In Table 3-1 of the General Plan, a residential buildout "scenario" of 3,738 units, not including Hillside residential units, is presented. This number is based on "assumed" percentages of how much existing developed land will be redeveloped through 2040. There is no explanation in the General Plan as to how these assumptions were derived or what information or data they are based on, and it does not meet the requirement to analyze the maximum potential buildout allowed.

At the September 20, 2021, Joint Meeting of the Planning Commission and Town Council, staff presented a new analysis which showed a new residential buildout "scenario" of 3,904 units for the 2040 General Plan. This analysis included the Hillside Residential land use and assumed 166 units would be developed on existing vacant land. This number appears to be an error and should have been 116 units. Making this correction, the "build out" based on the redevelopment percentages assumed, is 3,854. Please refer to Attachment A which presents the same information but with the Hillside Residential correction.

The percentages used in the Staff analysis reflect one possible outcome, out of an infinite number of possible redevelopment outcomes, that could occur and certainly does not reflect maximum buildout that would be **allowed** under the proposed land use densities. For example, if the assumed redevelopment percentages were set at 100% for all land use categories, the total number of units developed under the Staff's model, would be 16,513 units. This shows how arbitrary the assumed "redevelopment" percentages are and how easily they can be manipulated to show any development outcome that is desired.

We continue to believe that the DEIR has failed, among other items, to analyze the impacts for the "whole of the project" and the project description is not accurate, stable, or consistent as required by CEQA. A new, more comprehensive EIR needs to be prepared and circulated for public and review and comment prior to any Town action on the Project.

### **A word about Planning Horizons**

State law requires that the general plan only take a "long-term perspective", with no specific timeframe mandated. The current 2020 General Plan was built on a 10-year planning horizon, while the draft 2040 General Plan, for some unknown reason, shifted to a 20-year planning horizon. The timeframes for effective planning vary among issues. The Housing Element, for example, specifically involves time increments of eight years. Sewer, waste, and road systems are generally designed with a 30 to 50 year lifespan. Climate change is affecting local governments now, but longer-term planning should anticipate significant changes in the environmental setting over the next 20 to 30 years. Given these various planning horizons, State law does require that the **regulations and policies** in the General Plan need to be consistent across all elements, and not the time frames.

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The point here is that each horizon does not mark an end point but rather **provides for a general context in which to make shorter-term decisions**. Planning is a continuous process and as such the general plan should be regularly reviewed and revised as new information becomes available and as community needs and values change. Best practice today is a five-year update cycle which allows incremental changes to be planned more often. Given the high level of imprecision around 20-year forecasts and the uncertainty we live in, adopting a five-year update cycle reduces the cost of a comprehensive rewrite of a 20-year general plan and more importantly keeps the general plan timely, relevant, and responsive to community needs.

### **Summary**

The LGCA wishes to thank the Town Council for the opportunity to provide our recommendations for amending the current draft of the Land Use Element. We will be submitting additional recommendations regarding specific goals, policies, and implementation programs in the Land Use Element. We strongly urge that the Town Council provide clear feedback to the Staff now, so changes can be made to the draft 2040 General Plan before any further consideration is given to the draft as written.

Sincerely,

Los Gatos Community Alliance

**Attachment A**

| 2.4                                | Density Range (du/ac) |                    | Typical Density       |                    | Assumed Redevelopment (Redev) Assumptions |             | Existing General Plan     |                     | Draft General Plan (Town Staff Assumptions) |                     | Draft General Plan (Alternative Assumptions) |                     |                             |
|------------------------------------|-----------------------|--------------------|-----------------------|--------------------|---|-------------|---------------------------|---------------------|---|---------------------|--|---------------------|-----------------------------|
|                                    | Existing General Plan | Draft General Plan | Existing General Plan | Draft General Plan | Town Staff                                | Alternative | New Housing (Vacant Land) | New Housing (Redev) | New Housing (Vacant Land)                   | New Housing (Redev) | New Housing (Vacant Land)                    | New Housing (Redev) | Imputed Population Increase |
| Hillside Residential               | 0 to 1                | 0 to 1             | 1                     | 1                  | 0%  | 100%        | 116                       | -                   | 166   | -                   | 116  | -                   | 278                         |
| Low Density Residential            | 0 to 5                | 1 to 12            | 4                     | 12                 | 5%  | 100%        | 75                        | 13                  | 283   | 84                  | 283  | 1,680               | 4,711                       |
| Medium Density Residential         | 5 to 12               | 14 to 24           | 10                    | 20                 | 10%                                       | 100%        | 107                       | 133                 | 224   | 343                 | 224  | 3,430               | 8,770                       |
| High Density Residential           | 12 to 20              | 30 to 40           | 18                    | 36                 | 15%                                       | 100%        | 53                        | 111                 | 110   | 268                 | 110  | 1,787               | 4,552                       |
| Neighborhood Commercial            | 10 to 20              | 10 to 20           | 16                    | 18                 | 10%                                       | 100%        | 11                        | 39                  | 26  | 91                  | 26   | 910                 | 2,246                       |
| Community Commercial               | 0                     | 20 to 30           | 0                     | 26                 | 15%                                       | 100%        | -                         | -                   | -   | 156                 | -  | 1,040               | 2,496                       |
| Mixed-Use                          | 10 to 20              | 30 to 40           | 16                    | 36                 | 20%                                       | 100%        | 55                        | 242                 | 126   | 605                 | 126  | 3,025               | 7,562                       |
| Central Business District          | 10 to 20              | 20 to 30           | 16                    | 26                 | 15%                                       | 100%        | 12                        | 46                  | 21  | 113                 | 21   | 753                 | 1,858                       |
| Office Professional                | 0                     | 30 to 40           | 0                     | 36                 | 15%                                       | 100%        | -                         | -                   | 4   | 255                 | 4  | 1,700               | 4,090                       |
| Service Commercial                 | 0                     | 20 to 30           | 0                     | 26                 | 15%                                       | 100%        | -                         | -                   | 10  | 44                  | 10   | 293                 | 728                         |
| Subtotal                           |                       |                    |                       |                    |   |             | 429                       | 584                 | 970   | 1,959               | 920  | 14,618              | 37,292                      |
| Housing Units, New and Redeveloped |                       |                    |                       |                    |   |             |                           | 1,013               |   | 2,929               |  | 15,538              | 37,292                      |
| Housing Units, ADUs                |                       |                    |                       |                    |   |             |                           | 500                 |   | 500                 |  | 500                 | 1,200                       |
| Subtotal                           |                       |                    |                       |                    |   |             |                           | 1,513               |   | 3,429               |  | 16,038              | 38,492                      |
| Housing Units, Existing Projects   |                       |                    |                       |                    |   |             |                           | 475                 |   | 475                 |  | 475                 | 1,140                       |
| <b>Total</b>                       |                       |                    |                       |                    |   |             |                           | <b>1,988</b>        |   | <b>3,904</b>        |  | <b>16,513</b>       | <b>39,632</b>               |

This appears to be an error in the Draft General Plan. Should be 116

The error is corrected here

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**VIA E-MAIL [JArmer@losgatosca.gov]**

Jennifer Armer, AICP  
Senior Planner  
Town of Los Gatos  
Community Development Department  
110 E. Main St.  
Los Gatos, CA 95030

**Re: Town of Los Gatos 2040 General Plan Draft Environmental Impact Report**

Dear Ms. Armer :

We appreciate this opportunity to submit comments on the 2040 General Plan Draft Environmental Impact Report (“DEIR”) prepared by Town of Los Gatos (the “Town”) for the 2040 General Plan (the “2040 General Plan” or the “Project”). We write on behalf of Los Gatos Community Alliance (“LGCA”).<sup>1</sup> LGCA has significant concerns with the adequacy of the DEIR.

As you know, the California Environmental Quality Act (“CEQA”) calls for public review and comment on environmental documents, such as the DEIR, to assure that the environmental impacts of proposed projects are accurately identified, fully evaluated in conformity with established plans and policies, and adequately addressed through the imposition of feasible mitigation measures and/or the adoption of feasible alternatives. In light of CEQA’s important public policies and concerns, we submit the following comments on the DEIR.

As detailed below, the DEIR: (1) fails to analyze the impacts of the “whole of the project,” as required by CEQA, (2) does not contain an accurate, stable, and consistent description of the Project, (3) fails to adequately analyze and address the Project’s significant air quality, noise, transportation, water supply, and other impacts, (4) fails to consider or properly analyze significant cumulative impacts, and (5) fails to analyze a reasonable range of alternatives to the Project.

We respectfully request that these comments and questions be addressed, and that a new, more comprehensive EIR be prepared and circulated for public review and comment prior to any Town action on the Project.

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<sup>1</sup> Members and/or supporters of LGCA include: Joanne Benjamin, Sandy Decker, Tom Ferrito, Peter Hertan, Phil Koen, Don Livinghouse, Sandra Livinghouse, Tim Lundell, Ann Ravel, Steve Rice, Barbara Spector, Rob Stump, Rick Van Hoesen, Jak Vannada, and Colleen Wilcox.



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**I. The DEIR does not comply with CEQA.**

**A. The DEIR fails to analyze the impacts of the “whole of the project” as required by CEQA.**

CEQA Guidelines Section 15126 makes clear that an EIR must take a comprehensive review of the proposed project as a whole. “All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation.” (CEQA Guidelines § 15126.) This requirement reflects CEQA’s definition of a “project” as the “*whole of an action*” that may result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change. (Public Resources Code § 21065; CEQA Guidelines § 15378.)<sup>2</sup> Moreover, it is well settled that an EIR must study the reasonably foreseeable consequences of an action. (CEQA Guidelines § 15146(b) [EIR on general plan “should focus on the secondary effects that can be expected to follow from the adoption or amendment”]; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376 [EIR found inadequate for describing project as occupying only part of a building even though university had plans to occupy the entire building].)

The DEIR states that the 2040 General Plan “accommodates a potential for 3,738 dwelling units by the year 2040, and the EIR has used this figure to calculate and project environmental impacts.” (DEIR, p. ES-1.) The DEIR also acknowledges that it assumes no additional non-residential development beyond the pending and approved projects shown in Table 2-4. (DEIR, pp. 2-16, 4.16-17.) But in actuality, the 2040 General Plan vastly increases the development potential on all residential and commercially designated lands. (See 2040 General Plan, Table 3-1; DEIR, Table 2-1.) Instead of 3,738 new housing units and approximately 670,000 square feet of commercial development, the 2040 General Plan would allow for nearly 75,000 housing units and over 45 million square feet of commercial development. (See Table entitled “Maximum Buildout Potential Under 2040 General Plan,” attached hereto as Exhibit A.) By comparison, the Town currently contains only 13,300 housing units and an unspecified number of square feet of non-residential development.<sup>3</sup> (DEIR, pp. 2-14.)

The 2040 General Plan would significantly increase allowed densities and intensities throughout the Town. For Low Density Residential lands (the bulk of the Town’s land use) up to 12 units per acre would be allowed; for Medium Density Residential Lands, up to 24 units per acre would be permitted; and under the High Density Residential designation, up to 40 units per acre are permitted.<sup>4</sup> Additionally, for lands designated Medium and High Density Residential, lot coverage

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<sup>2</sup> Unless otherwise noted, emphasis in quotations herein is supplied and citations are omitted.

<sup>3</sup> By failing to specify the amount of existing non-residential square footage, the DEIR does not accurately describe the environmental setting (or baseline) against which Project environmental impacts are to be measured. (CEQA Guidelines § 15125; *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 94.)

<sup>4</sup> If enacted, the Town would generally be prohibited from denying or reducing the density of

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is increasing from 40 to 75 percent.<sup>5</sup> For sites designated Neighborhood Commercial, up to 20 units per acre would be allowed. On lands designated Central Business District and Service Commercial, up to 30 units per acre would be allowed while on lands designated Office Professional and Mixed-Use, up to 40 units per acre would be permitted. The 2040 General Plan also creates a new land use category, Community Commercial, allowing for residential densities of up to 30 units per acre. All of these densities vastly exceed any densities allowed under the current General Plan.

The 2040 General Plan would also greatly increase intensities for non-residential land uses. For instance, the allowed floor area ratio (“FAR”) for Mixed Use will increase six-fold from 0.5 to 3.0.<sup>6</sup> In the Community Commercial district, development at up to a 3.0 FAR would be allowed. The allowed FAR for the Central Business District will increase over three-fold from 0.6 to 2.0 FAR. In the Neighborhood Commercial, Office Professional, Service Commercial, and Light Industrial designations, the permitted FAR will double, increasing from 0.5 to 1.0. Most of these intensities vastly exceed any intensities currently allowed in the Town, including under the Albright Specific Plan. (DEIR, pp. 4.11-5 to 4.11-6 [Albright Specific Plan entitled for development intensity of approximately 0.5 FAR].) Ignoring the increased intensities allowed by the 2040 General Plan and relying solely on a table of “Pending and Approved Projects,” the DEIR claims that approximately 671,680 square feet is the maximum amount of non-residential development allowed under full buildout of the General Plan. (DEIR, p. 2-16.)<sup>7</sup>

Buildout to the densities and intensities permitted under the 2040 General Plan would result in tens of thousands of new housing units and tens of millions square feet of new office and commercial development. Such development would have significant unavoidable impacts to most, if not all, environmental resources. Yet, the DEIR does not study the impacts of the potential development allowed by the planning changes. Instead, it studies only a fraction of the development allowed by the plan changes. This undermines the DEIR’s analysis of every single environmental resource from Aesthetics to Wildlife. The DEIR is fundamentally flawed and cannot be approved on this basis alone. The DEIR must either study the full impacts of the proposed Project, or the enormous and unnecessary density increases proposed by the 2040 General Plan must be greatly reduced.

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any housing project that complied with these new density standards. (2040 General Plan, p. 10-2 [proposed plan correctly observes that the State Housing Accountability Act “prohibits the Town from lowering the density or denying a project (unless there are specific and unmitigable adverse impacts to health and safety) if the project complies with the Town’s General Plan and Zoning Ordinance (Gov. Code, Section 65589.5).”].)

<sup>5</sup> For lands designated Low Density Residential, lot coverage is increasing from 40 to 50 percent.

<sup>6</sup> FAR “means the gross floor area of a building or buildings on a zoning plot divided by the area of such zoning plot.” (2040 General Plan, p. 3-2.)

<sup>7</sup> Even this figure is contradicted by Table 4.11-3 which shows a higher amount of non-residential development capacity, e.g., 951,866 square feet.

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The DEIR acknowledges that “[i]n accordance with CEQA, a program-level EIR is obligated to analyze the maximum potential buildout allowed under the subject plan or program.” (DEIR, pp. 4.13-2, 2-15.) But the DEIR then inexplicably proceeds to analyze only a very small fraction of the potential buildout allowed under the 2040 General Plan. The DEIR states: “It has been calculated that the Los Gatos 2040 General Plan accommodates a potential for 3,738 dwelling units by the year 2040, and the EIR has used this figure to calculate and project environmental impacts.” (DEIR, p. 4.13-2.) By whom and on what basis was it determined that the General Plan accommodates this figure? The DEIR cannot possibly mean that 3,738 dwelling units is the maximum potential buildout allowed under the 2040 General Plan. In the Low Density Residential districts alone, over 53,000 units could be developed under the proposed density changes allowing for up to 12 units per acre. (See Exhibit A.) The DEIR nonetheless claims that these districts will only see 367 new units over the next 20 years. (DEIR, p. 4.13-3, 4.13-6.)

The significant underreporting of buildout potential appears to be based on “assumed” percentages of how much existing developed land will be redeveloped. For instance, for Low Density Residential, the assumed redevelopment figure is 5 percent. (DEIR, p. 4.13-6.) There is no explanation in the DEIR, however, as to how these assumptions were derived or what information or data they are based on. Such assumptions are directly contradicted by the DEIR’s impact analysis which repeatedly claims that impacts will be less than significant because lands will be redeveloped. (Cf. DEIR, p. 4.11-12 [“Unlike many communities where growth is primarily on vacant land, Los Gatos would see a higher percentage of change through redevelopment of lands that have development potential.”].) There is also no information provided on the amount of developed versus undeveloped land in the Town. Such artificially and unsubstantiated “assumptions” about future growth do not reflect maximum buildout potential. It entirely ignores the economic incentives to redevelop existing lands given the significant up-zoning allowed by the 2040 General Plan. If 3,738 dwelling units is truly the expected “full buildout,” as stated in the DEIR, why does the General Plan so vastly increase development potential in every single land use designation? (DEIR, p. 2-15.) The assertions made do not match, and conflict with, the regulatory changes proposed by the 2040 General Plan.

**B. The Project Description is not accurate, stable, or consistent.**

An accurate and complete project description is necessary for an intelligent evaluation of the potentially significant environmental impacts of the agency’s action. (*Silveira v. Las Gallinas Valley Sanitary Dist.* (1997) 54 Cal. App. 4th 980, 990.) “Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal . . . and weigh other alternatives in the balance.” (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192; *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, 407– 408.) The DEIR’s project description is flawed for multiple reasons.

First, the preferred Land Use Alternative approved by the Town Council is not the project studied in the DEIR. At its April 7, 2020 meeting, the Town Council embraced Land Use

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Alternative C. That alternative called for 2,303 additional housing units.<sup>8</sup> (Minutes, April 7, 2020 Town Council meeting, p. 5.) The DEIR assumes 3,738 new housing units, a more than 60 percent increase from the land use scenario approved by the Town Council.

The DEIR incorrectly states that the Town Council subsequently modified the preferred Land Use Alternative, but that is not accurate. (DEIR, p. ES-4.) At its November 17, 2020 meeting, Councilmembers indicated that new housing should be focused in Opportunity Areas/Community Place Districts without increasing the allowed density in Low Density Residential areas and the Downtown/Central Business District. (Minutes, November 17, 2020 Town Council meeting, p. 6.) These statements were consistent with the Council’s initial direction that “the existing General Plan is serving the community well, and this update provides the opportunity to refine the General Plan, address emerging trends and recent State laws, and consider new issues.” (Staff Report to the Town Council, November 17, 2020, p. 5.)<sup>9</sup>

Second, the DEIR states that one of the “central objectives” of the 2040 General Plan is to achieve the Regional Housing Needs Allocation (“RHNA”) of 2,000 dwelling units for 2023-2031 developed by the Association of Bay Area Governments (“ABAG”). (DEIR, pp. 2-7, 6-1.) But the DEIR then proceeds to analyze 3,738 dwelling units—nearly double the assumed 2023 RHNA figure. The DEIR further inconsistently states that the 2040 General Plan “incorporates the adopted 2015 Housing Element” and that the 2023 Housing Element “is not included in this General Plan Update and would be updated consistent with state law.” (DEIR, pp. 1-4, 2-14, 2-16, 4.13-4.)<sup>10</sup> If the Project’s objective truly is to embrace the 2023 RHNA allocation then proceedings on the 2040 General Plan should halt until the 2023 RHNA allocation is finalized. That final figure could be then be included in a new EIR which analyzes not only the 2040 General Plan, but the 2023 Housing Element as well.

Third, as noted by the State Department of Fish & Wildlife in its August 4, 2020 comment letter, “the geographical scope of the Project is not clear.” (DEIR, Appendix A.) The DEIR refers to the eight Community Place Districts (nomenclature that replaced the Opportunity Areas approved by the Town Council) which are supposed to be “[f]ocus areas for growth.” (DEIR, pp. ES-2, 2-1; *see also* DEIR, p. 4.2-9 [“A principal goal of Los Gatos is to manage growth to retain the Town’s small size and historic atmosphere while respecting the surrounding natural resources.”].) But as noted above, the 2040 General Plan significantly increases densities throughout the Town, not just in Community Place Districts. The DEIR does not acknowledge or attempt to reconcile this serious

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<sup>8</sup> After accounting for 475 units in the pipeline and 500 units assumed to be built as accessory dwelling units, Land Use Alternative C could result in the development of 1,328 housing units.

<sup>9</sup> The 2040 General Plan ignores the Town Council’s direction and greatly increases density throughout the Town, including in Low Density Residential areas and the Downtown/Central Business District. This is unnecessary given that the 2,000 or so units could readily be accommodated in the Opportunity Areas/Community Place Districts.

<sup>10</sup> The 2015 Housing Element provides for 619 additional housing units. The Project assumes, at minimum, a 500 percent increase in housing compared to the 2015 Housing Element.

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disconnect between the amount and location of growth allowed by the 2040 General Plan and the amount and location of growth studied in the DEIR.

Finally, an EIR is invalid if its project description does not describe the necessary infrastructure improvements (e.g., sewer, water, storm drain, roadways, sidewalks, etc.) associated with the project. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729-734 [EIR for housing project invalid for failing to consider and analyze impact of necessary sewer expansion].) The DEIR’s project description does not contain any discussion of the necessary infrastructure improvements associated with the Project. The DEIR likewise defers analysis of infrastructure impacts to a future time. This is plainly inadequate under CEQA.

**C. The DEIR fails to adequately analyze and address numerous significant environmental impacts.**

**1. Aesthetics**

The DEIR provides only photographs of the existing (baseline) conditions. (DEIR, pp. 4.1-4 through 4.1-11.) No visual simulations or related data is provided of the future buildout conditions. As such, there is no evidence, let alone substantial evidence as required, to support the DEIR’s conclusion that the Project’s impacts to aesthetics will be less than significant.

The DEIR does not discuss the key policies pertaining to scenic resources, scenic easements, undergrounding requirements, or view corridor protection. (*See* 2040 General Plan, p. 8-4 [Goal ENV-1 and Policies ENV-1.1, 1.2, 1.3, and 1.4].) Policies ENV-1.2 and ENV-1.4 call for the protection of scenic easements and “key view corridors.” Yet neither of these features are even discussed, let alone addressed, by the DEIR.

The DEIR states that it does not study scenic resources within a state scenic highway because there are no such highways in the Town. (DEIR, p. 4.1-15.) Yet, the portion of Highway 9 through the Town—from Highway 17 to the Monte Sereno town limits—is eligible for designation as a state scenic highway. (California State Scenic Highways System Map, California Department of Transportation, 2018.) And the portion of Highway 9 just outside the Town limits is officially designated as a state scenic highway. (*Id.*) Caltrans specifically asked for a discussion of potential visual impacts to these scenic corridors in its August 7, 2020 comment letter. (DEIR, Appendix A.) Yet the DEIR contains no such analysis.

The DEIR states that the 2040 General Plan would maintain land use designations and thus not “facilitate new development” adjacent to any state scenic highway.<sup>11</sup> (DEIR, p. 4.1-17.) As noted above, while the designations may nominally remain the same, the potential for development

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<sup>11</sup> The DEIR also states that lands adjacent to Highway 9 are residential. (DEIR, p. 4.1-17.) But this roadway also traverses through commercial districts, including crossing over both University Avenue and N. Santa Cruz Avenue.

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in these land use designations is vastly increased by the 2040 General Plan. The DEIR itself acknowledges that the General Plan would “include more dense and diverse types of land uses including residential, office and industrial development . . .” (DEIR, p. 4.1-17.)

The DEIR states that design guidelines will be developed later and concludes without any evidentiary support that adherence to such yet-to-be developed guidelines will reduce impacts to a less than significant level. (DEIR, p. 4.1-18 [“[D]evelopment of formal design guidelines for all forms of developing, including suggested finishes, landscaping, and other aesthetic attributes, would mitigate potential impacts.”].) As a result, the DEIR improperly defers mitigation for significant visual impacts. (CEQA Guidelines § 15126.4(a)(1)(B); *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.)

## 2. Air Quality

For plan-level impacts to criteria air pollutants, the thresholds of significance prepared by the Bay Area Air Quality Management District (“BAAQMD”) require the lead agency to consider consistency with the air quality plan and to evaluate whether the “projected VMT or vehicle trip increase is less than or equal to projected population increase.” (BAAQMD CEQA Guidelines May 2017, p. 2-7.)

The DEIR only evaluates the Project for consistency with six of the 85 control strategies contained in the 2017 Clean Air Plan. The DEIR’s conclusion that the Project would be consistent with the control measures in that plan is not supported by substantial analysis because a consistency analysis with 79 of the 85 control measures was not performed. Moreover, growth under the 2040 General Plan is likely inconsistent with the growth projections assumed in the 2017 Clean Air Plan, which are based on ABAG population forecasts. (DEIR, p. 4.13-6 [acknowledging that the 2040 General Plan “would increase the total population to approximately 42,021 persons, which would be 27.1 percent above ABAG’s 2040 population forecast of 33,050.”].)

Additionally, the analysis based on vehicle miles traveled (“VMT”) is not supported or defensible. The threshold asks simply whether the projected VMT increase is less than or equal to the projected population increase. (DEIR, p. 4.3-7.) Here the projected VMT increase of 507,845 miles greatly exceeds the stated population increase of 8,971 residents. The DEIR only reaches a less than significant conclusion by comparing VMT and population increase on a “percentage basis.”<sup>12</sup> (DEIR, pp. 4.3-7, 4.3-14.) But nothing in the threshold itself or BAAQMD’s CEQA Guidelines suggest that this is an appropriate method or manner to measure such impacts.

The qualitative analysis of construction impacts focuses only on dust control measures. No analysis of construction-related emissions of reactive organic gases, nitrogen oxides, or fine

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<sup>12</sup> The DEIR also states without any legal or evidentiary support that the “rate of increase of service population is a more appropriate indicator of whether the increase in VMT would be considered significant.” (DEIR, p. 4.3-14.)

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particulate matter is included nor is any mitigation imposed for any such emissions. The DEIR nonetheless concludes that plan-level construction impacts would be less than significant with implementation of Mitigation Measure AQ-1. Mitigation Measure AQ-1 simply requires adherence to standard dust control measures and does not address the other construction-related emissions referenced above. (DEIR, pp. 4.3-15 to 4.3-16.) The DEIR's conclusion that the Project would result in less than significant construction impacts is not supported by substantial evidence.

Additionally, the Town was required to consider the health-related effects of all air quality emissions, including criteria air pollutants associated with Project construction activities and operations. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502 [EIR overturned for failure to explain how air pollutants generated by a project would impact public health]; *accord, Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.) Because the Town failed to conduct such an analysis, the DEIR fails as an informational document. (*Id.*)

The DEIR states that the 2040 General Plan includes a net increase of approximately 327 units of commercial development. (DEIR, p. 4.3-17.) There is no explanation for how this figure was derived. If it is based on the 671,680 square feet of development in Table 2-4, that only represents approved and pending development and vastly understates the amount of development allowed by the 2040 General Plan. (*See* Section I.A, *supra*; *see also* Exhibit A.)

Further, BAAQMD's CEQA Guidelines recommend that a general plan land use diagram identify special overlay zones around existing and planned sources of toxic air contaminants ("TACs") and PM<sub>2.5</sub>, including 500 feet on each side of all freeways and high-volume roadways. (BAAQMD's CEQA Guidelines, p. 2-7.) A high-volume roadway includes those with 10,000 vehicles or more per day or 1,000 trucks per day. (DEIR, p. 4.3-17.) Portions of Lark Avenue, Los Gatos Boulevard, and Winchester Boulevard, where additional growth is targeted, currently exceed 10,000 vehicles per day. (DEIR, Appendix C, Table 7-2.)<sup>13</sup> Instead of identifying special overlay zones, the DEIR cites one plan policy requiring developments to incorporate site planning techniques that reduce exposure to impacts of high pollutants. (DEIR, p. 4.3-18.) Per the BAAQMD Guidelines, impacts are significant given the absence of identified overlay zones. Further, sensitive receptors are (and will be) located in close proximity to construction activities. A health risk assessment should have been prepared to substantiate the DEIR's conclusion that the Project would result in less than significant impacts related to TACs.

### **3. Biological Resources**

Page 4.4-12 states that "approximately 42 percent of the Town is developed or urban land and does not provide habitat for the special-status species reported or known to occur in or near to Los Gatos." While Table 4.4-1 does indicate that approximately 42 percent of the Town is urban land, it does not state that no special status species occupy those lands or that those lands do not

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<sup>13</sup> The DEIR also observes that medium- and high-density residential neighborhoods are "generally located near major arterial roadways." (DEIR, p. 4.11-11; *see also* DEIR, p. 4.11-4.)

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provide habitat for such species.<sup>14</sup> In its August 4, 2020 comment letter, the State Department of Fish & Wildlife expressed concern about several special-status animal and plant species “that may be present within the Project location.” (DEIR, Appendix A.) The Midpeninsula Regional Open Space District likewise commented that the Los Gatos Planning Area and adjacent District preserves “consist of habitat for several special status species.” (*Id.*) Indeed, residents in the Downtown area have reported seeing special-status species, such as the California Tiger Salamander, on their properties. The DEIR does not acknowledge nor address potential impacts to special-status species.

Page 4.4-16 states that the infill development facilitated by the 2040 General Plan “would increase density in some areas” which could require upgraded utilities or stormwater drainage. In reality, the 2040 General Plan increases density in *all* areas. (*See* Section I.A, *supra*; *see also* Exhibit A.) Further, while the DEIR acknowledges that this development could result in significant impacts, it does not impose any mitigation measures to address those impacts. (DEIR, pp. 4.4-13, 4.4-16.) The DEIR’s conclusion that impacts would be less than significant is not supported by substantial evidence.

There is no discussion of Threshold 2 under Impact BIO-1 as indicated on page 4.4-12. There is a typo in the last sentence of page 4.4-16: “impacts” should be “impacted.” There is also a typo on page 4.4-22, “conservers” should be “conserves.”

#### **4. Cultural and Tribal Cultural Resources**

Any structure within a historic district is recognized by the Town as a historic resource. (DEIR, p. 4.5-8.) Additionally any structure constructed prior to 1941 is designated a historic resource unless the Town has specifically determined that the structure has no historic significance or architectural merit. (*Id.*) The 2040 General Plan would allow significantly increased densities in almost every land use designation. These increased densities would likely lead to additional development in historic districts (many of which appear to be zoned residential) and impact structures built prior to 1941. (DEIR, p. 4.7-19 [“The 2040 General Plan would encourage infill development, which would in many cases replace older structures . . . with newer structures . . .”].) The DEIR does not directly acknowledge this potentially significant impact nor address its significance.

In requiring that a cultural resources study be prepared for individual projects and that the recommendations of the study be implemented, Mitigation Measure CR-1 constitutes deferred mitigation. (CEQA Guidelines § 15126.4(a)(1)(B); *Sundstrom, supra.*) Moreover, demolition of a historic resource generally results in a significant unavoidable impact. (CEQA Guidelines § 15064.5(b); *League for Protection of Oakland’s Architectural & Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896.) Thus, the DEIR’s statement that Mitigation Measure CR-1 would reduce impacts to a less than significant level is not supported by the facts or the law.

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<sup>14</sup> This percentage is consistent with that shown in Table 4.11-1. Table 4.2-1, however, contains different and inconsistent figures.



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While acknowledging that new ground disturbance could have a potentially significant impact on tribal cultural resources, the DEIR concludes that implementation of policies requiring consultation with Native American tribes will reduce this impact to a less than significant level. The referenced policies do not require that tribal cultural resources be identified prior to commencement of ground disturbance, as stated. (DEIR, p. 4.5-15.) Thus reliance on such policies is inadequate to avoid or mitigate significant impacts to tribal cultural resources. (*See Save Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th 665, 686-690.) The DEIR further appears to ignore the detailed guidance set forth in the July 13, 2020 comment letter from the Native American Heritage Commission. (DEIR, Appendix A.)

There is a typo in Impact CUL-2 on page 4.5-13. It appears that the word “would” should be “with.” On page 4.5-15, third line, it appears that the word “impacts” is missing after “reduce.” Page 4.5-6 mistakenly refers to the 2040 General Plan as the 2045 General Plan.

## **5. Energy**

On page 4.6-1, the DEIR states that it accounts for the physical environmental impacts associated with the generation of electricity and burning of fossil fuels elsewhere, but this is not accurate. While the greenhouse gas (“GHG”) emissions associated with increased energy usage are referenced in Table 4.8-4, none of the other resource categories address the physical impacts associated with increased electricity generation or the burning of fossil fuels.

The DEIR does not acknowledge a significant impact related to transportation fuel consumption associated with the Project’s significant and unavoidable impact to VMT. Instead, the DEIR claims that VMT would only be increased at a local level, not a regional level. (DEIR, pp. 4.6-11 to 4.6-12.) There is no exception allowing the wasteful, inefficient, or unnecessary consumption of energy resources at the local level. The DEIR further states that to reduce localized VMT, “it encourages high-density and mixed-use infill developments” placing Town residents “closer to places of employment, businesses those residents patronize, and public transit facilities.” (DEIR, p. 4.6-12.) There is no evidence that the Project will place residents closer to office, commercial, or public transit. The DEIR states that only pending and approved commercial developments are proposed and that expansion of light rail service “remains unfunded” and “uncertain.” (DEIR, p. 4.15-6, *see also* 2040 General Plan, p. 5-9.)

Page 4.6-13 contains inconsistent information related to regulations concerning renewable resource targets. For instance, the first full paragraph references a 50 percent renewable requirement by 2030 while the next paragraph refers to a 50 percent renewable target by December 31, 2026. (*See also* DEIR, p. 4.16-8 to 4.16-9 [referring to a 50 percent renewable target being met by 2030].) Additionally, PG&E’s power mix is listed as including 29 percent renewable energy sources as of 2019 and being on track to achieve 50 percent renewable energy sources by 2020. (DEIR, p. 4.6-13.) The word “with” in the last sentence of that paragraph appears to be a typo. The next to last sentence of page 4.6-14 appears to be missing the word “in.”

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The analysis in an EIR must reflect evolving scientific knowledge and state regulatory schemes especially with respect to GHG emissions.<sup>15</sup> Under Impact E-2, the DEIR considers the City's 2012 Sustainability Plan, but that plan is woefully outdated given that it is tied to expired and superseded 2020 GHG reduction targets.<sup>16</sup> Further, the DEIR does not discuss or analyze the Project's consistency with the State's 2017 Scoping Plan under Impact E-2.

Finally, there is a reference to "RPU" on page 4.6-15 with no explanatory text. There is also a typo on this page in the fourth line under Energy Efficiency: "project" should be "projects."

## **6. Geology and Soils**

The DEIR states that the thresholds are based on Appendix G to the CEQA Guidelines. But, Threshold 1 does not ask whether the Project would "[d]irectly or indirectly cause potential substantial adverse effects" related to ruptures of earthquake faults, strong seismic ground shaking, liquefaction, or landslides, as specified in Appendix G. The thresholds listed on page 4.7-18 also do not contain the Appendix G threshold asking whether the Project would "[d]irectly or indirectly destroy a unique paleontological resource or site or unique geological feature."

The San Andreas Fault, an Alquist-Priolo Fault Zone, is located west of the Town's western limits, not eastern limits as stated. (DEIR, pp. 4.7-7, 4.7-19.) Under Impact GEO-2 on page 4.7-21, there is a typo: "disturb" should be "disturbs." Threshold 5 and 6 are not labeled as such on page 4.7-24. As noted previously, Threshold 6 is not identified in the stated Significance Thresholds.

In requiring that a paleontological resource study be prepared for certain projects and that protective measures identified in the study be implemented, Mitigation Measure GEO-1 constitutes deferred mitigation. (CEQA Guidelines § 15126.4(a)(1)(B); *Sundstrom, supra.*)

## **7. Greenhouse Gas Emissions**

The 2040 General Plans results in significant unavoidable impacts to GHGs. To address this significant impact, the DEIR proposes Mitigation Measures GHG-1. That measure consists of various action items aimed at reducing GHGs, primarily in the Energy sector. Table 4.8-5 shows GHGs substantially reduced by this measure, especially under 2040 conditions. There is no supporting data to support the quantified reductions shown.<sup>17</sup> Moreover, the emissions are primarily from on-road VMT, yet Mitigation Measure GHG-1 contains few measures related to transportation

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<sup>15</sup> (*Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 223; *Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 3 Cal.5th 497, 519.)

<sup>16</sup> Moreover, the DEIR acknowledges that it is unknown whether the GHG reduction goal set in 2012 was even achieved by 2020. (DEIR, p. 4.8-18.)

<sup>17</sup> The mitigated emissions shown in Table 4.8-5 are inconsistent with those described in the text at page 4.8-32.

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generally and none aimed at reducing VMTs to the extent needed to comply with the GHG efficiency thresholds.

Contrary to CEQA, the DEIR does not discuss other feasible mitigation measures to reduce or avoid the significant impact, as required. (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 91 [“Having recognized and acknowledged that incremental increases in greenhouse gases would result in significant adverse impacts to global warming, the EIR was now legally required to describe, evaluate and ultimately adopt feasible mitigation measures that would mitigate or avoid those impacts.”].) Instead, the DEIR states that “it may not be feasible for buildout under the 2040 General Plan to implement the individual and Town scale VMT reduction measure and also be a transit-oriented development.” (DEIR, p. 4.8-27.) This is not legally adequate especially given the DEIR’s admission that the 2040 General Plan “would preclude or create obstacles to future attainment of the related State GHG reduction goals.” (DEIR, p. 4.8-32.)

The Greenhouse Gas Forecast Report (Appendix B to the DEIR) reports VMT of 519,080,770 in 2008 and VMT of 885,815,875 in 2040. These figures vastly exceed the VMT reported in the Transportation section of the DEIR. (DEIR, p. 4.15-23 [“As shown in Table 4.15-3, the population and employment growth resulting from the 2040 General Plan would increase project-generated VMT from 2,044,940 (Existing Conditions) to 2,552,780 (Cumulative 2040 with Project Conditions).”].) Please explain this major discrepancy and reconcile and revise the analysis, as needed.

As noted previously, the GHG analysis in an EIR must reflect evolving scientific knowledge and state regulatory schemes. The DEIR nonetheless states that it does not use the 2045 carbon neutrality goal as a significance threshold because it was enacted by Executive Order instead of by statute. (DEIR, p. 4.8-24, fn. 8.) This does not reflect a good faith effort to analyze and disclose impacts, as required by CEQA. (CEQA Guidelines § 15151 [“An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences” and that in reviewing an agency’s efforts in regard to preparing an EIR courts look for “adequacy, completeness, and a good faith effort at full disclosure”]; *accord*, CEQA Guidelines § 15204(a) [requiring that a “good faith effort at full disclosure [be] made in the EIR.”].)

In the second line, page 4.8-1 contains a typo: “generated” should be “generate.” Page 4.8-12 appears to be missing the word “in” between “increase” and “temperature.”

## **8. Hazards and Hazardous Materials**

Page 4.9-18 states that “[m]andatory implementation of RMPs would reduce the potential hazard to residents and the public in mixed-use development from reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.” There is no explanation or description of what “RMPs” means.

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In concluding that Impact HAZ-3 would be less than significant, the DEIR cites General Plan Goal HAZ-13 and its related policies. (DEIR, p. 4.9-21 [citing Goal HAZ-13 as stating: “The potential for injuries, damage to property, economic and social displacement, and loss of life resulting from hazardous materials is eliminated.”].) The 2040 General Plan does not contain any such goal or related policies.<sup>18</sup>

Page 4.9-23 refers to the Town’s Fire Department and the Los Gatos Fire Department. The Town does not have a fire department. Fire protection services are provided by the Santa Clara County Fire Department. (DEIR, p. 4.14-1.)

This section contains typographical errors. On page 4.9-18, second full paragraph, second line, strike the word “and.” On page 4.9-20, first paragraph, line 9, add “such as” prior to “gas stations.”

## **9. Hydrology and Water Quality**

Impact HWQ-2 acknowledges that the 2040 General Plan could result in the depletion of groundwater supplies or the interference with groundwater recharge. It states that growth that would be facilitated by the 2040 General Plan “has been incorporated into the SCVWA 2015 Urban Water Management Plan (UWMP)” and that “[f]uture water demand in Los Gatos is projected to be met by SCVWD’s current water supply (SCVWD 2016).” (DEIR, p. 4.10-14.) Referencing a 2017 report, it also states that groundwater supply has reached a “normal” stage, indicating “good water supply conditions. (DEIR, p. 4.10-2.) As such, it concludes that the Project would not result in depletion of groundwater supplies.

First, the growth from the 2040 General Plan, proposed in 2021, could not have been incorporated into a 2015 UWMP. Second, there is no relevant entity known as SCVWA. Third, the Town’s water provider, San Jose Water Company (“SJWC”), adopted its 2020 UWMP in June 2021. That UWMP, which is not cited in the DEIR, discusses water supply reliability concerns pertaining to groundwater. Fourth, recognizing that Santa Clara County is in severe drought conditions, the Board of Directors of the Santa Clara Valley Water District (“SCVWD”) adopted a resolution declaring a water shortage emergency condition and calling for water use restrictions of 15 percent.<sup>19</sup> The DEIR’s reliance on 2016-2017 data is misleading and does not present an accurate picture of the environmental setting, which includes extreme drought conditions.

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<sup>18</sup> There appear to be several inconsistencies between the policies cited in the DEIR and those contained in the 2040 General Plan. For instance, DEIR page 4.7-20 purportedly cites Goal HAZ-2 and associated policies pertaining to geology and soils. But in the 2040 General Plan, Goal HAZ-2 and associated policies relate to fire safety precautions. (2040 General Plan, p. 9-6.) The policies cited by the DEIR pertaining to fire safety (DEIR, pp. 4.17-6 to 4.17-10), in turn, relate to geology and soils (2040 General Plan, pp. 9-7 to 9-14). All inconsistencies should be reconciled in a revised EIR circulated for public review and comment.

<sup>19</sup> (See <https://www.valleywater.org/your-water/water-supply-planning/monthly-water-tracker>.)

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Impact HWQ-2 purports to address Threshold 2 pertaining to drainage, erosion, and runoff, along with Threshold 4 related to flooding. However, the impact discussion only addresses flooding issues. Impacts related to drainage appear to be addressed in Impact HWQ-1. Moreover, the flooding issues it discusses are hazards associated with flooding, not the risk of released pollutants due to flooding. (DEIR, p. 4.10-9.) These same inconsistencies permeate the discussion of cumulative impacts. The cumulative impact discussion also refers to Impact HWQ-4, which does not exist.

On page 4.10-11, in the first full sentence, the text appears to be missing the word “square” feet. The next sentence is a run-on sentence. On page 4.10-16, the discussion refers to a development permit showing “the location of a regulatory information.” It is unclear what this text means.

## **10. Land Use and Planning**

The discussion of Impact LU-1 focuses on the impacts of buildout of the existing General Plan as opposed to the 2040 General Plan. (DEIR, pp. 4.11-11 to 4.11-12 and Table 4.11-3 [referring to residential and commercial buildout projections under current projections and claiming those as increased buildout conditions in 2040].) The analysis further acknowledges that most growth will occur through redevelopment, which directly contradicts the artificially deflated percentages of land assumed to be redeveloped. (DEIR, pp. 4.11-12, 4.11-14, 4.13-6.)

The DEIR claims that the Project is consistent with Plan Bay Area 2040. However, the DEIR acknowledges that the Project results in significant unavoidable impacts related to VMT and GHG. Thus, it is unclear how the DEIR could find the Project to be consistent with Plan Bay Area’s goal of reducing emissions from cars and light duty trucks by 15 percent, reducing air quality impacts by 10 percent, and increasing non-auto mode share by 10 percent.<sup>20</sup> (DEIR, pp. 4.11-15 to 4.11-17.) The DEIR states that much of the growth facilitated by the 2040 General Plan would occur near existing transportation systems and businesses, thereby “reducing the need for commuting by vehicle.” (*Id.*) Yet in the discussion of VMT and GHGs, the DEIR states that impacts cannot be reduced to a less than significant level due to emissions from on-road VMT and lack of public transit options. (DEIR, pp. 4.8-27, 4.13-2.) The DEIR also states that the Project would “generally” be consistent with GHG-related plans and policies, when the discussion of Impact GHG-2 reaches the exact opposite conclusion. (DEIR, pp. 4.11-18, 4.8-31 to 4.8-32.)

Additionally, Plan Bay Area projects growth of only 619 additional housing units in the Town by 2040. (DEIR, p. 4.13-2 [since the Town lacks a major transit hub or station, Plan Bay Area does not assume any intensified residential or commercial development will occur in Los Gatos].) The 2040 General Plan would admittedly result in at least 3,738 additional housing units. As

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<sup>20</sup> The Project does not result in any increased job growth beyond that already approved and pending. (DEIR, p. 2-16.) As such, it conflicts with Plan Bay Area Goal 6 calling for an increase in jobs by 20 percent. (DEIR, p. 4.11-17.)

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explained in Section I.A, the increased densities allowed by the 2040 General Plan could result in tens of thousands of new housing units. (*See also Exhibit A.*) This significant conflict with Plan Bay Area is not disclosed let alone analyzed or addressed.

The DEIR acknowledges that a “guiding principle” of the 2040 General Plan is “to accommodate growth by streamlining development into built areas.” (DEIR, p. 4.11-20.) This could include Historic Districts containing historic resources to be preserved. Thus, contrary to Impact LU-3, there could likely be a conflict between the 2040 General Plan and the existing Historic Districts. The DEIR does not acknowledge or address this potential conflict.

## 11. Noise

The analysis of construction noise (Impact N-1) focuses only on the Community Place Districts, ignoring the potential for increased development allowed Town-wide by the 2040 General Plan. Even as to the limited areas studied, the DEIR acknowledges that impacts could exceed the Town’s threshold (85 dbA at 25 feet) even with mitigation. The DEIR nonetheless concludes that the impact is less than significant. (DEIR, p. 4.12-12.) This conclusion conflicts with, and is not supported by, substantial evidence in the record.

The DEIR states that mitigation would ensure that construction noise increases are not substantial. (DEIR, p. 4.12-12.) This is the qualitative standard; the DEIR must also address the quantitative standard. The DEIR acknowledges that construction noise could well exceed the 85 dbA quantitative standard. (DEIR, p. 4.12-12.) Courts have repeatedly invalidated EIRs that rotely rely on standards that do not actually reflect environmental impacts. (*See, e.g., East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281 [struck down an EIR which concluded that traffic impacts were not significant based on plan policies allowing level of service E or F conditions in certain downtown locations] and *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099 [EIR’s reliance on a threshold that failed to account for project impacts was overturned].) An EIR must explain why an impact is not significant. (Public Resources Code § 21100(c); CEQA Guidelines § 15128.) And “the fact that a particular environmental effect meets a particular threshold cannot be used as an automatic determinant that the effect is or is not significant.” (*Protect the Historic Amador Waterways, supra*, 116 Cal.App.4th at 1109.)

While acknowledging that the use of pile drivers and vibratory rollers could result in vibration impacts, the DEIR concludes that such impacts would not be significant because “construction in Los Gatos would generally not involve the use of pile drivers” and based on a portion of Mitigation Measure N-2 requiring that the use of vibratory rollers be “avoid[ed]” within 50 feet of buildings that are susceptible to damage from vibration. (DEIR, p. 4.2-16.) To be legally adequate, there must be substantial evidence that mitigation will actually result. (*California Clean Comm. v. City of Woodland* (2014) 225 Cal.App.4th 173, 197 [fee to offset urban decay impacts was not linked to any specific mitigation]; *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1122 [traffic impact fee was not adequate mitigation because no plan for requiring fees from

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other projects or definite commitment to make highway improvements was in place.].)<sup>21</sup> Given that there is no prohibition on the use of pile drivers or vibratory rollers, such construction equipment could be used, and if used, would result in significant but unacknowledged impacts. Indeed, pile drivers appear to have been used in connection with recent construction projects.

Referencing the Transportation Analysis, the DEIR states that the 2040 General Plan will result in an increase of over 27,000 trips.<sup>22</sup> (DEIR, p. 4.12-14.) Because this is less than a 10 percent increase, the DEIR concludes that the increased roadway noise levels will be less than significant. There is no reference to the 27,000 trip figure in the Transportation Analysis. Even if there were, the DEIR contains no analysis of increased noise levels, especially on roadways where roadway noise already exceeds established levels. (See 2040 General Plan, p. 8-25.) The DEIR's reliance on a ratio theory to justify its less than significant impact conclusion violates CEQA. (CEQA Guidelines § 15130; *Kings County Farm Bureau, supra.*)

There is no discussion of other operational noise impacts, as required. (CEQA Guidelines, Appendix G, Section XIII [Would the project result in “[g]eneration of a substantial . . . permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?”].) For instance, the Noise analysis does not discuss or address the requirement that new development be located in areas where noise levels are appropriate for the proposed use. (2040 General Plan, pp. 8-26 to 8-27.) There is also no cumulative discussion of operational noise impacts or roadway noise levels, also as required. (CEQA Guidelines § 15130 [“An EIR shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable.”].)

## 12. Population and Housing

While acknowledging that the Project would induce substantial population growth (e.g., growth exceeding ABAG population forecasts), the DEIR claims that this impact is not significant because the growth enabled by the 2040 General Plan will not likely materialize. (DEIR, pp. 4.13-6 to 4.13-7, 4.13-9, 5-1) As noted in Section I.A above, the DEIR is invalid because it fails to consider the environmental impacts of the Project's maximum potential buildout. (See also Exhibit A.) Even assuming that there were only to be 3,738 new housing units built, this would still exceed ABAG's population forecasts by nearly 30 percent. (DEIR, pp. 4.13-6, 5-1.)<sup>23</sup>

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<sup>21</sup> (*Accord, Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 173 and *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692.)

<sup>22</sup> The Transportation Analysis, labeled a Draft, is attached as Appendix C to the DEIR and not Appendix TRA as indicated on page 4.12-9.

<sup>23</sup> At page 5-1, the DEIR mistakenly states “the environmental effects associated with future development in or around *Beverly Hills* would be addressed as part of the CEQA environmental review for such development projects.” The DEIR also neglects to mention the significant unavoidable VMT impacts under its discussion of Irreversible Environmental Effects in Section 5.2.

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The fact that development may occur in infill areas does negate the significant and unmitigated impacts related to population growth. (DEIR, p. 4.13-7.) Reliance on the jobs-housing ratio is irrelevant and unproven. If anything, the 2040 General Plan will exacerbate the existing jobs-housing imbalance by adding far more housing (at least 3,738 units) than jobs (1,810). (DEIR, pp. 2-15, 2-16, 4.11-12.)

The DEIR ignores the potential displacement impacts that could result from the increased densities allowed by the 2040 General Plan. The DEIR's conclusion that Impact PH-2 would result in less than significant impacts is not supported by substantial evidence, as required.

### **13. Public Services and Recreation**

In Section 4.14.1.a, the DEIR states that the County Fire Department “provides Insurance Services Office (ISO) Class 2/2Y services” for the Town and other nearby communities. (DEIR, p. 4.14-1.) It is unclear what this refers to or its relevance to the environmental impact analysis.

The DEIR acknowledges that response times for structure fires currently does not meet state-specified standards. (DEIR, p. 4.14-2.) The DEIR also acknowledges that most of the Town is within a high or very high fire severity zone. (DEIR, pp. 4.14-3 to 4.14-4.) Under Impact PSR-1, the DEIR states that “fire and policing staffing needs are likely to increase which could require the construction of new facilities.” (DEIR, p. 4.14-21.) But because the location of such facilities is unknown, the DEIR does not engage in any environmental analysis of these facilities whatsoever. (*Id.*) Instead, the DEIR states that CEQA review for such facilities would occur at a later time. (DEIR, p. 4.14-23.) This deferral of any analysis, even at a program level, fails to comply with CEQA. (CEQA Guidelines §§ 15126.2, 15168; *Cleveland National Forest v. San Diego Assn. of Governments* (2017) 17 Cal.App.5th 413, 440.)

### **14. Transportation**

Instead of decreasing VMT by at least 11.3 percent as needed to comply with the Town's VMT threshold, the 2040 General Plan increases VMT by approximately 19 percent. (DEIR, pp. 4.15-18, 4.15-23.) The DEIR does not quantify the reductions in VMT from the Individual and Town-Wide measures referenced in Mitigation Measure T-1.<sup>24</sup> Without knowing the reductions from these measures, one cannot know whether additional Individual, Town-Wide, or Regional measures are needed.

The Governor's Office of Planning & Research lists several VMT Reduction Strategies.<sup>25</sup> The DEIR should explain in detail why none of the State's recommended strategies are feasible. It is well settled that an EIR cannot simply declare an impact significant and unavoidable without

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<sup>24</sup> The reductions may be quantified in Appendix D to the Transportation Analysis, but that information was not included in the version of the DEIR circulated for public review.

<sup>25</sup> (<http://www.opr.ca.gov/ceqa/updates/sb-743/>)



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considering and imposing feasible mitigation measures. (Public Resources Code § 21081(a)(3); CEQA Guidelines § 15091(a)(3); *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 982; *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 369.)

Threshold 5 asks whether the Project would “[c]onflict with an applicable congestion management program, including but not limited to level of service standards and travel demand measures, or other standards established by the County congestion management agency for designated roads and highways.” (DEIR, p. 4.15-17.) The DEIR contains no analysis whatsoever of this threshold. The Transportation Analysis states that several intersections and freeway segments will operate at deficient level of service (“LOS”) standards compared to the applicable LOS thresholds. (Transportation Analysis, Tables 3-4, 7-2, and 7-3; 2040 General Plan, p. 5-15.)<sup>26</sup> The Air Quality analysis likewise states that the Project would conflict with the County’s Congestion Management Plan “due to the forecast exceedance in LOS standards for a number of roadways.” (DEIR, p. 4.3-17.) But the DEIR does not disclose or address these impacts. The Transportation Analysis acknowledges a significant unavoidable impact to transit vehicle operations due to increased delays at intersections. The DEIR likewise does not disclose or address this impact.

Even if LOS were not treated as a CEQA impact (despite the DEIR’s inclusion of it as such in its Significance Thresholds), a conflict with LOS standards still constitutes an inconsistency with the General Plan. (2040 General Plan, p. 5-15.) Failure to comply with even *one* general plan policy is enough to render a project “inconsistent” with the general plan and any project approvals invalid. (See, e.g., *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 789 [project’s failure to comply with a single general plan provision calling for use of a prescribed traffic study methodology]; accord, *Spring Valley Lake Assn. v. City of Victorville* (2016) 248 Cal.App.4th 91, 101 [invalidating city’s approval of development because of failure to show consistency with one general plan policy] and *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 640-642 [finding a project to be inconsistent with an agency’s general plan based on its failure to comply with a single policy requiring the agency to “coordinate” with specified resource agencies on mitigation for impacts to special-status species].) The Project conflicts with the Town’s LOS policies and is inconsistent with the General Plan.

The DEIR relies on a ratio theory to justify its conclusion that cumulative VMT impacts will be less than significant. (DEIR, pp. 4.15-30 to 4.15-31.) This violates CEQA. (CEQA Guidelines § 15130; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692.) The DEIR also wrongly states that the impacts related to traffic hazards would be less than significant. (DEIR, p. 4.15-31.) Those impacts were not studied, even at a program level.

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<sup>26</sup> The Transportation Analysis does not study the Project’s impacts on freeway segments and also ignores the request in Caltrans’s August 7, 2020 comment letter to study specified freeway on- and off-ramps. (DEIR, Appendix A.)

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This section contains some typographic errors. The first line of page 4.15-18 mistakenly refers to Threshold 3 instead of Threshold 2. The first sentence on page 4.15-24 is missing a word or words. In the third sentence of page 4.15-24, “implement” should be “implemented.”<sup>27</sup> On page 4.15-31, the next to last sentence of the first full paragraph is missing a word or words. In the fourth sentence of the last paragraph, “intersection” should be “intersections.”

## **15. Utilities and Service Systems**

Threshold 1 does not consider the impacts of relocated utilities as specified in Section XIX of Appendix G to the CEQA Guidelines.

The discussion of Impact U-1 is required to be based on a Water Supply Assessment (“WSA”) that analyzes the Project’s impacts to available water supply under normal, single dry, and multiple dry years. (Water Code § 10910; CEQA Guidelines § 15155 [WSA required for projects proposing more than 500 dwelling units or 250,000 square feet of non-residential development].) The WSA is supposed to be circulated for public review and comment along with the DEIR. (*Id.*) The DEIR is deficient and must be revised and recirculated for public review on this ground alone.

Based on data from a *Draft* 2016 UWMP,<sup>28</sup> the DEIR contends that water demand will exceed supplies in 2040 conditions. (DEIR, pp. 4.16-1 to 4.16-2.) The SJWC adopted its 2020 UWMP in June 2021.<sup>29</sup> It contains different demand and supply figures than those relied on by the DEIR. The DEIR must be updated to reflect these new figures.

Moreover, in its 2020 UWMP, SJWC acknowledges the very real potential for water demand to exceed water supplies. In Section 2.7 entitled “Risks Related to Water Supply Availability,” the UWMP states:

Valley Water has indicated that the water supply analysis in their 2020 UWMP presents greater supplies than may be available in reality and should be interpreted as providing a more optimistic picture. The same caveat applies to the water supply analysis in SJW’s 2020 UWMP. Notably, the water supply analysis assumes an adequate number of Valley Water’s recommended water supply projects are implemented and benefits as currently expected are realized, and assumes higher Delta-conveyed imported supplies to Valley Water than may be available.

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<sup>27</sup> On page 4.15-18, the VMT thresholds are identified as derived from a 2021 document whereas on page 4.15-24 this is referred to as a July 2020 document.

<sup>28</sup> The impact analysis later states that it is based on San Jose Water Company’s 2015 UWMP and that San Jose Water Company is currently updating the UWMP. (DEIR, p. 4.16-17.) The 2020 UWMP was adopted in June 2021, prior to the release of the DEIR. At the very least, the DEIR analysis must be updated to reflect the 2020 UWMP.

<sup>29</sup> (<https://www.sjwater.com/sites/default/files/2021-07/2020%20UWMP%20FINAL%20with%20Appendices.pdf>.)

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Additional details on the caveats to the water supply reliability analysis can be found in Section 7.2.1.

In Section 7.2.1, the UWMP acknowledges that the water supply reliability analysis depends on several key assumptions: (1) SCVWD implementing various projects as well as achieving an additional 35,000 acre feet from conservation measures, (2) groundwater being drawn down to levels not representing a sustainable long-term groundwater condition, and (3) no reductions in imported water allocations due to climate change or to reflect future environmental regulations. (UWMP, p. 7-7.) Given these uncertainties and assumptions, the UWMP states that the estimated water supplies “should be interpreted as providing a more optimistic picture than what the future may look like in reality.” (*Id.*)

The above highly pertinent information pertaining to the uncertainty of future water supplies should have been acknowledged and addressed in the DEIR. Given the uncertainty associated with future water supplies generally and for the Project specifically, the DEIR should have examined the potential impacts of alternative water supply sources. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412.)

The DEIR admits that water supply would be insufficient to meet water demand during multiple-dry year conditions. (DEIR, p. 4.16-18.) After discussing conservation measures and recycling (infrastructure for which does not exist),<sup>30</sup> the DEIR states that “[b]ased on water supply projections based in the UWMP, the SJWC’s water supply would be sufficient to meet the projected demand of the development envisioned in the 2040 General Plan.” (DEIR, p. 4.16-18.) As noted above, the DEIR is relying on rescinded and superseded information. SJWC has acknowledged risks related to water supply availability in its 2020 UWMP.

Irrespective of which UWMP the Town relied on, those UWMPs are based on ABAG population projections. The DEIR acknowledges that the 2040 General Plan exceeds ABAG projections by nearly 30 percent. (DEIR, p. 4.13-6.) Because SJWC has not included the larger forecasted population in their demand projections, the DEIR cannot rely on the UWMP for analyzing the Project’s water demand.

The DEIR states that “[a]pproximately half of the Town’s water supply is local surface water . . .” (DEIR, p. 4.16-1.) In actuality, the primary sources of SJWC’s water supply is imported water and groundwater. (2040 General Plan, pp. 6-3 to 6-4; Table 4.16-1 at DEIR, p. 4.16-1.)

The analysis of solid waste impacts (Impact U-4) inconsistently states that the Guadalupe Landfill has “sufficient capacity” and is “near capacity.”<sup>31</sup> Relying on the former statement, the

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<sup>30</sup> (2040 General Plan, p. 6-4 [acknowledging that the Town “currently does not have the infrastructure in place to provide recycled water (purple pipe) to residents.”].)

<sup>31</sup> The DEIR refers to this landfill as a “Call II” landfill, whereas the 2040 General Plan refers to it as a “Class III” landfill. (DEIR, p. 4.16-23; 2040 General Plan, p. 6-9.)

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DEIR concludes the Project will result in a less than significant impact. (DEIR, p. 4.16-24.) The DEIR must analyze what impacts the Project has on the “near capacity” landfill.

## **16. Wildfire**

The number of buildings and persons in high and very high hazard zones in Table 4.17-1 appears to be underreported given the accompanying map and statement that “[n]early all of the southern and eastern portions of Town Planning Area are in high or very high hazard areas.” (DEIR, pp. 4.17-1, 4.17-3.)

The analysis of wildfire does not discuss or address 2040 General Plan Goal HAZ-2 and associated policies. Such policies require the provision of secondary emergency access and adequacy of water storage for fire protection. As noted above, the DEIR’s analysis of the Project’s impacts to water supply is inadequate.

Threshold 5 ask whether the Project would expose people or structures to a significant risk of loss, injury or death involving wildfires. (DEIR, p. 4.17-5.) There is no analysis of this Threshold in the Impact analysis.

### **D. The DEIR fails to analyze a reasonable range of alternatives to the Project.**

Contrary to CEQA, the DEIR does not analyze a reasonable range of alternatives that would meet most of the basic project objectives while avoiding or significantly reducing the project’s significant impacts. (CEQA Guidelines § 15126.6.)

The DEIR considers four alternatives to the Project.<sup>32</sup> These include the Low Growth Alternative (Alternative 1), Medium Growth Alternative (Alternative 2), High Growth Alternative (Alternative 3) and the mandatory No Project Alternative (Alternative 4). The DEIR states that these alternatives derive from the 2040 General Plan Land Use Alternatives Report (“Alternatives Report”). (DEIR, p. 6-2.) Table 6-1 wrongly lists the 2040 population estimated under the ABAG projections as 30,050, i.e., less than the 2018 population estimate of 31,472.<sup>33</sup>

Section 6.1.2 describes the Opportunity Areas and notes that under the Alternatives Report, the “alternatives were focused around seven Opportunity Areas (OA) in the Planning Area” which “have the existing infrastructure necessary to reasonably assume . . . additional housing units.” (DEIR, pp. 6-3 to 6-4.) The discussion goes on to state that “due to the complex regulatory structure,” the OAs were eliminated and instead growth was applied to “specific areas within Town that would have unique urban design and architectural applications.” (DEIR, p. 6-4.)

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<sup>32</sup> On page 1-8, the DEIR incorrectly states it only evaluates three alternatives.

<sup>33</sup> The DEIR also inconsistently portrays buildout population in 2040. In some places, it is stated as 42,021 (DEIR, pp. 4.13-6, 5-1); in other places, it is stated as 39,221 (DEIR, pp. 2-15, 4.14-24, 4.16-17, 4.16-23, 6-20).

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Notwithstanding this statement, all of the alternatives discuss and analyze the increase in density inside and outside Opportunity Areas. As such, there is no valid comparison to the proposed Project, as required, but instead to a prior project that was purportedly eliminated from consideration.

Further, there are two significant unavoidable environmental impacts to GHGs and VMT. The reader of the alternatives section cannot tell whether any of the alternatives, even the No Project Alternative, would avoid or reduce these significant impacts. As such, the alternatives fails in its fundamental purpose of discussing alternatives “capable of avoiding or substantially lessening any significant impacts of the project . . .” (CEQA Guidelines § 15126.6(b).) While focusing only on 2,000 housing units as its objective, the DEIR also narrowly confines and constrains the alternatives analysis contrary to CEQA. *North Coast Rivers Alliance v. A.G. Kawamura* (2016) 243 Cal.App.4th 647 [alternatives analysis predicated on impermissibly narrow list of project objectives is invalid].<sup>34</sup>

The VMT discussion in Alternative 1 states that it would result in an estimated 22.65 VMT per service population, but the baseline is 36.4 VMT per service population so this does not appear to be accurate. (DEIR, p. 6-8.) It also wrongly states that “compliance with 2040 General Plan goals and policies would result in reduced impacts on VMT but would remain a less than significant impact similar to the proposed General Plan.” (DEIR, p. 6-8.) The DEIR acknowledges that “VMT impacts of the 2040 General Plan would be significant and unavoidable, even after implementation of mitigation.”<sup>35</sup> (DEIR, p. 4.5-26.)

The Air Quality discussion of Alternative 2 compares this alternative to the No Project Alternative, instead of the Project, as required. Page 6-12 contains a typo: strike “the” after “develop” in the first line of the second paragraph under Hazards and Hazardous Materials. The VMT for Alternative 2 is reported as 22.20 VMT per service population, which again appears incorrect based on the baseline of 36.4 VMT per service population. (DEIR, p. 6-14.)

The discussion of Alternative 3 contains inconsistent and incorrect references to the number of residents (5,527 instead of 7,622) and housing units (3,170 versus 3,176.) (DEIR, pp. 6-15 to 6-16.) The discussion states that Alternative 3 would result in increased impacts to hydrology/water quality, public services, and utilities/service systems compared to the Project but does not explain how or why this is the case. (DEIR, pp. 6-17 to 6-19.) The VMT for Alternative 2 is reported as 21.48 VMT per service population, which again appears incorrect based on the baseline of 36.4 VMT per service population. (DEIR, p. 6-19.)

In an illogical manner, the DEIR asserts that the No Project Alternative would result in greater impacts to air quality, cultural resources, geology/soils, GHG emissions, land use,

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<sup>34</sup> (*Accord, City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438 and *Kings County Farm Bureau, supra*, 221 Cal.App.3d at 736.)

<sup>35</sup> The last line of Alternative 1 contains a typo, “Alternative a” should read “Alternative 1.” (DEIR, p. 6-9.)

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transportation, tribal cultural resources, utilities/service systems, and wildfire. (DEIR, pp. 6-21 to 6-25.) The only category identified as resulting in fewer impacts compared to the Project is Aesthetics. (DEIR, p. 6-26.) Instead of comparing Alternative 4's VMT to the Project, the text states "Alternative 4 would result in slightly reduced impacts compared to the 2040 General Plan and would remain significant and unavoidable as a result of *increased traffic intersection impacts* compared to the 2040 General Plan." (DEIR, p. 6-24.)

**E. The DEIR fails to consider or properly analyze significant cumulative impacts.**

The DEIR improperly conflates the analysis of project-level and cumulative impacts. The DEIR states that the project-level analysis and cumulative analysis are one and the same. (DEIR, p. 3-2 ["[T]he analysis of project impacts also constitutes the cumulative analysis."]; DEIR, p. 4-2 ["[T]he analysis of project impacts effectively constitutes the cumulative analysis."].) An EIR must separately consider the project-level impacts and cumulative impacts. (Public Resource §§ 21083(b)(2), 21100; CEQA Guidelines § 15130.) The DEIR appears to consider the impacts of only the General Plan and no other reasonably foreseeable development, as required. (*San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 74.)

The discussion of cumulative impacts in the DEIR is also flawed. The DEIR should have first asked whether the impact of the 2040 General Plan in combination with other reasonably foreseeable development is significant. (CEQA Guidelines § 15130.) If so, it then should have considered whether the 2040 General Plan's contribution is cumulatively considerable. (*Id.*) Yet, the DEIR frequently concludes that the cumulative impact is less than significant *and* that the project's contribution is less than cumulatively considerable with mitigation. (DEIR, pp. 4.5-15, 4.7-26, 4.11-21 to 4.11-22, 4.13-9, 4.14-26, 4.15-31.)

**F. The DEIR must be recirculated for public review and comment.**

The DEIR failed to analyze the "whole of the project," including the significant amount of new development that would be enabled by the 2040 General Plan. (*See* Section I.A, *supra*; *see also Exhibit A.*) The DEIR also failed to adequately analyze the Project's air quality, GHG, noise, transportation, utilities/service systems, and other resource topics, as detailed above. Moreover, the analysis of alternatives was deficient because it failed to analyze a reasonable range of alternatives that would avoid or substantially lessen the Project's significant environmental impacts. For any of these reasons, the DEIR was fundamentally and basically flawed and conclusory in nature such that meaningful public review and comment were precluded. Moreover, had the analysis been done correctly, the DEIR would have disclosed new or substantially more severe environmental impacts. The DEIR must be revised and recirculated for public review before the Town can legally take action on the Project. (Public Resources Code § 21092.1; CEQA Guidelines § 15088.5(a).)

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## **II. The Town Has Not Complied with Mandatory Noticing Requirements.**

Contrary to CEQA Guidelines Section 15087, the Town's Notice of Completion and Availability of the DEIR fails to include: (1) a list of the significant environmental effects of the Project, (2) the address where copies of the DEIR and all documents incorporated by reference in the DEIR are available for public review, and (3) whether the Project includes hazardous materials release sites. On this basis alone, a new Notice of Completion and Availability with a new public review and comment period on the DEIR must be provided.

Additionally, it is unclear whether the Town provided notice of the 2040 General Plan and the DEIR to all of the agencies listed in Government Code Section 65352. Those agencies should have been provided copies of the 2040 General Plan and the DEIR and given at least 45 days to review and comment on those documents. (Gov. Code § 65352(b).)


## **III. Conclusion**

While it is plain that an EIR is needed in connection with the proposed Project, it is also clear that the DEIR should be more complete than the version that was provided for public review and comment. The current version of the DEIR fails to adequately analyze the "whole of the project," thereby thwarting effective public review and comment on the Project. In several key areas, it fails to thoroughly and adequately identify the Project's significant environmental impacts and propose feasible mitigation measures and alternatives to avoid or substantially lessen such impacts. As such, the DEIR fails to comply with CEQA, and the DEIR must therefore be revised, corrected, and recirculated with all of the analysis and other content required by CEQA before the Town may lawfully take action on the Project.

Thank you for your consideration of LGCA's comments on the DEIR. Please do not hesitate to contact the undersigned with any questions concerning this correspondence.

Very truly yours,

RUTAN & TUCKER, LLP



Matthew D. Francois

cc (via e-mail):

Honorable Marico Sayoc, Mayor, and Members of the Town Council  
Laurel Prevetti, Town Manager  
Joel Paulson, Community Development Director  
Robert Schultz, Town Attorney

# **Exhibit A**



**Maximum Buildout Potential Under 2040 General Plan**

| <b>Land Use</b>                | <b>Acres<sup>1</sup></b> | <b>Density</b>                        | <b>FAR<sup>2</sup></b>                    |
|--------------------------------|--------------------------|---------------------------------------|---|
| Low-Density Residential        | 4,460.93                 | 1-12 du/acre<br>4,460.93-53,531.16 du | ---                                       |
| Medium-Density Residential     | 200.32                   | 14-24 du/acre<br>2,804.48-4,807.68 du | ---                                       |
| High-Density Residential       | 77.10                    | 30-40 du/acre<br>2,313-3,084 du       | ---                                       |
| Mixed-Use                      | 100.11 <sup>3</sup>      | 30-40 du/acre<br>3,003.3-4,004.4 du   | Up to 3.0<br>13,082,374.8 ft <sup>2</sup> |
| Neighborhood Commercial        | 133.40                   | 10-20 du/acre<br>1,334-2,668 du       | Up to 1.0<br>5,810,904 ft <sup>2</sup>    |
| Community Commercial           | Unknown                  | 20-30 du/acre<br>Unknown du           | Up to 3.0<br>Unknown ft <sup>2</sup>      |
| Central Business District      | 4.18                     | 20-30 du/acre<br>83.6-125.4 du        | Up to 2.0<br>364,161.6 ft <sup>2</sup>    |
| Office Professional            | 136.38                   | 30-40 du/acre<br>4,091.4-5,455.2 du   | Up to 1.0<br>5,940,712.8 ft <sup>2</sup>  |
| Service Commercial             | 10.55                    | 20-30 du/acre<br>211-316.5 du         | Up to 1.0<br>459,558 ft <sup>2</sup>      |
| Light Industrial               | 42.39                    | ---                                   | Up to 1.0<br>1,846,508.4 ft <sup>2</sup>  |
| Public/Quasi Public            | 415.74                   | ---                                   | Up to 1.0<br>18,109,634.4 ft <sup>2</sup> |
| Parks/Open Space               | 4,075.90                 | ---                                   | ---                                       |
| Agriculture                    | 311.88 <sup>4</sup>      | 1 du/ 20 acre<br>15.594 du            | ---                                       |
| Streets/Right-of-Way/Utilities | 1,294.85                 | ---                                   | ---                                       |
| Private Recreation             | 144.87                   | ---                                   | ---                                       |
| Vacant                         | 691.43                   | ---                                   | ---                                       |
| <b>TOTAL</b>                   | <b>11,688.02</b>         | <b>18,302-74,007.934 du</b>           | <b>45,613,854 ft<sup>2</sup></b>          |

<sup>1</sup> Unless specifically noted, Acre figures used are from Table 4.11-1 (Existing Land Use within the Planning Area).

<sup>2</sup> Calculated by converting existing acres to square footage.

<sup>3</sup> Using Acres figure from Table 4.2-1 (General Plan Land Use Designation Summary).

<sup>4</sup> Using Acres figure from Table 4.2-1 (General Plan Land Use Designation Summary).

**From:** jvannada

**Sent:** Wednesday, December 1, 2021 8:05:42 PM

**To:** Clerk; Town Manager; Arn Andrews; Mary Badame; Maria Ristow; Marico Sayoc; Rob Rennie; Matthew Hudes; Joel Paulson

**Subject:** Council Study Session, 12-7-2021 GENERAL PLAN SURVEY RESULTS

To: Shelley Neis, Town Council, Staff

For: Tuesday, December 7, 2021 Town Council Study Session @

Attached to this email you will find the slides that we presented to our group to give them the results of our October, 2021 community survey. The purpose of the survey was to determine the residents thoughts and opinions of the 2040 Draft General Plan. These are the results of a survey paid for by the Los Gatos Community Alliance as conducted by EMC Research, San Francisco.

As you will see in another email from us and included in the Council's 12/7, packet we have been very concerned about the escalation of the number of housing units to be planned for the 6<sup>th</sup> cycle. Several Councilmembers and the staff have told us this will never happen and the housing will be reduced. But reduced to what? Never before have we seen the town opening so widely for development. Perhaps "it never happened before" because the old rules and permitting made it too laborious. Now the developers are operating under a whole new set of rules. Who knows what's next? Why is Los Gatos the only town to increase the number of planned units, nearly doubling the required amount when the Community is already built out? We advocate growing incrementally with reviews every 5 years.

As of Sept 2019, we were given the impression that the 2020 General Plan was serving us well and it would be fine-tuned to create the 2040 plan. About one year later, an unanticipated escalation started to form, eventually raising the RHNA planned units of 1993 to planning for 3904! One year after that in October of 2021, we decided that we had heard enough dissatisfaction from our fellow residents that we decided to incur the cost of another poll to measure the temperature of the Los Gatos residents.

We hired EMC Research out of San Francisco. This was the firm who had also conducted the poll when we presented two initiatives in the 2020 election; one for **Term Limits** and the other for a permanent citizens **Finance Commission**. Council told us no one wanted Term Limits and the Finance Commission would never pass.

Both passed easily. The polling results were extremely close to the actual voting results. Polling done right works well. We think this poll tells the Council what the citizens want. Please listen.

The reason for telling you this is that though polling is not always perfect, it has been a great tool for us to measure public sentiment and give us confidence that even if we do not have the buy-in from the politicians, the public understands that **we want what works for them**. We are giving you these results far in advance of when we intended because the results are important for all to understand.....now.

The attached survey will tell the Council and Planning Commission the thoughts and opinions of our residents as they pertain to the 2040 Draft General Plan. It absolutely should not be approved in its present form. Let's start at 1993 plus a buffer as required; then let's review how we're doing every 5 years, and last, make course corrections when necessary. You don't start big and hope to go small if you made a mistake.



# Survey of Voters in Los Gatos, CA 2040 General Plan Attitudes

*October 2021*

# Methodology

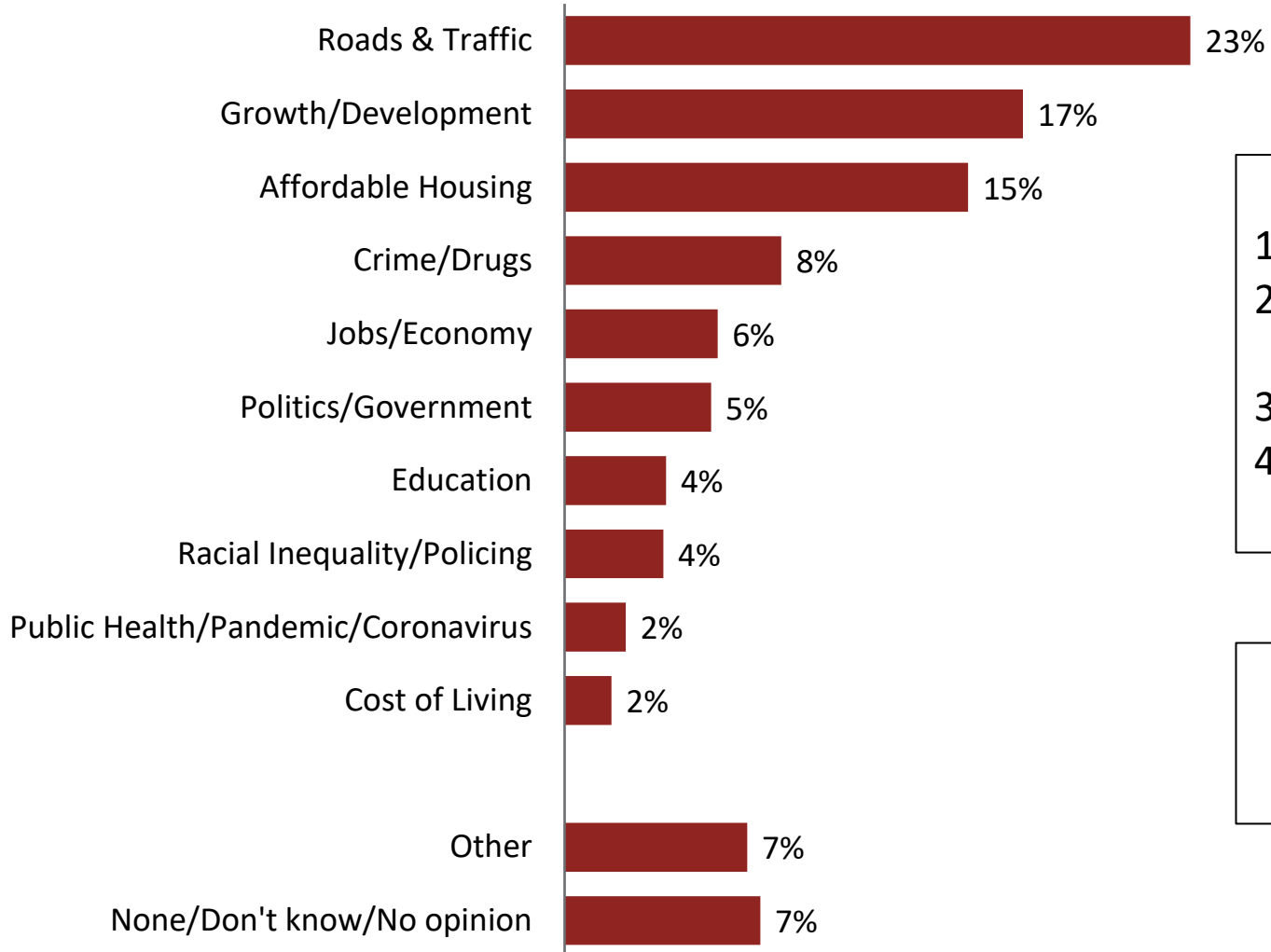
- ▶ Survey of Registered Voters in the town of Los Gatos, California
- ▶ Conducted October 12 – 18, 2021
- ▶ Mixed-mode methodology incorporating live telephone interviewing along with email and text-to-web responses
- ▶ 400 interviews; overall margin of error  $\pm 4.9$  percentage points

Please note that due to rounding, some percentages may not add up to exactly 100%.

# Key Findings

- ▶ Los Gatos voters have an overwhelmingly positive opinion of the Town's quality of life.
- ▶ There is significant concern about the availability and affordability of housing, especially among those who do not own a home.
- ▶ Traffic is also a widespread concern.
- ▶ Although awareness of the General Plan discussions is not widespread, among those who are familiar there is significant dissatisfaction.
- ▶ A majority of Los Gatos voters would like to see an increased supply of affordable housing, protection of open space and housing located near transit, jobs and commercial areas.

# Most Important Problem

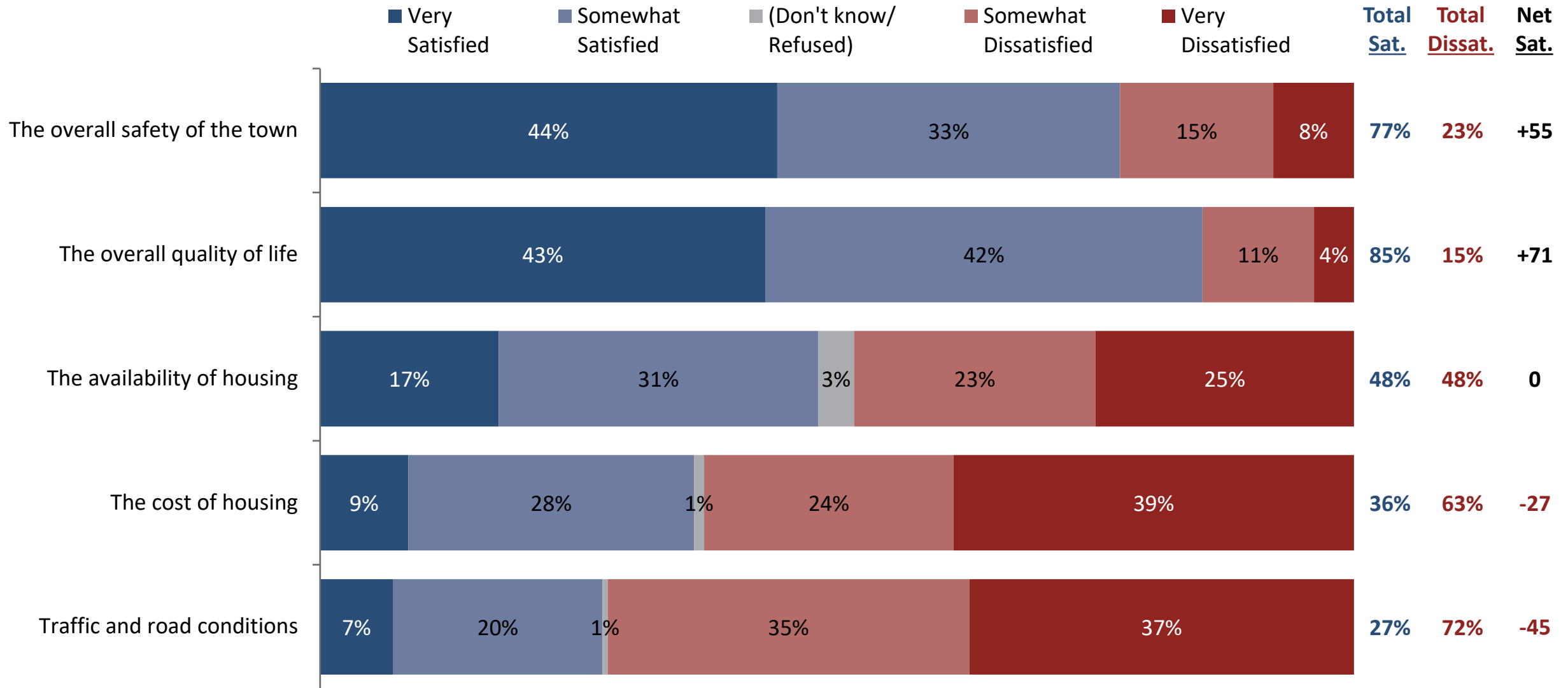


### Top issues from 2019:

1. Traffic – **52%**
2. Difficult for commerce/not business-friendly – **10%**
3. Affordable housing – **10%**
4. Overcrowding/Growth/Development – **8%**

Among those that **do not own a home**, the top issue mentioned is **affordable housing** at **21%**

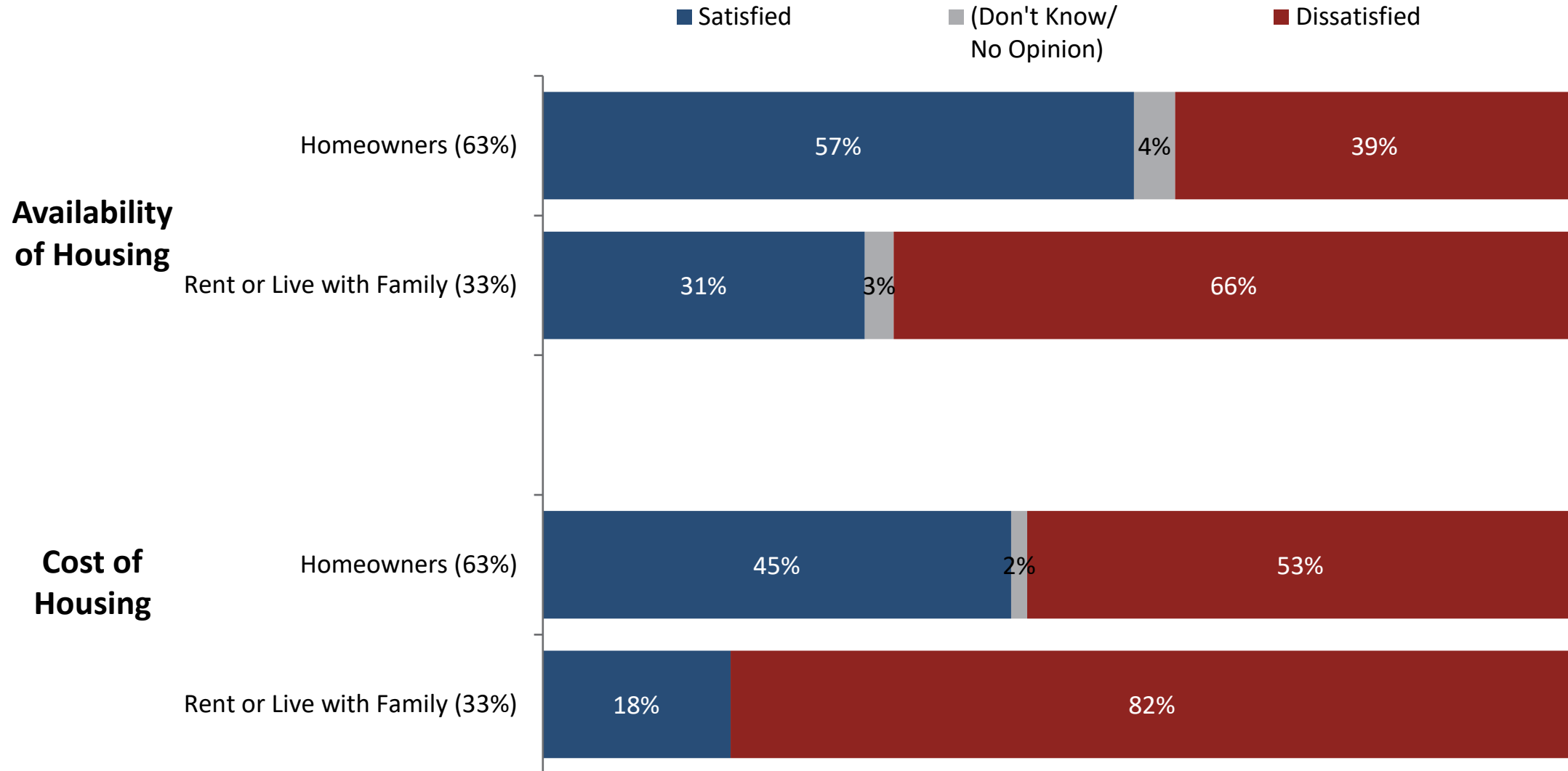
# Los Gatos Satisfaction Ratings



Would you say you are very satisfied, somewhat satisfied, somewhat dissatisfied or very dissatisfied with each of the following in Los Gatos?



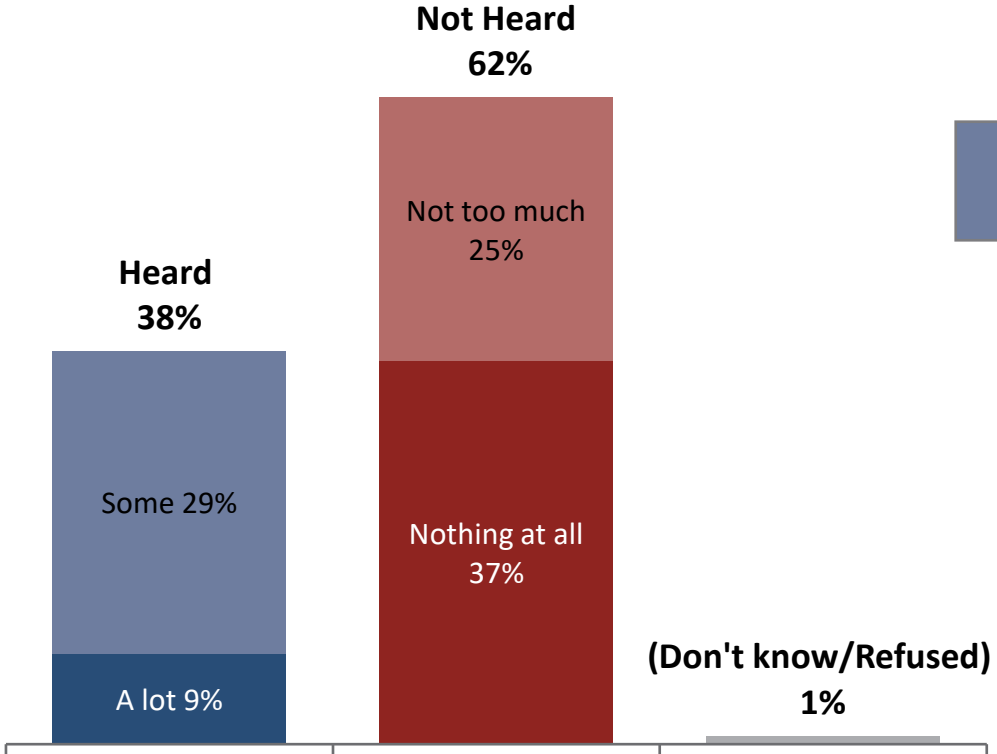
# Housing Satisfaction Ratings



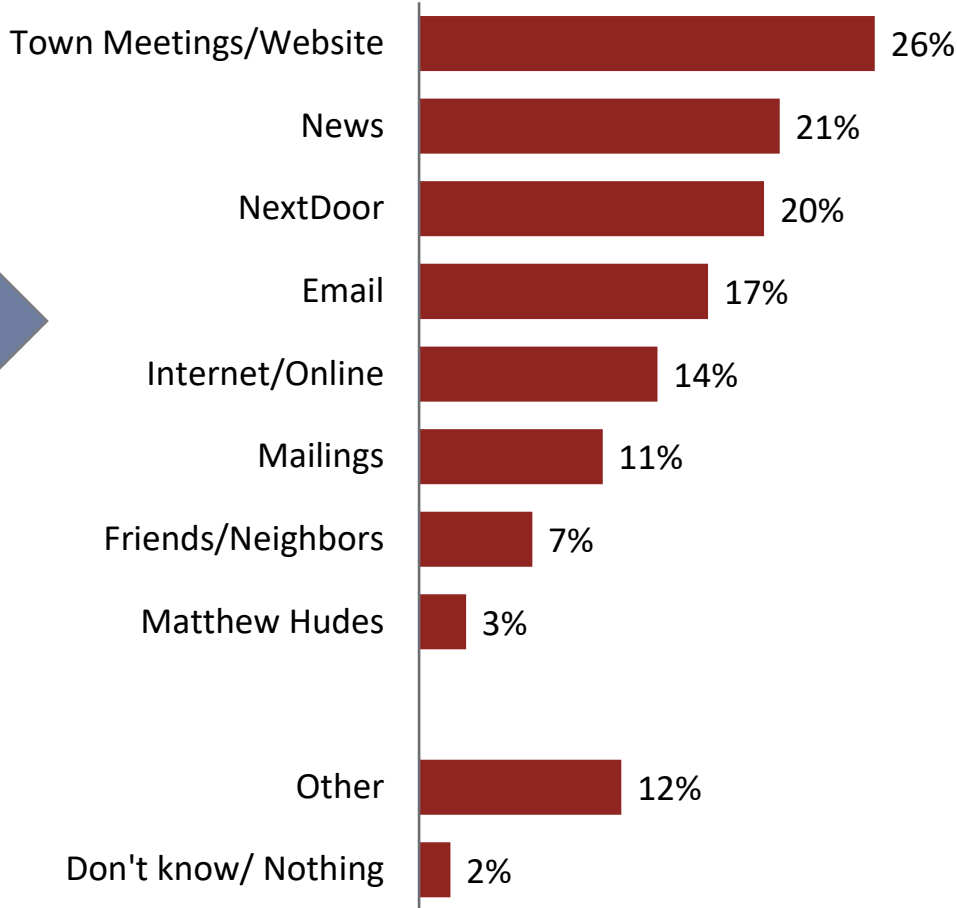
# Awareness of General Plan

How much, if anything, have you heard or seen recently about the Los Gatos 2040 General Plan?  
 Have you heard a lot, some, not too much, or nothing at all?

Heard (n=158)

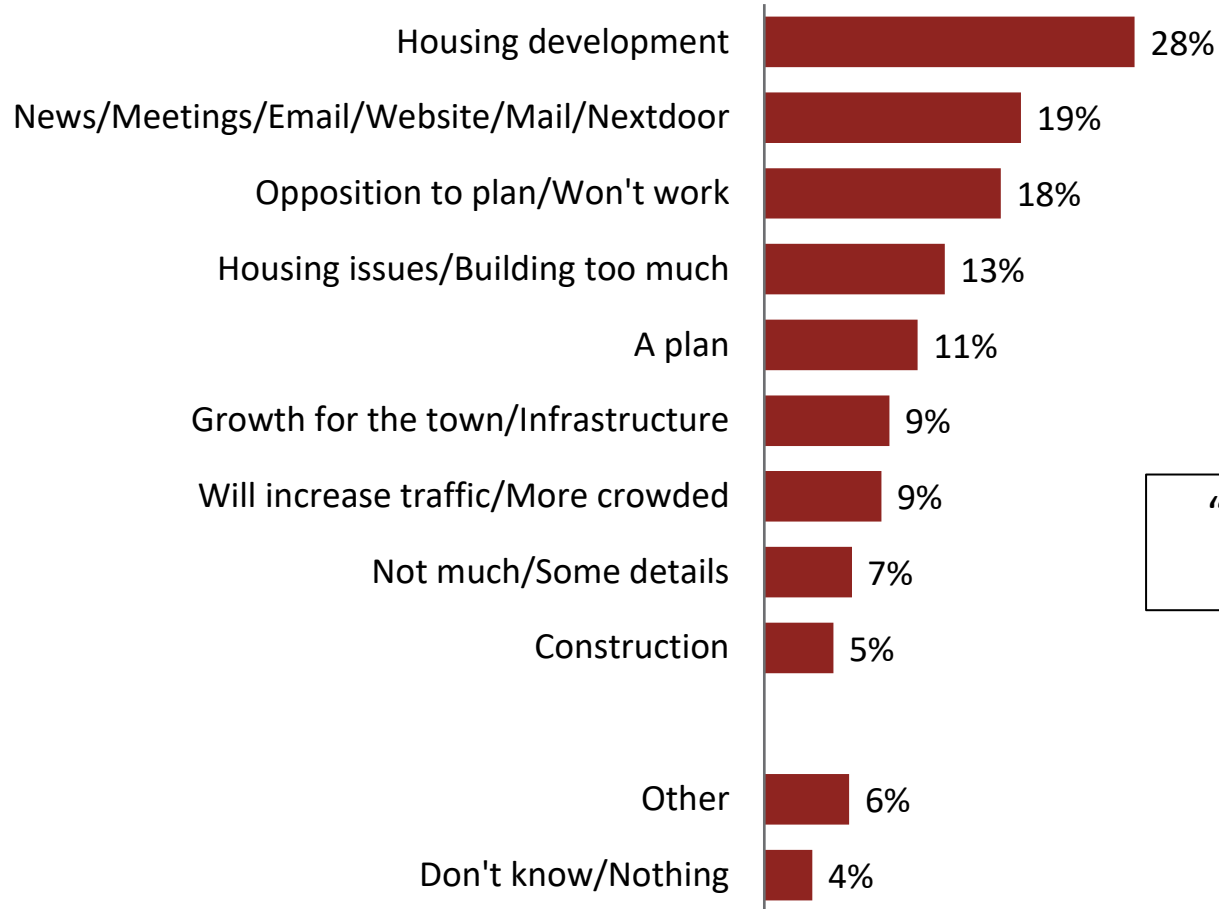


And where did you learn about the Town's 2040 General Plan?



# Sources of General Plan Information

## What have you heard or seen?



“A lot of things I am unhappy about.”

“The town plans to significantly build more housing units than required by state mandate. This will lead to further congestion and potential overcrowding at the schools. Additionally, where will the water for these homes come from?”

“Amount of houses planned, road changes, etc.”

“Lots of low income multi family units and lack of planning for traffic and population increase”

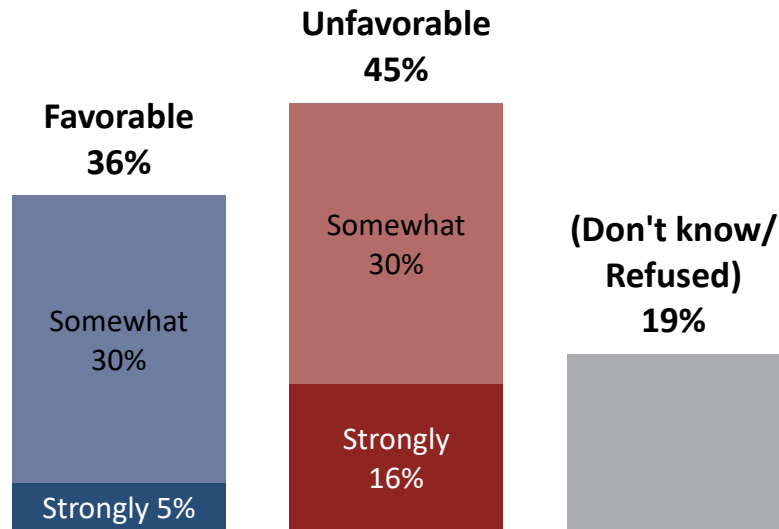
Asked of voters who are aware of the 2040 General Plan (n=158).

# Initial General Plan Rating

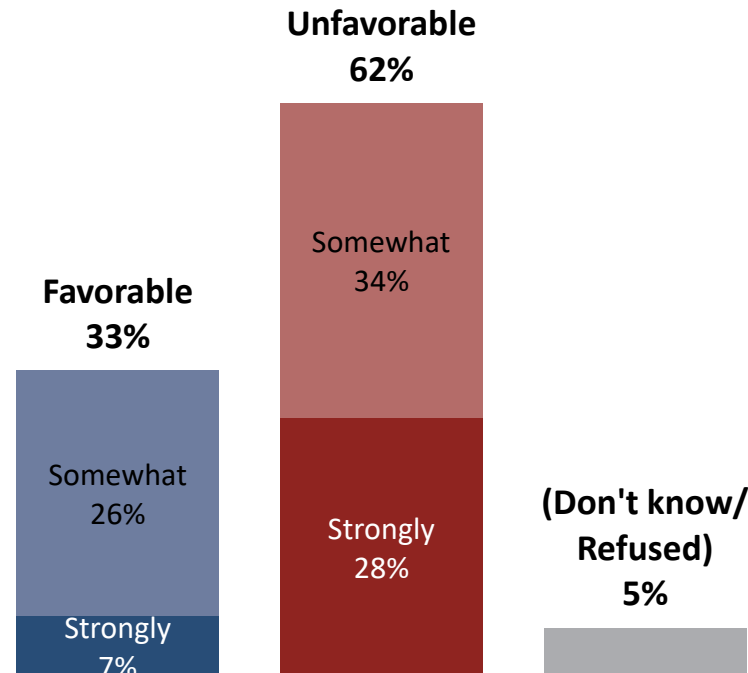
As you may know, the Los Gatos 2040 General Plan is a comprehensive strategy for the Town's future on issues like transportation, housing, the environment, and the economy.

Based on what you know today, do you have a favorable or unfavorable opinion of the Los Gatos 2040 General Plan?

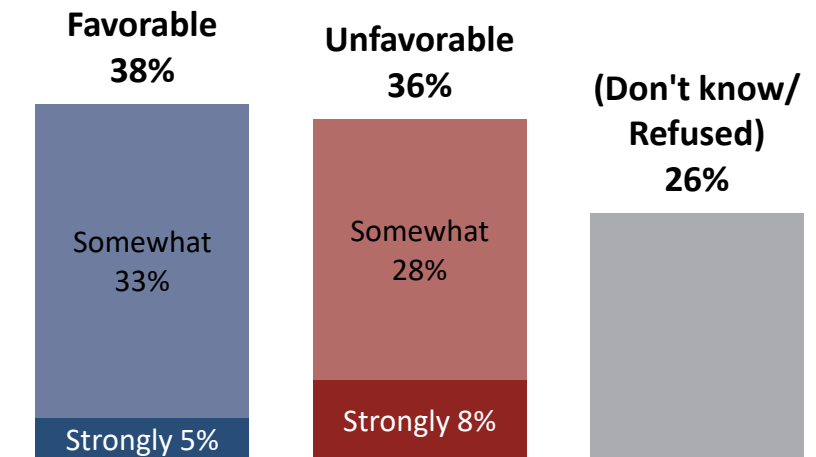
## Overall



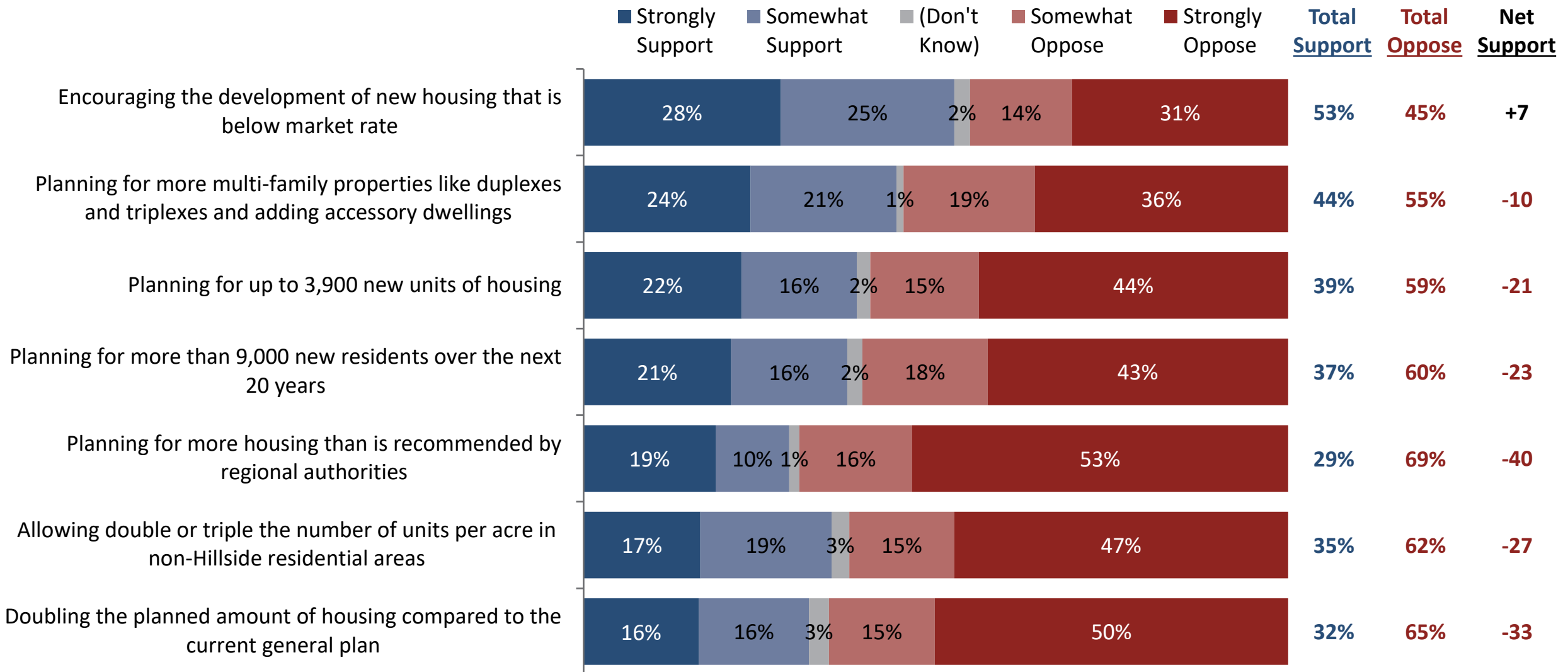
## Familiar with Plan (n=158)



## Not Familiar with Plan (n=239)

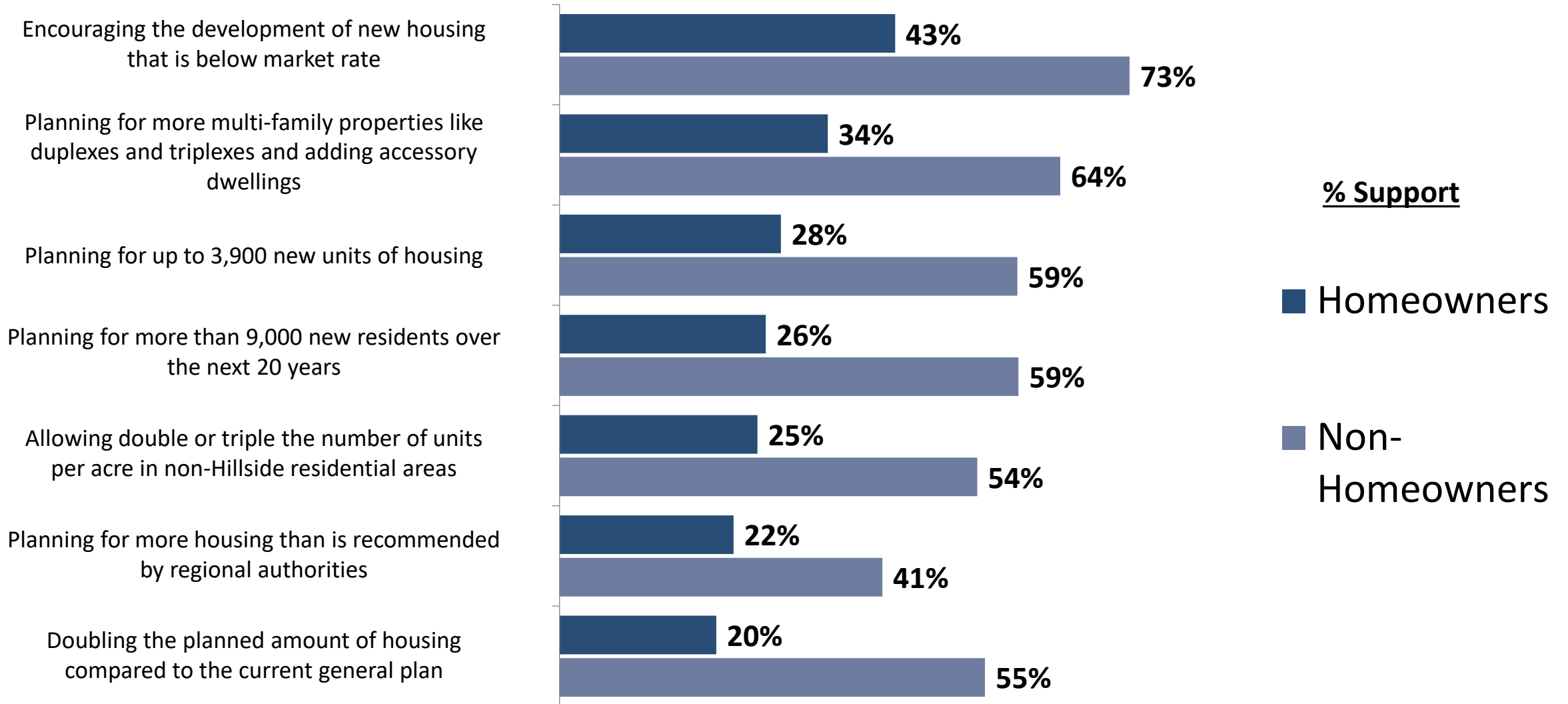


# General Plan Proposed Elements



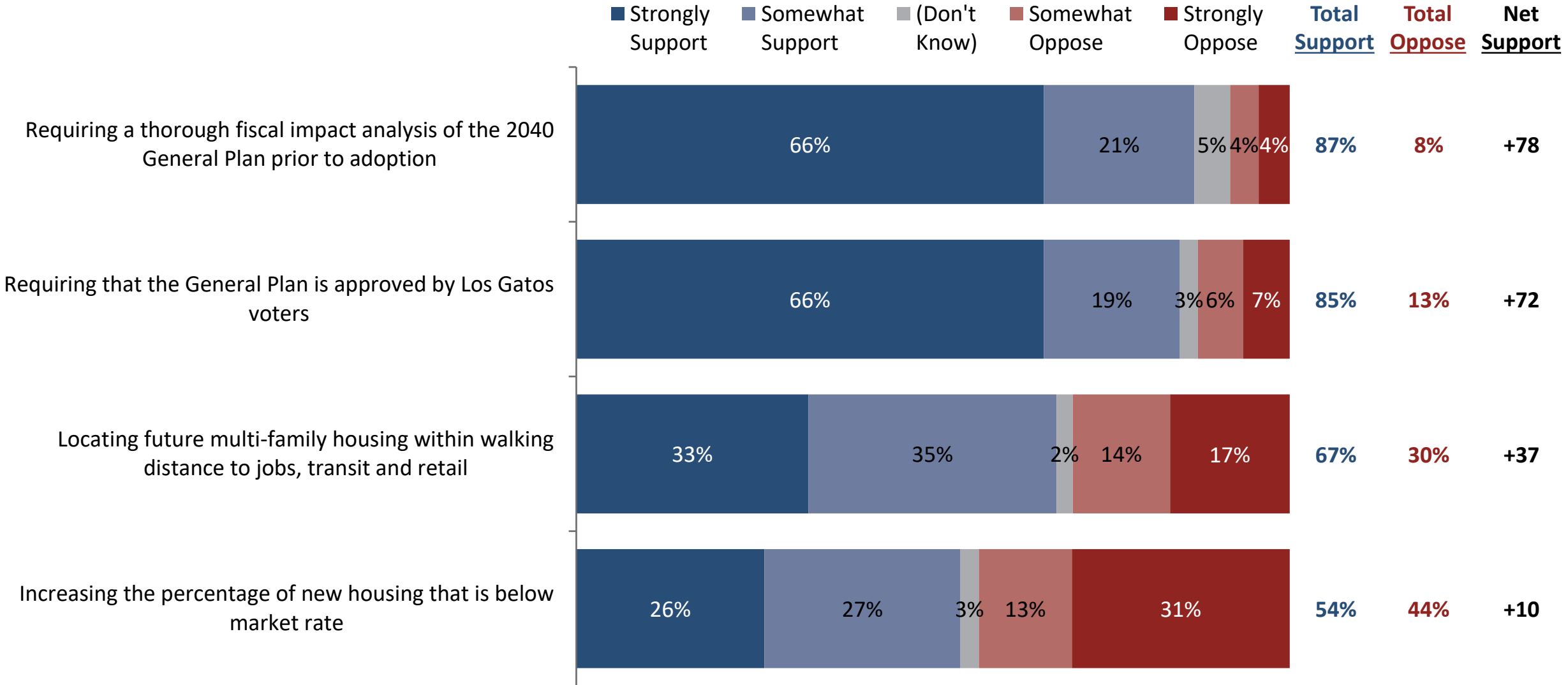
Now I am going to read you some of the things that could be included in the Los Gatos 2040 General Plan. Please tell me if you strongly support, somewhat support, somewhat oppose or strongly oppose each one.

# Elements by Housing Status



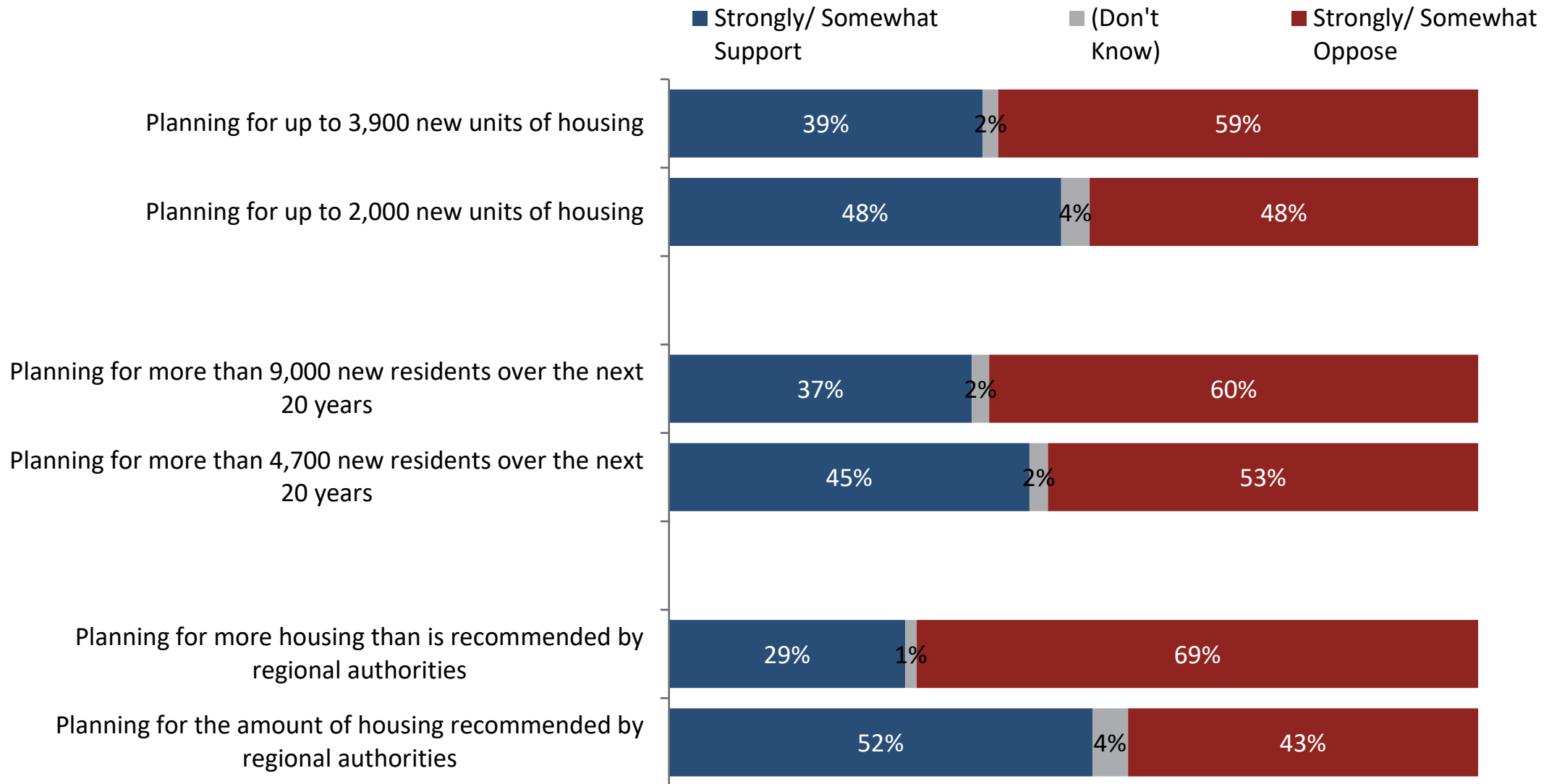
Please tell me whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with each of the following statements.

# Alternative General Plan Elements



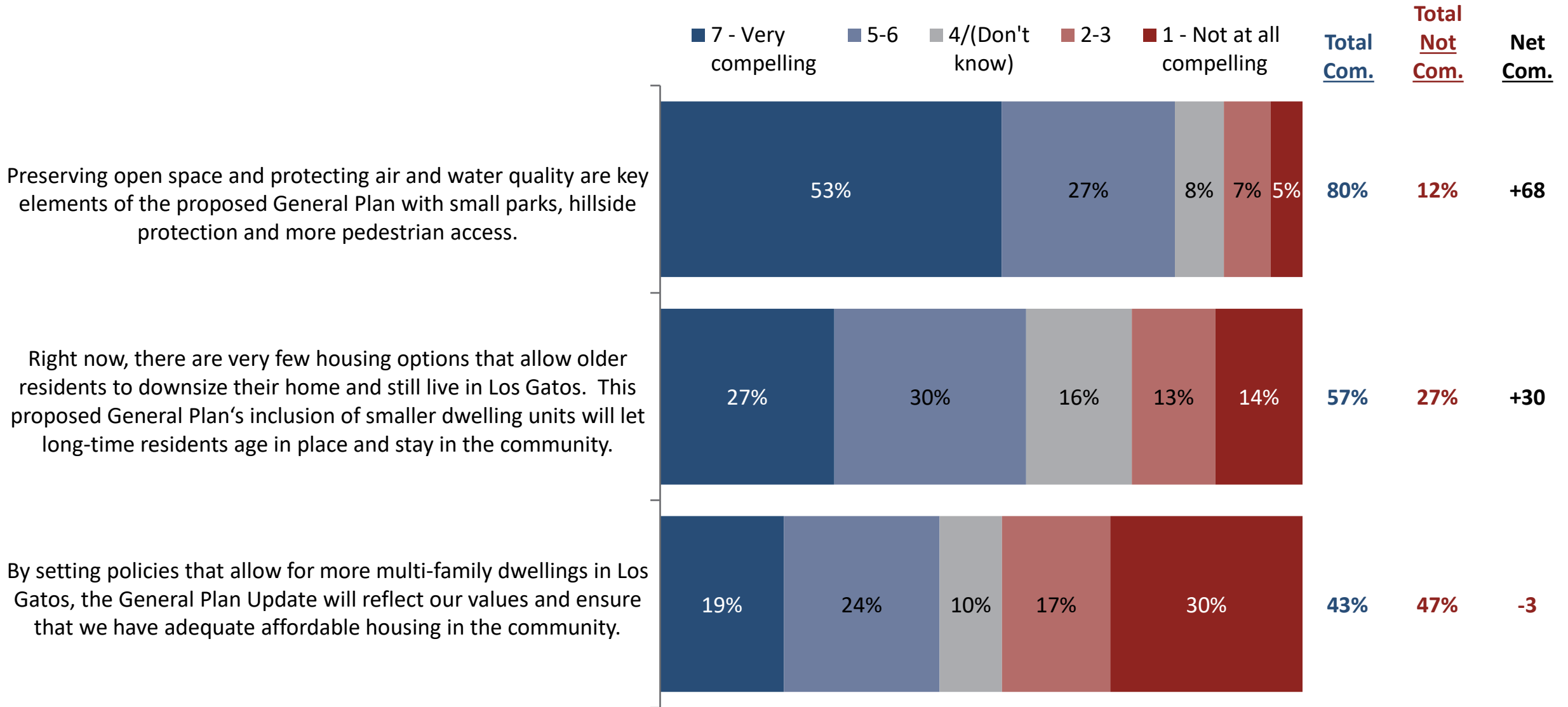
Finally, I am going to read you some alternative items that some people say should be included in the Los Gatos 2040 General Plan. Please tell me each you support or oppose each one.

# Proposed vs. Alternative Plans



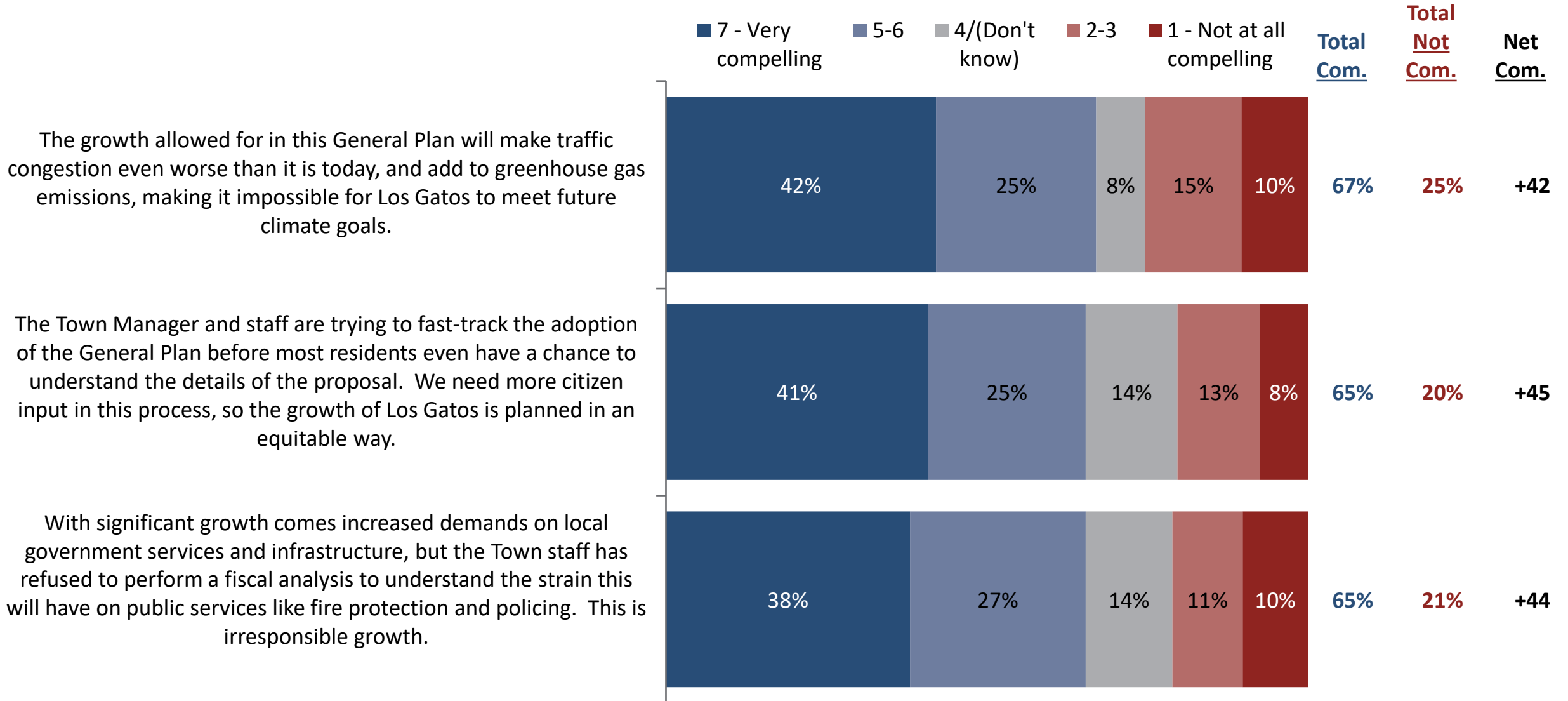


# GP2040 Top Messaging



Next I'd like to read you some statements from people who support the proposed 2040 General Plan. Please rate each statement, using a scale from 1 to 7, where 1 means the statement is not at all compelling and 7 means the statement is very compelling.

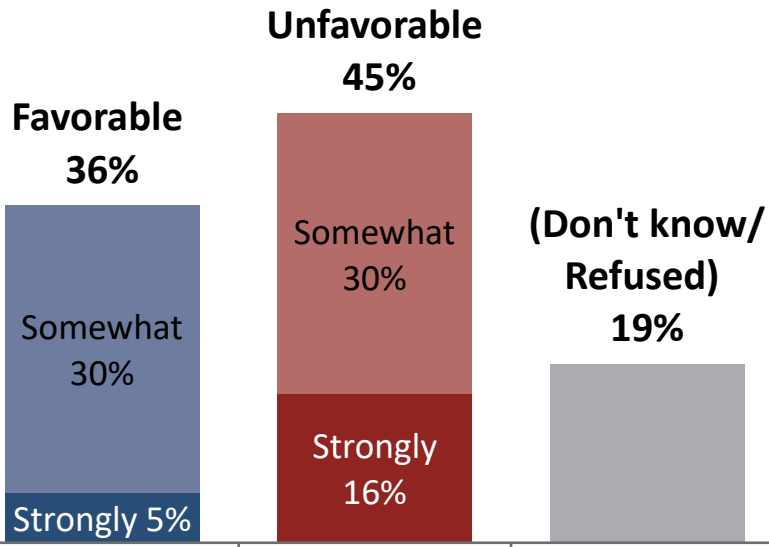
# GP2040 Top Opposition Messaging



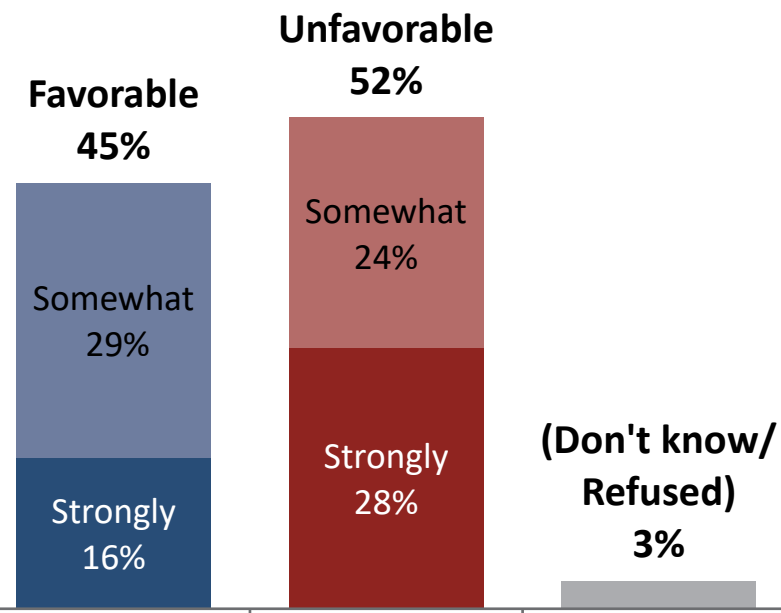
Next I'd like to read you some statements from people who oppose the proposed 2040 General Plan. Please rate each statement, using a scale from 1 to 7, where 1 means the statement is not at all compelling and 7 means the statement is very compelling.

# Informed General Plan Rating

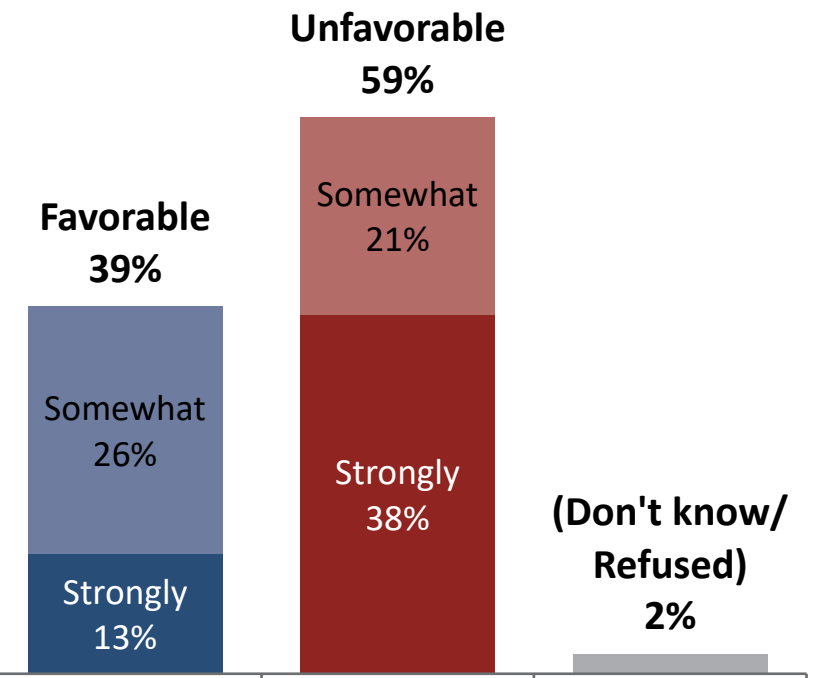
## Initial Favorability



## Favorability After Support



## Favorability After Opposition

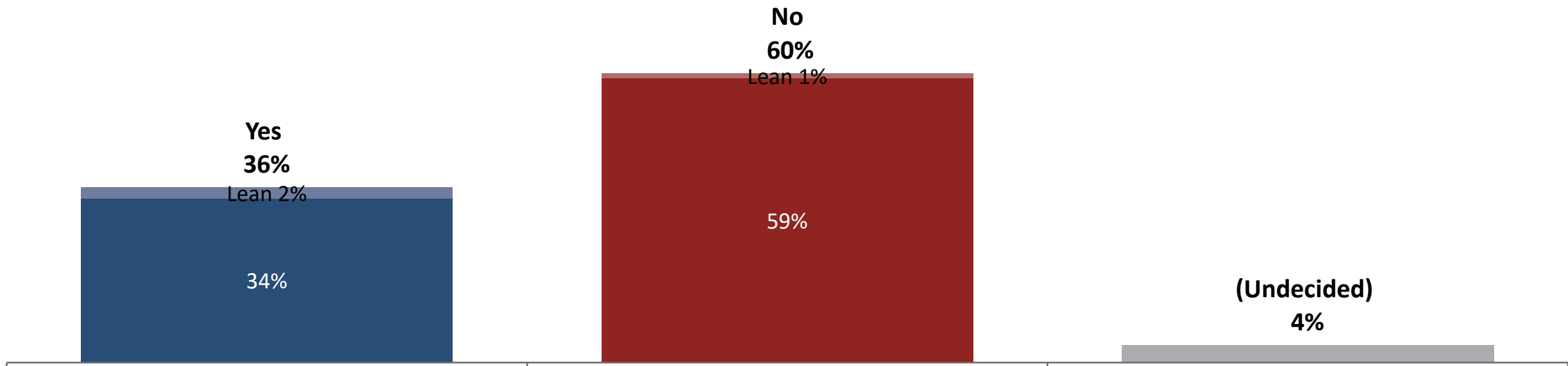


After everything you've heard, do you have a favorable or unfavorable opinion of the Los Gatos 2040 General Plan?

# Informed Referendum Vote Preference

If the Town Council adopts the 2040 General Plan, voters may have an opportunity on a future ballot to vote in a referendum to approve or reject the plan.

If the election were held today, would you vote yes to approve or no to reject the proposed 2040 General Plan?





**Ruth Bernstein**  
**ruth@emcresearch.com**  
**510.550.8922**

**Brendan Kara**  
**brendan@emcresearch.com**  
**202.686.5902**

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From: Terry Rinehart  
Sent: Thursday, December 2, 2021 9:29 AM  
To: Council  
Subject: General Plan

To All Members of the LG Town Council,

I firmly believe that the General Plan should NOT double the number of homes to be built. I agree with the 1993 number, but definitely NOT increasing the number with no recourse to reduce it in the future.

PLEASE do not go above the required level

Thank you for your time,  
Terry Rinehart  
LG Resident for over 40 years

**From:** Rick Van Hoesen

**Sent:** Thursday, December 02, 2021 11:01 AM

**To:** Phil Koen

**Cc:** Shelley Neis; Marico Sayoc; Rob Rennie; Matthew Hudes; Mary Badame; Maria Ristow; jvannada; David Weissman

**Subject:** Re: Letter to the Town Council - December 7 Study Session - 2040 General Plan

Dear Shelley,

The LGCA has the following additional comment it would like submitted for consideration in the upcoming study session:

*The draft 2040 General Plan has been in the public domain since June. The Town has requested public comments. What is the plan to incorporate that public feedback ?*

*What is the process for the draft General Plan to be amended/changed to reflect any public feedback prior to when the PC takes it up? Then what happens? How will the GP get changed?*

*Please explain to the public the process and timeline to get to a final and adopted 2040 GP and how residents can shape the current draft. No one understands it.*

Please confirm receipt of this email.

Thank you

Rick