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Sent: Thursday, January 26, 2023 10:57 AM

To: Janette Judd <jjudd@losgatosca.gov>; Town Manager <Manager@losgatosca.gov>; Wendy Wood <WWood@losgatosca.gov>; Matthew Hudes <MHudes@losgatosca.gov>; Rob Rennie <RRennie@losgatosca.gov>; Mary Badame <MBadame@losgatosca.gov>; Rob Moore <[REDACTED]>; Maria Ristow <MRistow@losgatosca.gov>; Joel Paulson <jpaulson@losgatosca.gov>

Subject: For Council Meeting 1-30-23 Re: Housing Element

Honorable: Mayor Maria Ristow, Vice-Chair Badame, Councilmembers and Staff.

Re: **Housing Element Advisory Board**

Attached is a copy of the 3/22/22 letter from our attorney with our recommendations sent to the Housing Element Advisory Board. Our recommendation to complete the HE so as to not be up against the wall on the 31st, was rejected. Briefly, the letter follows the path as listed below for those who may not have had the time to read the letter back in March. As you are now approaching the final deadline, in all sincerity, we wish you the best of luck. We realize that there were at least two if not more paths you could have taken. In the end, we all love the Town and want the Town to continue to move forward. We also acknowledge all of the time and hard work you have put into this document by all parties.

Comments Regarding Proposed 2040 General Plan

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- B. Add Low-Medium Density Residential in Appropriate Locations
- C. Amend Permitted Intensities Allowed in Central Business District
- D. Make Other Changes As Needed to Accommodate The Town's Assigned RHNA

Los Gatos Community Alliance
Facts Matter; Transparency Matters; Honesty Matters
www.lgca.town

[REDACTED]

March 22, 2022

VIA E-MAIL [PlanningComment@losgatosca.gov]

Honorable Melanie Hanssen, Chair
and Members of the Planning Commission
Town of Los Gatos
110 E. Main St.
Los Gatos, CA 95030

Re: Comments Regarding Proposed 2040 General Plan

Dear Chair Hanssen and Members of the Planning Commission:

We write on behalf of the Los Gatos Community Alliance (“LGCA”), a group of concerned citizens, in regard to the Proposed 2040 General Plan (the “Proposed Plan”).¹ In previous correspondence to the Town of Los Gatos (the “Town”), LGCA expressed its significant concerns with the Proposed Plan’s major upzoning of every residential and commercial land use district in the Town, potentially resulting in up to 75,000 new housing units and 45 million square feet of new commercial development.² We pointed out how such intensification violated the California Environmental Quality Act (“CEQA”) as it was not studied in the environmental impact report (“EIR”) prepared by the Town for the Proposed Plan. We also explained that such intensification was entirely unnecessary to accommodate the 1,993 additional housing units needed per the Town’s Regional Housing Needs Allocation (“RHNA”).

By January 2023, the Town Council must adopt a Housing Element which includes an inventory of sites suitable and available for residential development to meet the Town’s RHNA. Given the pending statutory deadline and in light of LGCA’s substantial concerns with the Proposed Plan, the Town should focus first on updating its Housing Element. The housing sites inventory will provide critical information to determine what area(s) of the Town, if any, need to be re-designated in the General Plan to meet the RHNA. Updating the General Plan prior to and apart from updating the Housing Element is tantamount to putting the cart before the horse.

¹ Members and/or supporters of LGCA include: former Mayor Joanne Benjamin, former Mayor Sandy Decker, former Mayor Tom Ferrito, former Mayor Steve Rice, former Mayor Barbara Spector, former County Superintendent of Schools Colleen Wilcox, Tim Lundell, Phil Koen, Don Livinghouse, Sandra Livinghouse, Lee Fagot, Ann Ravel, Rob Stump, Rick Van Hoesen, and Jak Vannada.

² See September 13, 2021 and January 5, 2022 letters from Matthew Francois to Jennifer Armer.

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1. Background.

In terms of background, the current 2020 General Plan planned for 1,600 additional units to be constructed between 2009 and 2020. The majority of these units—some 1,423 units—were projected to be developed on the Housing Element opportunity sites and the North Forty Specific Plan area. We understand that of the 1,600 additional units projected, only approximately 500 have been built thus far. This leaves capacity for approximately 1,100 additional units with no changes whatsoever to existing residential densities.

When the Town began the process of updating the 2020 General Plan, Staff acknowledged that “the existing General Plan is serving the community well,” and that the Proposed Plan “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; *see also* General Plan Update, September 2019 [further noting that the General Plan update effort was “intended to be a fine-tuning of the existing General Plan, rather than a comprehensive overhaul of the document.”].)

A December 2019 Land Use Alternatives Report prepared by Town Staff presented four growth alternatives (labeled A-D) with net new housing ranging from 1,156 to 3,176 units.³ At its April 7, 2020 meeting, the Town Council approved Land Use Alternative C. That alternative called for 2,303 additional housing units. At the November 17, 2020 Town Council meeting, Councilmembers indicated that new housing should be focused in Community Place Districts without increasing the allowed densities in Low Density Residential areas or changing the Downtown/Central Business District.

The Draft EIR (“DEIR”) for the Proposed Plan states that one of the Proposed Plan’s “central objectives” is to achieve the RHNA figure assigned to the Town. (DEIR, pp. 2-7, 6-1.) The RHNA figure assigned to the Town is 1,993 units. Yet, the DEIR then proceeds to analyze 3,738 dwelling units—nearly double the assumed RHNA figure. In reality, the Proposed Plan, with its increased densities across almost all land use designations, could enable development of tens of thousands of new housing units. This growth was not acknowledged let alone factored into the DEIR, as legally required.

In its December 2, 2021 report to the Town Council on the Proposed Plan, Staff noted that the Planning Commission had the authority to recommend a lower housing number than that studied and assumed in the DEIR, with commensurate changes to the Proposed Plan. Staff also indicated that the report to the Planning Commission would include an option for approximately 2,000 units with associated modifications needed to the Proposed Plan to achieve this lower housing capacity.

³ The Land Use Alternatives report also identified the range of likely market demand for new housing between 2020 and 2040 to be approximately 1,500-2,000 dwelling units.

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In December 2021, the Association of Bay Area Governments (“ABAG”) approved its final RHNA Plan for Bay Area cities. Under that Plan, the Town will need to identify housing sites for 1,993 units. As is typical, the Town’s allocation is separated into four income categories: Very Low: 537 units, Low: 310 units, Moderate: 320 units, and Above Moderate: 826 units. ABAG’s RHNA Plan was approved by the State Department of Housing & Community Development (“HCD”) on January 12, 2022.

2. The Town Should Focus First On Updating Its Housing Element, Which Will Guide And Shape Any Other Updates To The General Plan.

Unlike the General Plan update, the Town is under a statutory deadline to submit the updated Housing Element to HCD by January 2023. On June 15, 2021, the Town Council retained EMC Planning Group to prepare the Housing Element update. In its Scope of Services, EMC states that it will rely on the Town Council’s Preferred Land Use Alternative C, which proposes residential development of 2,303 additional units to be located primarily in Community Place Districts.

By law, the Housing Element update must include an inventory of land suitable and available for residential development to meet the Town’s regional housing need by income level. (Gov. Code §§ 65583, 65583.2.) “Suitable” means the parcel is zoned appropriately for residential development and has available infrastructure and is not environmentally constrained. (*Id.*) “Available” means that the site has a likelihood for development during the Housing Element planning period. (*Id.*) If the housing sites inventory demonstrates that there are insufficient sites to accommodate the housing allocation for each income category, the inventory must identify potential sites for rezoning and a program to effectuate such rezoning early in the 2023-2031 planning period. Per the schedule included in its Scope of Services, EMC stated that the housing sites inventory would be completed by Winter 2021-2022.

The Town must update the Housing Element by January 31, 2023 and submit it to HCD for certification. If the Town does not secure HCD certification of its Housing Element within that required timeframe, it could become ineligible for state and regional funding programs, be placed on an accelerated Housing Element cycle, and/or face legal challenges. (Gov. Code §§ 65585, 65588, and 65889.11.)

The Town’s website devoted to the Housing Element update refers simply to the formation of the Housing Element Advisory Board, with no documents, information on meetings, or updates concerning a critical statutory deadline that is less than 12 months away.⁴ Other Bay Area cities have been laser-focused on updating their Housing Elements. For instance, since May 2021, the City of Palo Alto held over a dozen meetings on its Housing Element update, and the Palo Alto City Council recently provided feedback on the housing sites inventory.

⁴ <https://www.losgatosca.gov/2711/Housing-Element-Advisory-Board>

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The Town should follow both common sense and the lead of other cities and focus now on updating its Housing Element. Doing so will guide and provide critical information for the Proposed Plan. Updating the General Plan prior to and apart from updating the Housing Element is tantamount to putting the cart before the horse.

3. When Resumed, the Proposed Plan Should Be Modified to Reflect the Housing Element Update and Other Changes.

Once the Housing Element update has been adopted by the Town Council and certified by the State, the Proposed Plan should be updated to reflect it. Other recommended changes to the Proposed Plan are detailed below.

A. Restore Existing Low Density Residential Development Standards.

For lands designated Low Density Residential, the current General Plan allows for single-family development at densities of up to 5 units per acre. The Proposed Plan would more than double the permitted densities, allowing for development of up to 12 units per acre. No change in land use designation or densities should be made to the Low Density Residential land use category.

First, no such changes are needed to meet the Town's RHNA figure. Higher density development is already provided for in other areas, such as Community Place Districts. Further, the densities proposed in Low Density Residential areas (up to 12 units per acre) would not count toward the Town's fair share of affordable housing. (Gov. Code § 65583.2(c)(3)(B) [requiring densities of at least 20 units per acre to be deemed appropriate to accommodate housing for lower income households].)

Second, state law has already added density to low density residential areas. Senate Bill 9, which took effect on January 1, 2022, allows for up to four units per single family residential lot. The Town has enacted an urgency ordinance to implement Senate Bill 9. Adding further density to single-family neighborhoods would not be appropriate as such areas are generally not in close proximity to public transit, employment, or commercial services. Local upzoning on top of state upzoning would also be contrary to policies in the Proposed Plan that emphasize maintaining and enhancing a sense of place in residential neighborhoods and requiring new construction to be compatible with existing neighborhoods. (See, e.g., Proposed Plan, Goals LU-5 and LU-17 and Policies LU-2.1, LU-4.1, and LU-5.8.)

Third, given the relatively high land costs, much higher development densities are required to achieve the unit development economics to incentivize the production of duplexes and triplexes. The desired development would not likely ever materialize given the high land cost. The resulting housing would instead likely consist of denser, single-family detached housing that is market rate and not affordable.

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B. Add Low-Medium Density Residential in Appropriate Locations.

The Proposed Plan contains policies that encourage development of “missing middle” housing. (*Cf.* Proposed Plan, Policies LU-1.2, LU-3.5, and LU-5.1; *see also* Proposed Plan, pp. 3-5 to 3-6.) The Proposed Plan describes missing middle housing as “multiple units on a single parcel (whether attached or detached) that are compatible in scale and form with detached single-family homes.” (Proposed Plan, p. 3-3.) The plan goes on to state that common missing middle housing types include, among others, duplexes, triplexes, and townhomes. (*Id.*)

To encourage the development of this type of housing, the Town should establish a new Low-Medium Density Residential land use category that allows for the development of duplexes and triplexes at a density range of between 6 and 13 dwelling units per acre. The City of Campbell has a similar land use designation in its General Plan, which it describes as consisting generally of duplexes, small apartment buildings, and small lot, single-family detached homes. This new land use designation would be between Low Density Residential, designed for single-family residential development, and Medium Density Residential, designed for multiple-family residential development. Staff could identify appropriate sites in Community Place Districts for this new land use designation.

C. Amend Permitted Intensities Allowed in Central Business District.

As currently written, the Proposed Plan would change the permitted floor area ratio (“FAR”) in the Central Business District (“CBD”) from 0.6 to 2.0 and allow for residential densities of 20-30 units per acre. This change would increase allowed intensities in Los Gatos’s unique and charming Downtown by over 200 percent. Such a change would conflict with policies emphasizing the small-scale retail development envisioned in the CBD district that is consistent with the Town’s identity, character, and style. (*Cf.* Proposed Plan, Policies LU-8.2, LU-8.3, LU-9.1, and LU-9.4.) Such high density development could threaten the commercial viability of the Downtown area.

The City of Campbell limits FAR in its Central Commercial (“CC”) district to 1.25. Similar to Los Gatos’s CBD district, Campbell’s CC district is intended to promote retail commercial uses on the ground floor with office or other uses on upper floors. The Town should likewise limit FAR in the CBD to 1.25.

D. Make Other Changes As Needed to Accommodate The Town’s Assigned RHNA.

In addition to the above changes, the Town should modify land use designations and densities so that build-out under the Proposed Plan would accommodate no more than approximately 2,300 units. This figure reflects the Town’s RHNA of 1,993 units, plus a 15 percent buffer. It also reflects the economic demand and the City Council’s preferred land use alternative. By proceeding with

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this reasonable growth figure, the Town could ensure that development is phased and does not outpace necessary infrastructure and service improvements.

The current Proposed Plan allows for the development potential of nearly 75,000 housing units at maximum allowable densities. There is no need to maximize densities in each and every residential and commercial land use category to achieve the Town's RHNA and doing so would fundamentally change the nature and character of the entire Town. This underscores why the Housing Element update and its critical housing sites inventory should precede any further work on the Proposed Plan.

We respectfully ask the Town to focus first on the Housing Element update prior to considering the Proposed Plan or any other General Plan update. The Housing Element update will provide critical information on what area(s), if any, need to be re-designated in the General Plan to accommodate the Town's projected housing growth. Once the Housing Element update has been finalized, the Proposed Plan should be revised to reflect it as well as the other recommended changes detailed above.

Thank you for your consideration of LGCA's views on these important matters. 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 Rob Rennie, Mayor, and Members of the Town Council
Laurel Prevetti, Town Manager
Joel Paulson, Community Development Director
Robert Schultz, Town Attorney

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