

From: Karyn Meadows [REDACTED]
Sent: Monday, June 20, 2022 11:23 AM
To: GP2040 <GP2040@losgatosca.gov>
Subject: Comments on the Draft 2040 General Plan

EXTERNAL SENDER

Hello, I wanted to add my comments to the email that Matthew Hudes sent out summarizing the 3 key areas and questions that remain.

1. Should virtually every residential area in Town be "upzoned" into more dense neighborhoods?

My answer to this is NO unless you are talking about only ADU's. Any other upzoning in current residential areas of single family homes will utterly ruin the character and charm that we came here to live in, buy in and invest in. Our local Santa Clara population is decreasing - WHY do you want to triple the RHNA??? It will be absolutely devastating to this very small town.

2. Will services and infrastructure keep pace with the safety and quality of life that our residents expect?

Really cannot see that this happening at all if you try to build so quickly. Especially if you want to grow 70% over RHNA. Again, this will ruin the character of our town.

Should growth be spread over a 20-year period such that services and infrastructure can keep pace, or should all growth be permitted on day-one of the 20 year plan?

It would only make sense for growth to be spread out over the 20 year period. There is no way for safety, services, and quality of life to be preserved if you try to permit all growth on day 1.

On the key questions:

Density on top of Density - we do NOT want that additional upzoned density. It would ruin it for us. It would ruin the open-ness, the character, the entire area. It would just ruin it.

For upzoning properties in fire danger areas, it really makes no sense to upzone them unless it's to add 1 or 2 homes. We've seen what happens in mtn communities that have wildfires. It's not good!!

Although the GOAL of increased density would be affordable homes, the reality is that MANY, possibly MOST of the lots will be taken by large luxury residences. There are too many developers here and they are not interested in doing affordable homes. **Maybe the regulations should change to support LOCAL buyers and NOT INVESTORS.** That would certainly help the housing stock here without building up and ruining the character of the town.

SB9 SHOULD be counted as part of your housing plan. Period!! It will be for the most part, intended to house, therefore it only makes sense to count it.

Best, Karyn Meadows, Resident

From: Helen Sun [REDACTED]
Sent: Monday, June 20, 2022 2:01 PM
To: GP2040 <GP2040@losgatosca.gov>
Subject: Fwd: Council Will Vote Soon on Housing and General Plan

EXTERNAL SENDER

Dear town council,

Please see my comments shared with council man Hudes below on the expansion plan of 2040. The town has already become more denser/populated over the last few years since we moved here. I am concerned about how the general 2040 plan will change the feel and look of the town and also the burden on the infrastructure of this small town. I would ask the town leaders to sincerely consider preserving the culture of the town and also also not over expanding to the surrounding forest.

Can we find out how the nearby towns are handling this issue, ie. Saratoga, Los Altos, Palo Alto, etc, so that we can all expand wisely and responsibly? Thank you!

Best,

Helen

Begin forwarded message:

From: Helen Sun [REDACTED]
Date: June 18, 2022 at 14:43:39 PDT
To: Matthew Hudes [REDACTED]
Subject: Re: Council Will Vote Soon on Housing and General Plan

Hi Councilman Hudes,

Thanks for sending this to me. Personally, I don't think it makes sense, nor is it realistic to add another 4000 homes to this tiny town. Our infrastructure and already in crisis resources do not support the expansion at this scale and speed. Will that be another school or two added to the district OR our children and teachers will have to suffer with even larger class size and less resources available to them? I really believe this will hurt our town both near and long run. Thanks!

Helen

On Jun 18, 2022, at 14:26, Matthew Hudes [REDACTED] wrote:

Hi Helen,

On Monday night at 7:00 PM the Los Gatos Town Council will consider the Draft 2040 General Plan which includes as many as 3,904 additional homes in Los Gatos. This is an opportunity, before a vote is taken, for your voice to be heard regarding **Housing, Neighborhood Character**, and the **Future of Our Town**.

Town Council

7:00 PM June 20, 2022

<https://losgatosca-gov.zoom.us/j/88004227157?pwd=ZG1pc3pscTZwZXdCWjc2SkM3b2Nzd0>

Passcode: 320795.

In April, the Planning Commission reviewed the Draft 2040 General Plan and made some recommendations to the Council. I have had many conversations with folks around Town, and I am summarizing three key areas and some questions that remain:

- 1. Should virtually every residential area in Town be "upzoned" into more dense neighborhoods?**
- 2. Will services and infrastructure keep pace with the safety and quality of life that our residents expect?**
- 3. How can we preserve the character of our community while guiding the Town into the future?**

As always, please feel free to reach out to me at [REDACTED] and you can send your comments to the Town at gp2040@losgatosca.gov

Thanks for your engagement,

Matthew Hudes
Councilmember, Town of Los Gatos

Key questions:

1. Density on top of Density

Increased density is when additional homes are built in spaces previously zoned for fewer homes. The Draft 2040 General Plan and the Planning Commission Recommendation call for **increased density (also called "upzoning") in virtually every residential area in Los Gatos**. The State's **SB9 mandate also allows for additional density** on top of the upzoning.

- Do we need that additional upzoned density? And can our town handle the associated **impacts of traffic, parking, water-use, and wildfire hazard**?
- Why should any properties be upzoned in **the Very High Fire Hazard Severity Zone**, some of which are on narrow roads with flammable vegetation?
- And what is the goal of this **transformation of Los Gatos neighborhoods**—will increased density result in **affordable housing** or just **many large luxury residences on small lots**?

2. Overall growth

As drafted, the 2040 General Plan, would allow Los Gatos to grow by at least 8,971 people or 28%, which is almost three times greater than the Town's growth rate in the last 20 years. Infrastructure and services will need to keep pace with growth in order **for safety and quality of life to be maintained**. Town-wide upzoning could result in even greater stress on our services and infrastructure,

yet **the fiscal impact of this growth has not been analyzed** in the Draft 2040 General Plan.

- Why would Los Gatos plan for **nearly double the amount that the State is mandating** in its latest Regional Housing Needs Allocation (RHNA)? (California's and Santa Clara County's populations have decreased over the last several years.)

STATE MANDATE (RHNA)	DRAFT 2040 GENERAL PLAN	PLANNING COMMISSION RECOMMENDATION
	3,738+166 Hillside	3,280+116 Hillside
1,993	3,904	3,396
	95% over RHNA	70% over RHNA

- Should growth be **spread over a 20-year period such that services and infrastructure can keep pace**, or should **all growth be permitted on day-one of the 20 year plan**? (A 5-year review process has been proposed; however, recent State law (SB330) allows those reviews to **only increase density**, not to decrease density. In other words, should we “Grow as we Go” rather than front-load development?
- Surely SB9 will result in additional housing; however the 2040 General Plan projects zero new units. **Should SB9 housing be counted?**

3. Character

There should be growth, and **affordable housing must be included and encouraged** in our 2040 General Plan.

- How can we provide more housing wisely in order to **preserve the character of the community while guiding the Town into the future?**
- What are **our principles and values** that we can use as a guidepost to carefully select areas for increased development?

At this time, my thoughts are preliminary, and I am open to information provided at upcoming hearings. I will not express a final opinion until the Council votes on these matters. Any expression is by me as an individual, not by the Council.

Matthew Hudes for Town Council · CA 95030, United States

This email was sent to [REDACTED] To stop receiving emails, [click here](#).

■

From: Jbestill [REDACTED]
Sent: Monday, June 20, 2022 2:35 PM
To: GP2040 <GP2040@losgatosca.gov>
Subject: Housing and General Plan

EXTERNAL SENDER

Council Members and Staff:

I have reviewed the proposed Housing and General Plan. I am very concerned about the large number of homes recommended here, the lack of specificity about the kind and location of the housing and, most importantly, the lack of fiscal analysis this proposed plan entails. This decision can not and should not be made without a clear understanding of the fiscal impact on the current and future revenue and expenses a proposal such as this will have on the Town. A fiscal analysis should have been part of the initial study for this type of proposal. The Council now has the opportunity to call for what should already be part of the Plan. I strongly urge the Council to reject this plan as currently envisioned and call for a fiscal analysis that includes a thorough outline of the type and location of future housing that meets the needs of our community and public.

John (Jack) Estill

Lecturer Emeritus, San Jose State University, Department of Economics

[REDACTED]

Los Gatos, CA 95032

[REDACTED]

From: Tami Shoot [REDACTED]
Sent: Monday, June 20, 2022 6:07 PM
To: GP2040 <GP2040@losgatosca.gov>
Cc: [REDACTED]
Subject: Draft 2040 General Plan pertaining to Housing Density

EXTERNAL SENDER

To Los Gatos Town Council Members,

I am adamantly against the Draft 2040 General Plan for Housing Density increasing housing in the downtown and outlying areas of Los Gatos. As I understand it, this proposal increasing housing by almost 9k people and/or 28%! An increase that is 3x greater than what has occurred over the last 20 years! That is a shameful proposition! This will detrimentally affect our traffic, water supply, peace, safety, property values, charm and the very heart and soul of beautiful Los Gatos. I urge you to please fight against this proposal. There is plenty open land in South San Jose where extra housing can be added to Santa Clara County without such an impact as squeezing more people in our already densely populated area that we pay a premium to live in. North 40 was proposed and built to allow more housing in the area. This already is and will be very impactful on traffic and everything else that I've aforementioned. I was against this too, but it happened anyway! And now they want to add even more?! Just say NO! Please!

Thank you for your time.

Tami Shoot

[REDACTED]

Los Gatos, CA 95030

[REDACTED]

From: Gregg Kerlin [REDACTED]
Sent: Tuesday, June 21, 2022 12:23 PM
To: [REDACTED]; GP2040 <GP2040@losgatosca.gov>
Subject: 2040 Plan Comments

EXTERNAL SENDER

I am in full support of expanding housing for teachers, retail clerks, police and local firefighters. Much of the regional planning is targeted to lower income housing and I believe that should be the referenced groups should be primary in designing new housing for Los Gatos.

The projects made by the 2040 plan for increased housing seem very optimistic since the 2020 census shows that Los Gatos actually lost population!!! Consequently, if the housing is affordable to people offering services support to the town is affordable, then perhaps we can do good at more than one level. However, let's use realistic projections.

I studied the 2040 plan's Safety section and compared it to the neighborhoods covered and plans by the Community Emergency Response Team (CERT) to understand how we allocate resources across the various risk zones. Some things were clear to me: Almond Grove and Civic Center (Downtown) is the subject of many different hazard events.

Moreover, the hillsides (whether within the Town's concept of zoning or not) are the trigger points of local disasters: wildfire, flooding, and in particular, landslides. We need to pay attention to the importance of pre-emptive planning on behalf of our mountainside neighbors since their rights become ours.

This leads me to believe that the Town needs to plan new housing sights more toward the northeast regions of Los Gatos, which in general is 1) closer to transportation corridors, and 2) less subject to increase public safety risk and congestion.

Beyond that, I don't have the knowledge to comment.

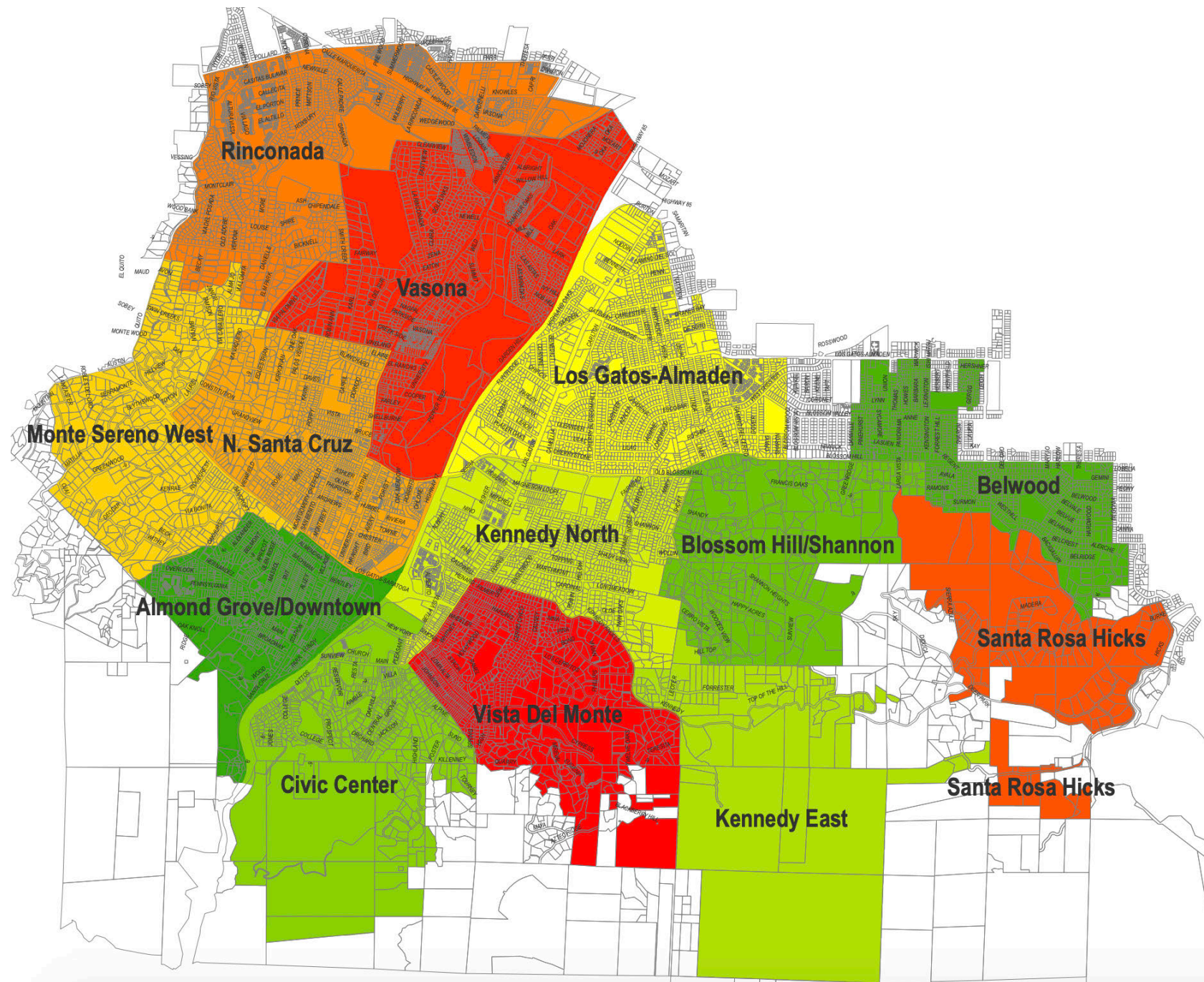
Regards,
Gregg Kerlin
[REDACTED]
Los Gatos

Extract from my simple study.

LG Town 2040 Safety Plan - Hazard Types

- LG 2040 Safety Plan provided graphics showing types of hazards the Town would face by using graphics.
- The Los Gatos Community Emergency Response Team (CERT) Incident Command Post (ICP) neighborhood map was overlaid onto each of the Town's 2040 Hazard graphics.
- Some interpretation and inferences are offered.

The Town of Los Gatos Defined. CERT Neighborhoods. (NICPs) to provide for the safety of its citizens in a disaster. This geographic assignment of Incident Command Posts includes Monte Sereno, similar to the Town's policing responsibilities.



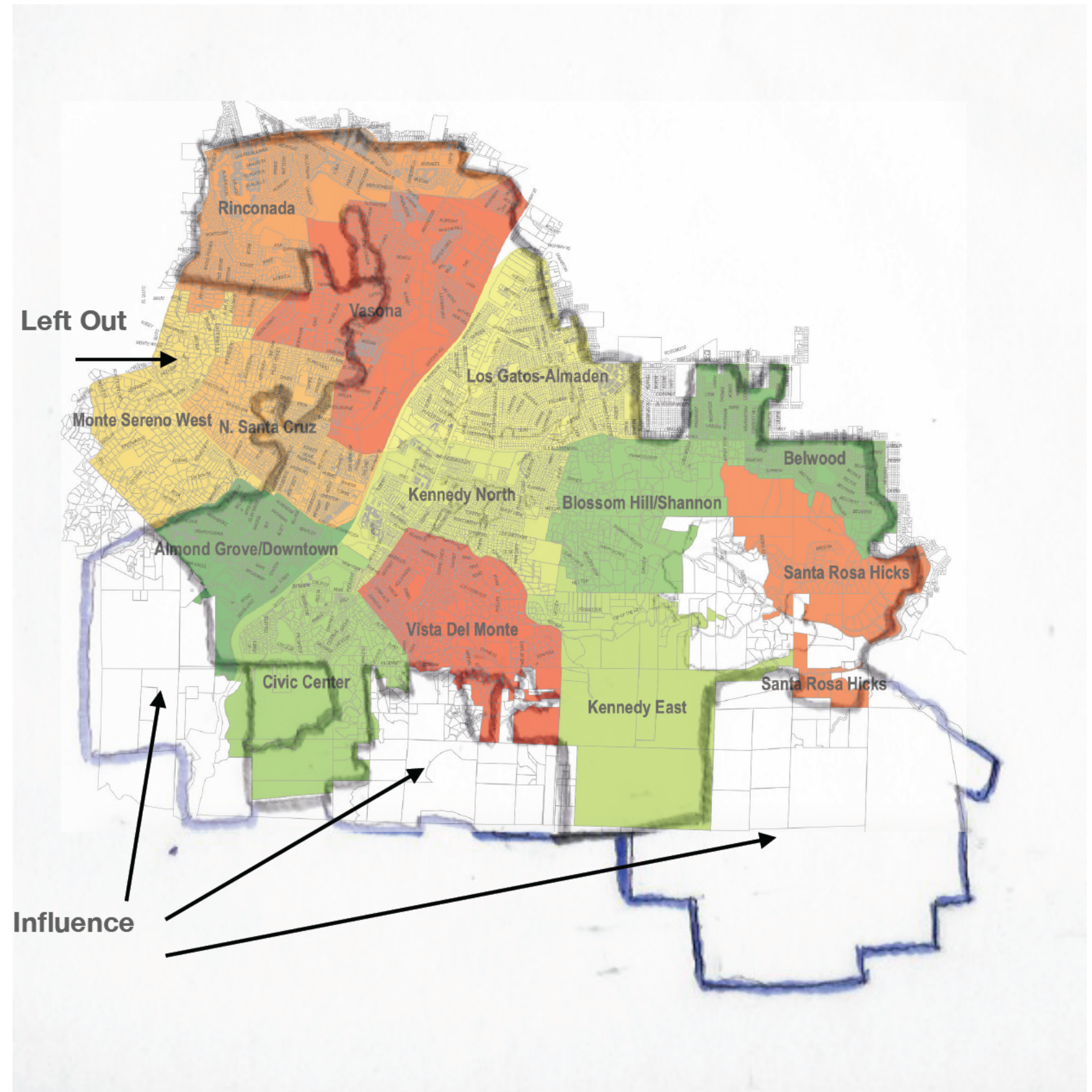
CERT NICP Coverage Vs. LG Town 2040 Safety Coverage

The Town of Los Gatos 2040 General Plan addresses safety concerns along with housing plans.

The safety mappings in the General Plan are of use to see how various hazards relate to CERT ICPs.

Note that the General Plan 2040 excludes Monte Sereno entirely and effectively ‘cuts-off’ portions of existing CERT ICPs.

In additional, the white enclosed area are consider zones of “Town influence” in the 2040 plan, while at the present time, we have no CERT coverage for those areas.



POTENTIAL HAZARDS BY CERT NEIGHBORHOODS



OVERALL RISK LEVEL



OVERALL RISK LEVEL

Incident Area	CERT ICP	Fire Hazard	Landslides	# Fault Lines	Ground Shaking	Liquifaction	Historical Wildfire	Flood Zone	Dam Inundation	Hazardous Material Sites
Almond Grove	Yes	Very High	Small Section	3	High	Partial High	Yes		High	
Civic Center	Yes	Very high	Significant	4	High					
Areas of Town's Influence	No	Very High	High	5	Very Low		Yes			
Blossom Hill	No	Very High	High	3	Low					
Vasona	Yes			5	Low - Moderate	Very High		Yes	Very High	2
Vista Del Monte	No		Significant	5	Moderate					
Kennedy North	Yes	High	Small Section	2	Moderate					
Kennedy East	No	Very High		2	Very Low					
Santa Rosa Hicks	No		High	5	Low			Some		
Rinconada	Yes		Small Section	2	Low	Partial High				
Los Gatos Almaden	Yes			3	Low					
North Santa Crus	Yes			1	Moderate				High	
Belwood	Yes			1	Low					
Monte Sereno West	No	High		2	Moderate					

ICP - Incident Command Post

High Level Observations

- Two active ICP zones need exercise drills and evaluation due to their elevated risk profile: Almond Grove and Civic Center.
- While CERT has paid attention to Wild Fire and Ground Shaking risks, both the Town and CERT do not have concrete plans for managing the high risk of LandSlides. Some planning and education would be beneficial on how to respond.
- The “Town’s Area of Influence” needs a plan and good definition. Clearly the hillside of Los Gatos most everywhere are substantial impact zones directly impacting the Town boundaries. It may be both socially responsible and wise to consider active involvement by the Town with the “Influence Zones” since these will be potentially impacting the Town whether we attend to them or not. Outreach into the hillsides and mountains is to our benefit. The area above St. Joseph’s Hill is also a critical zone.
- Some assessment should be made on the number of people impacted and how CERT can prepare. Residents in landslide areas are NOT covered by actual CERT ICP posts: Vista Del Monte, Blossom Hill, Kennedy East, and Santa Rosa Hicks. This should include considerations for Saint Joseph hillside.

Additional Comment for 2040 Plan — New housing should not include the higher risk zones of the Town as opportunity housing areas if other sites are available. In fact, the further one goes to the east and north (Hwy 85, Rinconada, Los Gatos Almaden, the better it is from a safety perspective.

From: ALLEN BRANCH [REDACTED]
Sent: Tuesday, June 21, 2022 3:19 PM
To: GP2040 <GP2040@losgatosca.gov>
Subject: General Plan

EXTERNAL SENDER

We are appalled that the Town proposes to approve an increase to the new housing units required by the state. The Town has yet to absorb the impact of the very large new development near Good Samaritan. The Town does not yet have actual information about the impact of this development on traffic, our schools, and the Town's infrastructure.

Now the proposal is to increase housing units by 3000 plus and make significant changes to the zoning in order to accomplish such changes. We have resided in Los Gatos for nearly 32 years and there have been a number of changes to the community and traffic during this period. But during that period, the Town had not set a goal for expansion of this significance. These proposed changes will, no doubt, change this community in ways that the town did not predict, nor can it adequately address. Further, those of us who chose to live in Los Gatos because it was not a high density housing area will have lost what we sought when we moved here.

Approval of this plan should be delayed. Although the Town has had a number of zoom meetings regarding the General Plan, the coverage of these issues has been spotty. A better job needs to be done in bringing these issues to the general public and the approval hearing should not be scheduled when many families are on vacation Susan and Allen Branch

From: Annette Seaborn [REDACTED]
Sent: Tuesday, June 21, 2022 4:03 PM
To: Erin Walters <EWalters@losgatosca.gov>
Cc: Jennifer Armer <JArmer@losgatosca.gov>; Corvell Sparks <CSparks@losgatosca.gov>; WooJae Kim <WKim@losgatosca.gov>
Subject: Re: 9 Forrest Avenue Los Gatos - APN 529-10-017

Hi Erin, I was not able to make the last meeting. Did anything change? I would like to increase the density of this property to "high density", or subdivide the property into 2. If that happened, the lots sizes would look exactly the same as the neighboring property.

Please advise. Thank you.

ANNETTE SEABORN - Area Specialist
2020, 2018 & 2017 #2 CB individual producer - Realtor

Coldwell Banker Realty [REDACTED]
[REDACTED]
[REDACTED]



INTERNATIONAL PRESIDENT'S PREMIER

"Documents prepared by other have not been verified"

On Jun 14, 2022, at 10:44 AM, Erin Walters <EWalters@losgatosca.gov> wrote:

Good Morning Annette,
Thank you for your email.

The property located at 9 Forest Avenue (APN: 529-10-017) is zoned R-M: 5-12, Medium Density Residential with a current density range of five to 12 dwelling units per acre. Based on the current density and size of the parcel per County records (13,076 s.f.) the property may yield between 1-3 units. How many units are currently on the stie.

Here is a link to the RM zoning regulations: [RM-Zone-Handout \(losgatosca.gov\)](#)

Draft 2040 General Plan

The draft General Plan 2040 proposes to increase the density range in Medium Density Residentials to 14 to 22 units per acre. Based on the draft density and size of the parcel per County records (13,076 s.f.) the property may yield between 4-6 units.

The Town Council will be holding a special meeting Monday, June 20, 2022 at 7:00 p.m. to review the Planning Commission's recommendations on the Draft 2040 General Plan. We encourage the public to attend and/or submit written comments for the June 20th Town Council meeting.

Here is a link to the website, draft document and links to Monday's meeting agenda. The material will be available after 5pm on Friday, June 17th. <https://losgatos-ca.municodemeetings.com/>

Please check with the Town's Engineering Department to determine if dedication would be required for this property. You may contact Corvell Sparks, Associate Engineer. I have cc'd him on this email.

<image001.png>

Town and County records note this property is pre-1941 and will require review by the Historic Preservation Committee for removal from the inventory or demolition.

I am available Wednesday at 10am and Thursday at 9am to set up a call to discuss your proposed project and the application process. Let me know what works best for you.

Sincerely,

<image003.jpg>

Erin Walters • Associate Planner

Community Development Department • 110 E. Main Street, Los Gatos CA 95030

Ph: 408.354.6867 • 408-354-6872

www.losgatosca.gov • ewalters@losgatosca.gov

COMMUNITY DEVELOPMENT HOURS:

Counter Hours: 8:00 AM – 1:00 PM, Monday – Friday

Phone Hours: 8:00 AM – 5:00 PM, Monday – Friday

Erin's Office Hours – M-F – 9:00 a.m. to 3:00 p.m.

Town offices are now open. In accordance with the Santa Clara County Public Health Office Order, we strongly recommend masks indoors regardless of vaccination status. All permit submittals are to be done online via our Citizen's Portal platform. All other services can be completed at the counter. For more information on permit submittal, resubmittal, and issuance, please visit the [Building](#) and [Planning](#) webpages.

[<image004.jpg>](#)

General Plan update, learn more at www.losgatos2040.com

[<image005.png>](#)

Housing Element update, learn more at <https://engagelosgatoshousing.com>

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Think Green, please consider the environment before printing this e-mail.

From: Annette Seaborn [REDACTED]
Sent: Monday, June 13, 2022 10:07 PM
To: Joel Paulson <jpaulson@losgatosca.gov>
Cc: Erin Walters <EWalters@losgatosca.gov>
Subject: Re: 9 Forrest AVE Los Gatos

Second request.... Can I please get some clarity? I am not sure how to proceed.. Thank you

ANNETTE SEABORN

On Jun 7, 2022, at 8:13 PM, Annette Seaborn [REDACTED] wrote:

Hi Joel, I would like to submit an application to increase my units per acre at 9 Forrest Ave. I understand you are looking for areas to add more units. This property is in a high density area however is not designated and such. Can you please let me know how to move this request forward? Thank you.

ANNETTE SEABORN - Area Specialist
2020, 2018 & 2017 #2 CB individual producer - Realtor

Coldwell Banker Realty [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

<cb-awards-premier-i.jpg> INTERNATIONAL PRESIDENT'S PREMIER

"Documents prepared by other have not been verified"

From: John Shepardson [REDACTED]
Sent: Wednesday, June 22, 2022 12:25 AM
To: Council <Council@losgatosca.gov>; Matthew Hudes <MHudes@losgatosca.gov>
Cc: Rob Rennie <RRennie@losgatosca.gov>; Mary Badame <MBadame@losgatosca.gov>; Maria Ristow <MRistow@losgatosca.gov>; Marico Sayoc <MSayoc@losgatosca.gov>
Subject: General Plan 2040: RHNA Plus 15 percent & More

EXTERNAL SENDER

Dear Mr. Hudes:

Hard for me to understand RHNA plus 15 position given others' statements not enough. RHNA is 8 years. GP is 20 years. Can you explain the basis for your position. I don't have an agenda. I'm trying to be curious and figure out the housing allocation process and numbers.

Are the RHNA numbers fair? Why the big jump? What is projected growth? Do we need the buffer?

I like the concept of small town feel.
It's a feeling, an emotional sense.

Rod Diridon promotes growth in transit areas so we the South Bay is more like Paris than LA.

If spread out additional housing outside of transit areas, will it result in lots of cars parked on streets and increased traffic congestion?

Community growth areas seem to allow additional homes while reducing traffic impact—shorter distance to drive and assuming people will walk or bike. More commercial development will drive up RHNA numbers.

Note Cupertino is putting in concrete barriers to protect bicyclists.

Santa Row houses a lot of people. How many bike? Don't see many.

Cambridge, England—people of all ages ride bikes.

Copy and paste from <https://www.theguardian.com/environment/bike-blog/2011/aug/17/cambridge-model-cycling-city>

What makes Cambridge a model cycling city?

With considerate drivers, dedicated bicycle parking and bike-friendly city planning, it's no wonder cycling is a popular means of transport

He says: "It is the ordinary people of Cambridge who cycle; it is your parents having the courage and confidence to cycle that means children have the confidence. If you don't have parents who cycle it is difficult."

He added: "Once children get to 11 they cycle to school unaccompanied in Cambridge. In fact they will probably not allow their parents to accompany them after that"

I spoke to an 88-year-old man on a bike. Like everyone I spoke to here, he simply sees cycling as the best way to get around.

In Cambridge cycling has consistently remained a popular means of transport and so investment into cycling has continued over the years. People teach cycling to their children, who in turn cycle into adulthood. It is just a part of normal life. Where many towns are now choked with cars, Cambridge's faith in the bicycle has made it sadly unique among British towns and cities. Perhaps more positively, however, this has made it a model for what can be achieved when people believe in the bicycle.



Should additional housing be in Blossom Hill area given their group's advocacy for 525K feet for Albright and ended up at like 467K, well over EIR Superior alternative of 350K? Certainly RHNA numbers increased because over 350K? Equity....

How do we promote equity and diversity while keeping the small town feel? That's the sweet spot to meet both objectives.

What about community gardens?

Or innovative farming: copy and paste from <https://farmflavor.com/florida/walt-disney-world-farm-grows-magical-produce-earth/>

Vertical Growing Techniques (Not Just for Beanstalks Anymore!)

What if there were a way to increase food production while using less water, less fertilizer, fewer pesticides and even less space? At Disney, this isn't just fantasy. Traditional growing methods require huge, horizontal plots of land, but at Epcot, produce is climbing upward to achieve this dream. Plants are grown vertically using either stacked gardens or specialized trellises that allow crops to reach gravity-defying heights. Produce grown in this way uses a fraction of the space required by conventional methods, saving water and increasing yields.



Thank you for reading this email.

Respectfully,

John Shepardson, Esq.
Sent from my iPhone

From: Phil Koen [REDACTED]
Sent: Thursday, June 23, 2022 9:46 AM
To: Jennifer Armer <JARmer@losgatosca.gov>; Joel Paulson <jpaulson@losgatosca.gov>
Cc: Town Manager <Manager@losgatosca.gov>; Rob Rennie <RRennie@losgatosca.gov>; Matthew Hudes <MHudes@losgatosca.gov>; Mary Badame <MBadame@losgatosca.gov>; Maria Ristow <MRistow@losgatosca.gov>; Marico Sayoc <MSayoc@losgatosca.gov>; [REDACTED]; Rick Van Hoesen [REDACTED]; Lee Fagot [REDACTED]; Tran Nguyen [REDACTED]; Joanne Rodgers [REDACTED]; Gabrielle Whelan <GWhelan@losgatosca.gov>; David Weissman [REDACTED]
Subject: Staff Memo on Opportunity Housing - City of San Jose

EXTERNAL SENDER

Hello Ms. Armer,

During the Special Meeting of the Town Council this past Monday evening, in response to a series of questions from Council Member Sayoc, you stated there wasn't any additional information regarding developing Missing Middle Housing available.

I have attached a staff report written by the City of San Jose dated December 1, 2021, which provides a very thoughtful analysis of the financial feasibility of the redevelopment of properties into two to four units on a typical 7,500 sq. ft (60 x 125 feet) parcel in various residential neighborhoods throughout the City of San Jose. Additionally, the memo discusses the implications of SB 9 since many of the configurations studied would be allowed by SB 9.

I believe this information is critical to any land use decision regarding duplex, triplex and quadplex housing that is currently being deliberated by the Town Council. Perhaps you could review the material and provide the Town Council with Staff's view of the most appropriate location for duplex, triplex and quadplex housing types which maximizes the financial feasibility of development.

Unfortunately, I do not believe the GPAC, PC or Town Council ever received an analysis of the financial feasibility of redeveloping a typical 8,000 sq. ft single family residential parcel into two-to-four-units in Los Gatos. This goes to the heart of the question as to whether or not the Town ever studied the financial feasibility of the redevelopment of an existing neighborhood as shown in Figure 3-5 (attached) of the draft 2040 General Plan.

Without knowing whether the redevelopment of the parcels as shown in Figure 3-5 are financially feasible, how can one reasonably conclude that "implementing the missing middle" is the "how to meet the housing needs of Los Gatos" as stated section 3.2 of the draft 2040 General Plan?

Based on the City of San Jose study, the conclusion was that in the Tier 1 market (which is the highest market value area of San Jose which is below the market value of Los Gatos) the redevelopment of a stacked fourplex rental or condo (like housing type D in figure 3-5) was not feasible in existing residential neighborhoods. If a fourplex is not feasible neither would a stacked duplex such as types C and E. Since San Jose did not study the cottage court type, it is unknown as to its feasibility.

I did confirm with the Chair of the GPAC that a financial feasibility analysis similar to the City of San Jose's was never presented to the GPAC.

Lastly, the City of San Jose study shows that in the Tier 1 market (which is a good proxy for Los Gatos), the housing types studied are only affordable to households above 120% AMI. The newly published State Income Limits established the Santa Clara County Area Mean Income (AMI) to be \$168,500 (see attachment). 120% of \$168,500 would be an income level of \$202,200. Stated another way all of the redeveloped housing types shown in Figure 3-5 (e.g., Missing Middles)would not be affordable to very low- and low-income families.

If the Town has chronically under performed in our ability to develop housing for the very-low and low income groups, and we are struggling to determine an answer to how to properly plan for the amount of very-low and low income housing allocated by the 6th cycle RHNA, why is the Town promoting a land use policy such as LU 1.2 which seemingly benefits only those earning over \$202,200 and fails to address the housing needs of income groups earning between \$84,250 and \$168,500? The policy seems to conflate affordability with "less expensive". They are very different measures. To be clear, we believe the land uses goal needs to be centered on the concept of supporting housing types that are "affordable" and not simply "less expensive" since "less expensive" is a subjective term.

Thank you for your assistance.

Phil Koen
Los Gatos Community Alliance



Memorandum

TO: PLANNING COMMISSION
SUBJECT: Opportunity Housing and SB 9
Implementation

FROM: Christopher Burton

DATE: December 1, 2021

COUNCIL DISTRICT: Citywide

Type of Permit	Not a permit
Project Planner	Jerad Ferguson
CEQA Clearance	Not a Project, File No. PP17-007, Preliminary direction to staff and eventual action requires approval from a decision-making body.
CEQA Planner	David Keyon

RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council take the following action:

1. Decline to move forward with the City's Opportunity Housing effort at the present time in order to focus on implementation of Senate Bill 9 (SB 9), which requires the City to allow most of the Opportunity Housing types contemplated as part of the Four-Year Review of the General Plan process.
2. Direct staff to develop citywide design standards for implementation of SB 9.
3. Direct staff to explore allowance for "SB 9-type" housing projects within R-2 Zoning Districts and on historic properties that do not qualify under SB 9.

PROJECT BACKGROUND

General Plan Four-Year Review

The *Envision San José 2040 General Plan* (General Plan) is a comprehensive, innovative, and forward-thinking policy document that lays the framework for becoming a fiscally-sound and environmentally sustainable city of great places. Over 5,000 individuals participated in the General Plan update process from 2008 through 2011, and the General Plan was approved unanimously by the City Council on November 1, 2011.

The General Plan sets forth Goals and Policies requiring the City to conduct a review of the Plan every four years. The purpose of the General Plan Four-Year Review (Four-Year Review) is to evaluate significant changes in the planning context and achievement of key General Plan goals. The General Plan requires the City to reconvene a Task Force during each Four-Year Review to provide community and stakeholder engagement in reviewing and evaluating success in the implementation of the General Plan and to recommend any mid-course actions needed to achieve its goals.

Based on the outcome and recommendations from the Four-Year Review Task Force process, the City Council could decide to amend the General Plan goals, policies and actions, and/or the Land Use/Transportation Diagram to further the achievement of the General Plan's Vision and Major Strategies.

On June 11, 2019, the City Council approved the staff recommended scope of work for the second General Plan Four-Year Review and provided additional scope items as detailed in a [memo issued by Mayor Sam Liccardo, Councilmember Sergio Jimenez, Councilmember Raul Peralez, and Councilmember Sylvia Arenas on June 7, 2019](#). One of the items in the City Council approved scope of work is the subject of this Staff Report, the consideration of "Opportunity Housing."

1. *Explore allowing single-family parcels currently designated "Residential Neighborhood" to redevelop to 2-4 units per parcel with the following parameters from the outset:*
 - a. *Limit to parcels proximate to transit-oriented Urban Villages or immediately adjacent to residential parcels with existing medium-density building types, e.g., duplexes or triplexes.*
 - b. *Develop a set of design guidelines that would maintain current allowed heights and keep setbacks comparable to existing single-family homes to ensure development would be well integrated into neighborhoods.*
 - c. *Allow flexibility on the number of units allowed per parcel that would vary based on lot size, location, and other factors.*
 - d. *Clarify that any redevelopment remains within the discretion of the property owner.*
 - e. *Specify that this would be sensitive to historic neighborhoods.*
 - f. *Validate that opportunity housing projects are cost effective.*

In November 2019, a 42-member Task Force was reconvened to evaluate the scope identified by the City Council. Ten Task Force meetings were held between November 2019 and November 2020. The first four meetings were held in-person; however, just prior to the fifth Task Force meeting, on March 16, 2020, the Santa Clara County Public Health Officer issued a shelter in place order to slow the spread of COVID-19. With the rise of COVID-19 cases and legal orders to keep residents safe and limit new cases, City staff continued to work remotely and transitioned the Task Force meetings to a virtual format after a four-month hiatus. The first virtual meeting was held on June 25, 2020.

All meetings were open to the public, and a total of approximately 1,000 attendees participated in the Task Force Meetings; approximately 110 attended the four in-person meetings and approximately 890 attended the six virtual meetings. All meeting materials including agendas, synopsis, presentations, reports, and Task Force and public correspondence are available on the Planning Division website (<http://www.sanjoseca.gov/GeneralPlanReview>). The subject of this Staff Report and related hearing is limited to Opportunity Housing. The other General Plan Four-Year Review scope of work items will be considered, or have been considered, in separate public hearings. The background of Opportunity Housing, the General Plan Four-Year Review Task Force recommendations and previous staff recommendations related to Opportunity Housing are discussed below.

Opportunity Housing Background

At the [December 19, 2019 Task Force meeting](#), staff provided background information to the Task Force about missing middle housing, which is multi-unit housing similar in scale to single-family. This included presentations from Opticos Design and from a developer who had recently completed construction of a new duplex in the City.

At the [February 27, 2020 Task Force meeting](#), staff presented additional background information related to missing middle housing. This included information about missing middle housing initiatives in other cities across the country and a review of proposed state legislation at that time. Staff also presented an initial policy

framework with respect to Opportunity Housing that would allow two to four units of housing on parcels designated Residential Neighborhood. Parcels would be limited to those proximate to local or regional transit Urban Villages, and parcels adjacent to existing medium or high density residential. There would also be provisions preventing the redevelopment of parcels with rent-controlled units or properties that were renter-occupied. These recommendations aligned directly with scope of work provided by the Council.

There were many public comments at this meeting that were positive and supportive of staff recommendation on opportunity housing as it allows more housing in the City for the housing shortage while also addressing historic racial segregation and inequities. Some community members suggested that Opportunity Housing should be expanded citywide and to consider allowing more units closer to transit. Other community members were concerned that opportunity housing would disrupt historic neighborhoods, the historic resources inventory should be completed prior to implementing the policy, would add pressure on existing infrastructure, lack of early outreach, and the vulnerability it would create for starter neighborhoods that may be attractive to smaller developers to purchase and redevelop. Given time constraints there was not Task Force discussion at this meeting.

At the [July 30, 2020 Task Force Meeting](#), staff recommended establishing a conceptual Opportunity Housing policy framework with a work plan process based on the feedback received from the Task Force and community. The conceptual policy framework would be used as a starting point for further research on Opportunity Housing as part of the work plan. The work plan would involve short-term and long-term tasks including, but not limited to, completing public outreach, a Cost Effectiveness Study, a Displacement Risk Assessment, General Plan amendments, Zoning Code updates, and design standards. Task Force members provided comment and asked detailed clarifying questions of staff regarding their recommendation. There were 42 community members that provided public comment with varying degrees of support, opposition, and general questions and concerns regarding Opportunity Housing. The topic was continued to the next Task Force meeting.

At the [August 20, 2020 Task Force meeting](#), staff presented the Task Force with a further refined draft policy framework and work plan for Opportunity Housing based the feedback received at the previous meeting. This recommendation is detailed further below. Some Task Force members expressed concern that the staff time and resources to implement Opportunity Housing would detract from implementation other General Plan process such as Urban Village planning. Other members were supportive of Opportunity Housing but were concerned with the limited geography defined in the scope of work. These Task Force members were in favor of allowing Opportunity Housing citywide to provide more housing opportunities, and to undo historical exclusionary patterns that reinforce segregation.

Opportunity Housing Recommendations

Staff Recommendation to the Task Force

The final staff recommended policy framework and work plan were the result of feedback from the public that earlier iterations of the Opportunity Housing recommendations were being developed without community engagement, and that more extensive community input should be conducted first. The Four-Year Review process was not scoped or resourced to provide extensive community engagement beyond the Task Force meetings. Based on this feedback, and the limitation of what could be done in as part of the Four-Year Review process, staff modified its proposal to be a work program that proposed action items that should be completed if Council were to move forward with Opportunity Housing. This proposed work program included extensive community engagement. The staff proposal did, however, retain the initial policy recommendation on the geography of where Opportunity Housing should be allowed, as the geography was specified within the scope of work from the City Council. Below is staff's full recommendation to the Task Force on Opportunity Housing:

Staff recommends continuing to explore allowing up to four units on parcels with a Residential Neighborhood land use designation in areas generally a half-mile walking distance around Transit Urban Villages, taking into

consideration natural, human-made, and neighborhood boundaries, and on properties adjacent to existing multifamily housing types or properties designated for multifamily housing. Should the City Council direct staff to further explore Opportunity Housing, the following actions will need to be initiated:

- 1. Conduct a citywide community engagement effort:*
 - a. Work with community organizations and leaders to encourage participation and diverse representation reflective of San José in the outreach process.*
- 2. Explore creating an affordable housing incentive to encourage inclusion of units at affordable or moderately-priced levels in Opportunity Housing.*
- 3. Find an approach that would allow Opportunity Housing while also minimizing displacement risk:*
 - a. Conduct a Displacement Risk Analysis where Opportunity Housing would be implemented.*
 - b. Determine if existing City protections for renters (i.e., just causes for evictions under the Tenant Protection Ordinance, Ellis Act Ordinance relocation requirements) would be sufficient or are additional protections needed to minimize and discourage displacement. Consider additional protections for renters such as not allowing Opportunity Housing on properties that have withdrawn from the market through the Ellis Act Ordinance, are qualifying properties under the Apartment Rent Ordinance, and have been occupied by renters in recent years.*
 - c. Consider additional restrictions for use of Opportunity Housing units as short term rentals, beyond the City's existing ordinance.*
- 4. Explore strategies to preserve historic areas and properties while also allowing Opportunity Housing:*
 - a. Consider allowing the adaptive reuse of structures that are on or are eligible for inclusion on the City of San José's Historic Resources Inventory.*
 - b. Consider an age-based rule for older homes applying for Opportunity Housing if updates to the Historic Resources Inventory are not completed by the time of implementation.*
- 5. Update City policies and ordinances to allow Opportunity Housing:*
 - a. Update the Citywide Design Standards and Guidelines to include Opportunity Housing design standards that ensure that Opportunity Housing projects are designed to be compatible with existing neighborhoods.*
 - b. Revise the General Plan and Zoning Code to allow and facilitate Opportunity Housing while maintaining the intent for Opportunity Housing to blend in with the existing neighborhood.*

Task Force Recommendation

Many on the Task Force commented that they were concerned that limiting Opportunity Housing to areas proximate to transit would disproportionately impact less affluent neighborhoods and not provide new options for housing within higher resource neighborhoods. Following deliberation, the Task Force recommended approval of the staff recommendation (28 approved, 6 opposed) with the following modification:

Explore allowing up to four units on parcels with a Residential Neighborhood land use designation citywide.

The Task Force agreed with the further action items in the staff recommendation. The Task Force made the following additional recommendation to staff (27 approved, 6 opposed, 1 abstention):

Recommend to staff that during the period of study for Opportunity Housing that staff prioritizes Urban Village implementation.

Governor Newsom signed Senate Bill 9 (SB 9) into law on September 16, 2021. The bill becomes effective on January 1, 2022. SB 9 applies to all cities and counties, and allows for 1) subdivision of a single-family zoned lot into two lots; and 2) construction of two units on a single-family zoned property. SB 10 authorizes a local government to voluntarily adopt a zoning ordinance to allow up to ten dwelling units on any parcel within a transit-rich area or urban infill site at a height specified in the ordinance. SB 9 and SB 10 were the subject of City Council Study Session entitled *Overview of Senate Bill 9 and Senate Bill 10 and Implications to Planning Policy and Zoning Regulations*. An information memorandum related to this study session provides additional background information on SB 9 and SB 10 **Exhibit B**. The implications of SB 9 and SB 10 as it relates to the previous Opportunity Housing recommendations is discussed in detail in the Analysis section.

ANALYSIS

The City Council approved the scope of work in June 2019 for the General Plan Four-Year Review that included exploring Opportunity Housing that would allow up to two to four units of housing on properties currently restricted to single-family homes.

In bringing the recommendations to the Task Force on Opportunity Housing, staff considered the scope of Opportunity Housing received from the City Council and spent time analyzing which parcels should be included based on proximity to transit and transit-oriented Urban Villages with the context of the scope of work received from the City Council. The Task Force recommended that parcels be considered citywide rather than any specific restriction around proximity to transit. With the passage of SB 9, the City will be required to allow duplexes and lot splits of single-family zone parcels citywide, and this aspect of the discussion around Opportunity Housing is no longer as relevant.

Feasibility Analysis

Following the conclusion of the Task Force meetings, Staff engaged a consultant, Strategic Economics, to prepare a financial feasibility analysis of Opportunity Housing. This follows the direction of the Council approved scope of work item 1.f to *Validate that opportunity projects are cost effective*. The full report is contained in **Exhibit A**. The report contains two sections, the first is a feasibility analysis of 12 prototypes of Opportunity Housing in San José. The second section, completed by the subconsultant Opticos Design, is a citywide parcel testing analysis, that was used to develop the lot configurations used in the 12 prototypes.

The analysis is useful to understand the likelihood, based on financial feasibility, that properties will be redeveloped into two to four units if Opportunity Housing were allowed in the City by City ordinance. While the report was created around the concept of Opportunity Housing, i.e., two to four units per parcel, the analysis is still useful in understanding the implications of SB 9 as many of the Opportunity Housing configurations analyzed would be allowed under SB 9.

Overall, there are several configurations in specific sub-markets within the City where redevelopment of single-family lots into multiple units is financially feasible. However, it is worth noting that there are still many situations where redevelopment is not financially feasible or where site constraints would prevent redevelopment. Extensive or sweeping redevelopment of single-family neighborhoods is unlikely given the findings of this financial feasibility analysis. This conclusion is also supported in a July 2021 study¹ released by the Turner Center for Housing Innovation at UC Berkeley. A key finding of this study was that 5.4 percent of all single-family lots in the state would be feasible for redevelopment under SB 9.

Sub-market Tiers

The 12 sub-areas used for the Development Fee Framework and the Inclusionary Housing Ordinance² were used as the basis for dividing the City into "market tiers" to reflect the areas of the city that have different land values, sales prices, and rents that would impact financial feasibility. The consultant analyzed sales data

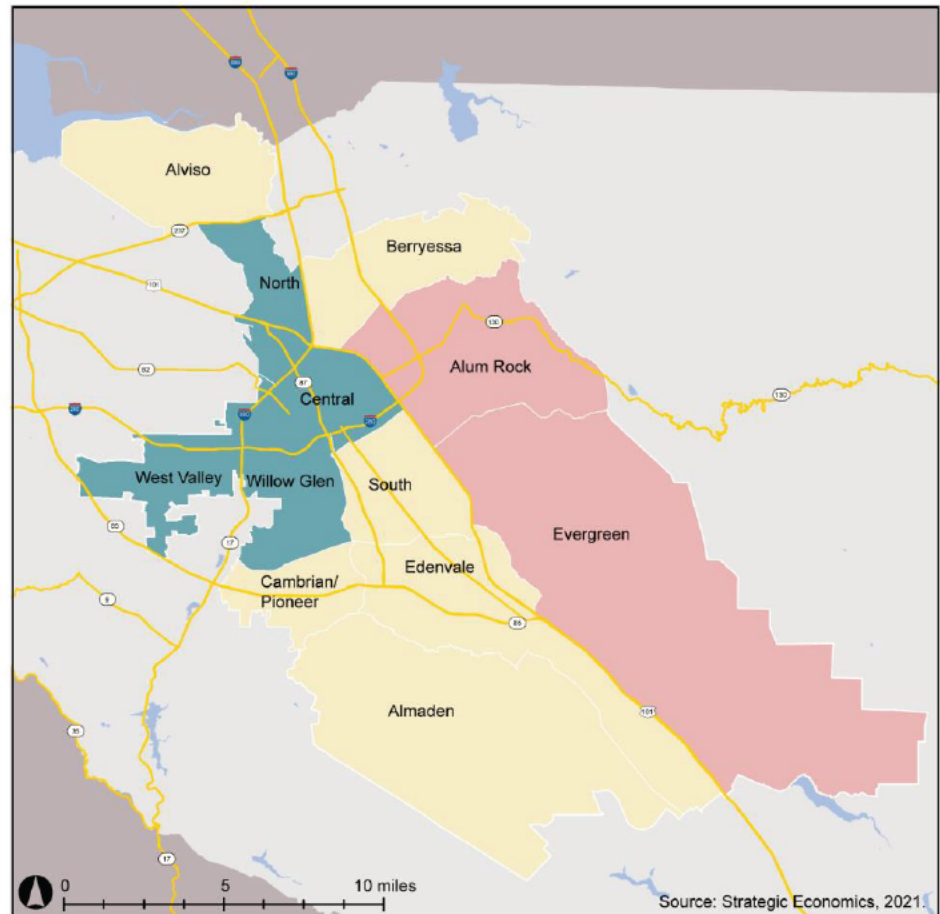
¹ <https://turnercenter.berkeley.edu/wp-content/uploads/2021/07/SB-9-Brief-July-2021-Final.pdf>

² <https://csj.maps.arcgis.com/apps/webappviewer/index.html?id=8518bc095ae54f4ea025d7743c650881>

over time from Redfin for various for-sale home types across the City, as well as rental data from Costar across the City over time in order to classify each sub-area into a market tier. Figures 3 and 4 from the report by Strategic Economics (below) show the 12 sub-areas divided into three tiers for rental and three tiers for for-sale. Tier 1 represents the highest-market value and Tier 3 the lowest. There are slight variations between the two where a rental market is of higher-value than a for-sale market, or vice versa. For example, the Cambrian/Pioneer sub-area is in Tier 1 for-sale and Tier 2 rental.

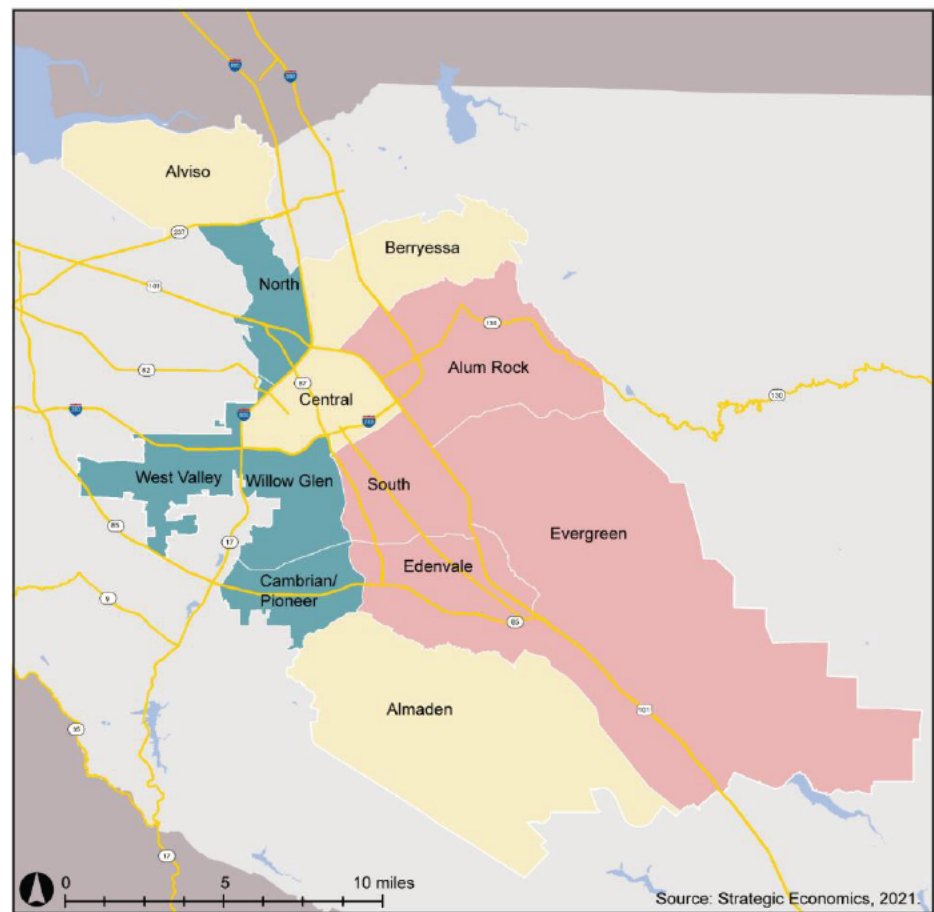
**San Jose Opportunity
Housing: Multifamily Rental
Subareas by Tier**

- Tier 1 (West Valley, Central, Willow Glen, North)
- Tier 2 (South, Berryessa, Alviso, Cambrian/Pioneer, Edenvale, Almaden)
- Tier 3 (Alum Rock, Evergreen)



San Jose Opportunity Housing: Condo/Townhome Subareas by Tier

- Tier 1 (West Valley, North, Willow Glen, Cambrian/Pioneer)
- Tier 2 (Central, Alviso, Berryessa, Almaden)
- Tier 3 (Alum Rock, South, Edenvale, Evergreen)



Lot Configurations

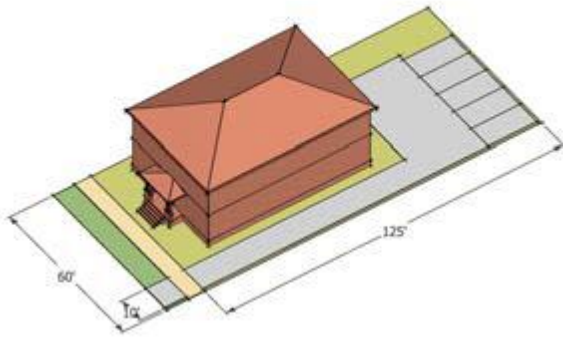
Based on the citywide review and analysis, there were 12 configurations selected that were used as prototypes and tested in each of the market tiers. One key finding of the citywide parcel analysis found that 79 percent of the over 149,700 parcels designated as Residential Neighborhood on the General Plan Land Use Diagram could accommodate a stacked fourplex. This equates to a lot size of at least 7,500 sq. ft. with dimensions at least 60 ft x 125 ft. Most configurations tested were within the bounds of the scope of work that contemplated up to four units on a lot. However, additional configurations with more than four units were tested in order to understand if a slight increase in density, still within a similar building size, would be more financially feasible. All configurations with two to four units assume one parking space per unit onsite (1:1 ratio). Below is a detailed description of the Opportunity Housing configurations that were used in the feasibility analysis:

Opportunity Housing Configuration (Two to Four Units):

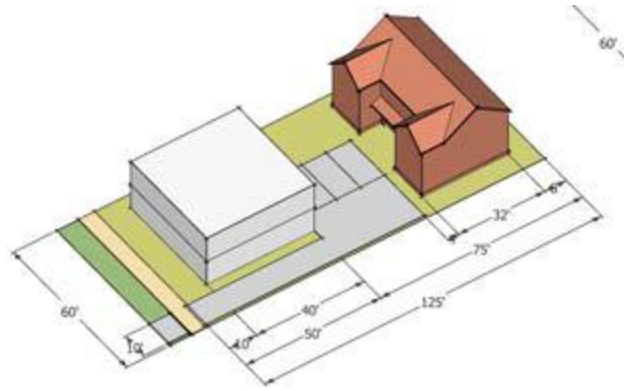
- **Stacked Fourplex (two stories):** A single building with four units. One common entrance and two-units on each floor. Tested as both a condo and a rental project.
- **Side-by-Side Large Duplex (two stories):** A traditional duplex condo with the same building footprint as the stacked fourplex.
- **Side-by-Side Duplex in Rear Yard (two stories):** A newly constructed side-by-side duplex in the rear yard of an existing single-family home. This was tested as both a condo and rental project.
- **Attached Townhomes (three stories):** Four attached townhomes on one lot and tested as condo.
- **Small Lot Single Family (three stories):** Four detached "small lot single family" units on one lot and tested as condo.

Additional Potential Configurations (six-eight units): These configurations are all three-stories but have parking ratios less than one per unit.

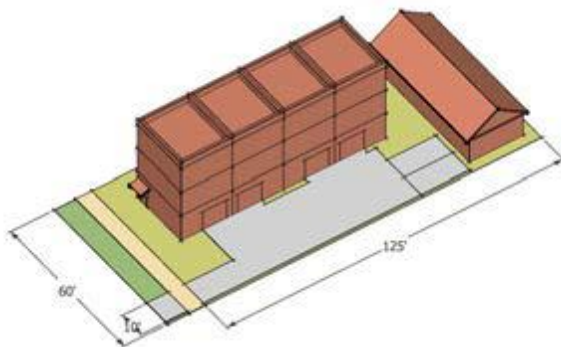
- Three-Story Sixplex: Adds a third story to the stacked fourplex, with two more units on the third story.
- Two-Story Eightplex: Same gross building square footage as the stacked fourplex, but with four units on each floor. These were tested only as rental and were the smallest unit size tested.
- Three-Story Eightplex: Same building square footage as three-story sixplex, but with three units that are smaller on first two floors. Tested as rental and condo.



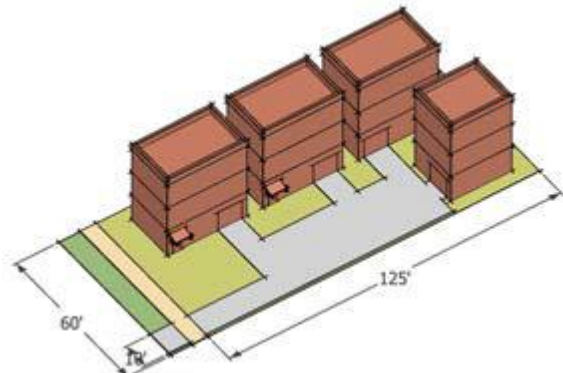
Stacked Fourplex
Two-Story Sixplex/Eightplex



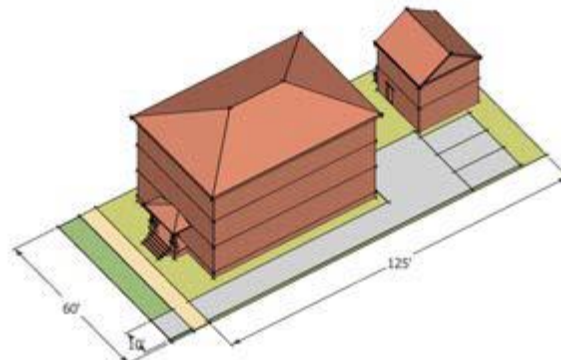
Side-By-Side Duplex in Rear Yard



Attached Townhomes



Small Lot Single Family



Three-Story Stacked Sixplex/Eightplex

Several Configurations are Financially Feasible

The 12 models were tested using a pro-forma model that calculated the project value (rental revenue or unit sales), subtracted development costs (all construction costs plus a profit), and calculated the residual value.

Therefore, to be considered feasible, the residual value would need to be greater or equal to the cost of acquiring the lot. The attached report from Strategic Economics goes into greater detail, but the results are summarized in the following table.

2-4 Unit Configurations	Tier 1	Tier 2	Tier 3
Side-by-Side Large Duplex Condo	Feasible	Feasible	Not Feasible
Side-by-Side Duplex Condo in Rear Yard	Feasible	Not Feasible	Not Feasible
Side-by-Side Duplex Rental in Rear Yard	Not Feasible	Not Feasible	Not Feasible
Stacked Fourplex Rental	Not Feasible	Not Feasible	Not Feasible
Stacked Fourplex Condo	Not Feasible	Not Feasible	Not Feasible
Small Lot Single Family	Feasible	Feasible	Not Feasible
Attached Townhomes	Feasible	Not Feasible	Not Feasible

6-8 Unit Configurations	Tier 1	Tier 2	Tier 3
Three-Story Sixplex Condo	Feasible	Not Feasible	Not Feasible
Three Story Eightplex Condo	Feasible	Not Feasible	Not Feasible
Three Story Eightplex Rental	Feasible	Not Feasible	Not Feasible
Three-Story Sixplex Rental	Not Feasible	Not Feasible	Not Feasible
Two Story Eightplex Rental	Not Feasible	Not Feasible	Not Feasible

As shown the table, Tier 1 area has four 2-4 unit for sale configurations that are feasible and three 6-8 unit configurations that are feasible, one of which is rental. Tier 2 has two for-sale configurations that are feasible. No configurations are feasible in Tier 3 under this model.

Cash Flow Analysis

The pro-forma model used to test financial feasibility for the 12 lot configurations assumes that the property would be acquired. However, the pro-forma model would not cover situations where a homeowner may own their property outright or own a significant share of equity in the property, and seek to add additional units. For this situation, the consultant conducted additional analysis using a cash flow model. The cash flow analysis is also more relevant in the context of SB 9 since owner occupancy for three years is required in certain circumstances. The cash flow model assumes a property owner would finance construction of additional units through a cash-out refinance mortgage with a conventional 30-year fixed rate loan. The *Side-by-Side Duplex Rental in Rear Yard* configuration was used for this analysis as it is a likely configuration for this situation as it leaves the existing home intact.

The analysis showed that in typical situation in the Tier 1 area, the property owner could expect to break even by year 6, with year 1 being the start of construction and mortgage payments. This assumes rental income beginning in year 2 after the completion of construction. Tier 2 properties would break even in year 7. Tier 3 is more challenging due to the property value limiting the maximum loan value. These properties would break

even in year 14 and would need additional up-front development money since the overall development cost exceeds the maximum loan. Overall, this analysis paints a similar picture as the pro-forma model where it is conceivable that some homeowners may develop additional units in their rear yard, but there is unlikely to be a large number that do so.

A cash out refinance mortgage is the most likely financial product currently available to a homeowner to finance this type of project. However, this product is less than ideal since the homeowner would likely need to show sufficient income, excluding anticipated rental income of new units, in order to qualify for the mortgage. Since this situation is relatively new, and could soon be occurring statewide, it is possible that local or regional financial institutions could look to create new products to accommodate this type of redevelopment.

Affordability of Units

The report from Strategic Economics also analyzed the affordability of the configurations tested for feasibility. The two- to four-unit configurations that are feasible would require tenant or owner household incomes above 120% of Area Median Income (AMI) for Santa Clara County. However, it should be noted that the Three-Story Sixplex Condo, the Three-Story Eightplex Rental, and the Three-Story Eightplex Condo were determined to be feasible in the Tier I market. These configurations would be affordable to Moderate-income renters or homebuyers, who earn between 80 and 120% AMI.³ The configurations highlighted in green below are those that were determined to be feasible.

Tier 1 Affordability Summary

Configuration	Income Needed to Rent or Purchase Unit	Affordable to Households at:
Two to Four Units		
Stacked Fourplex Rental (2-BR)	\$153,320	125% AMI
Stacked Fourplex Condo (2-BR)	\$183,198	135% AMI
Side-by-Side Large Duplex Condo (4-BR)	\$339,550	195% AMI
Side-by-Side Duplex Rental in Rear Yard (3-BR)	\$172,000	105-115% AMI
Side-by-Side Duplex Condo in Rear Yard (3-BR)	\$210,224	130-140% AMI
Small Lot Single Family (3-BR)	\$237,702	145-155% AMI
Attached Townhome (3-BR)	\$237,291	145-155% AMI
Six to Eight Units		
Three-Story Sixplex Rental (2-BR)	\$153,320	125% AMI
Three-Story Sixplex Condo (2-BR)	\$183,198	135% AMI
Two-Story Eightplex Rental (1-BR)	\$94,840	80-90% AMI
Three-Story Eightplex Rental		
1-BR	\$115,840	95-110% AMI
2-BR	\$146,120	105% AMI
Three-Story Eightplex Condo		
1-BR	\$128,809	105-120% AMI
2-BR	\$173,869	130% AMI

Tier 2 affordability is included in the full report from Strategic Economics as Figure 26. There are two feasible configurations, the Side-by-Side Duplex Condo and the Small Lot Single Family. Both are above the moderate-

³ City of San José Rent and Income Limit Tables, Effective Date April 26, 2021, <https://www.sanjoseca.gov/home/showpublisheddocument/72973/637568410954100000>

income range. The Side-by-Side Duplex Condo were affordable to households at 170% AMI and the Small Lot Single Family was affordable to households between 130-140% AMI. Tier 3 was not analyzed since there were no configurations that were found to be feasible. Overall, a slight increase in density by going to six to eight units improved affordability.

Senate Bill 9 Comparison with Opportunity Housing

As noted previously, SB 9 would allow most Opportunity Housing configurations with 2-4 units studied under the feasibility analysis. Below is a chart outlining which configurations would be allowed under SB 9 and its feasibility.

Configuration	SB 9	Feasibility	Notes
Stacked Fourplex Rental & Condo	Not allowed	Not Feasible	
Side-by-Side Duplex Condo	Allowed	Tier 1 & Tier 2	
Side-by-Side Duplex Condo in Rear Yard	Allowed with lot split	Tier 1	
Side-by-Side Duplex Rental in Rear Yard	Allowed with lot split	Not Feasible*	Owner occupancy is required.
Small Lot Single Family	Allowed with lot split	Tier 1 & Tier 2	Owner occupancy is required.
Attached Townhomes	Allowed with lot split; slight variation would be needed.	Tier 1	Lot split and owner occupancy is required. Not all units could be attached. Small Lot Single Family more likely.

*This configuration was also assessed under a cash flow analysis to examine this model from a homeowner's perspective discussed in the previous separate section.

Senate Bill 10

As noted in the background, SB 10 provides an optional route for cities to allow up to 10 units on any parcel within a transit-rich area or urban infill site. SB 10 would exempt the legislative acts of the City from CEQA, i.e., General Plan and zoning amendments. Individual development applications are still subject to CEQA unless the City were to provide for a ministerial approval process. However, it is staff's current understanding that SB 10 requires a city to allow 10 units to be constructed on every property zoned under SB 10, meaning the City could not use SB 10 to streamline zoning that would limit properties to Council's direction Opportunity Housing of up to four units, or the additional configurations tested in the feasibility analysis, such as six to eight units meeting the transit-rich or urban infill site definitions.

Reason for Recommendation

As noted previously, the Opportunity Housing configurations that have some level of feasibility shown in the feasibility analysis will be allowed throughout the City under SB 9. Those configurations not allowed by SB 9 are either not currently financially feasible, e.g., stacked fourplex, or contain more units than was contemplated under Opportunity Housing as defined in the City Council scope of work. Therefore, staff believes the best course of action at the present is to focus on implementation of SB 9, which takes effect on January 1, 2022, rather than pursuing the City's Opportunity Housing effort as proposed within the context of the General Plan Four-Year Review. In the future, the City could also consider allowing additional configurations beyond what is allowed under SB 9 such as sixplexes and eightplexes. However, more work,

including significant community outreach, would need to be done to understand where and how this type of housing should be facilitated in the city.

Citywide Design Standards

SB 9 requires a jurisdiction to allow at least two units of 800 square feet each on a single parcel. It also contains the following mandatory design standards:

- Cannot require more than four-foot side and rear setbacks for SB 9 developments.
- Cannot require more than one parking space per unit., except no parking can be required for projects within a half-mile walking distance of high-quality transit or major transit stops, as defined by state law, or if there is a car share vehicle located within one block.
- Must allow construction of attached units; however, attached units must be designed to meet all requirements for selling each unit individually.
- No setback can be required for existing structures.
- The City cannot require the correction of non-conforming zoning conditions on a property as a condition of approval of a SB 9 project or deny a SB 9 project due to existing non-conforming conditions.

The City may adopt additional objective design standards. This could include standards to assure new units fit better within the existing neighborhood, such as requiring front doors to be street facing and/or limiting the percentage of a front façade that is taken up by garage doors. Staff is recommending development of these design standards that would then be brought to the Planning Commission and the City Council for consideration. Staff anticipates that this effort would take a year to complete and would include robust community outreach.

R-2 Zoning District and Historic Properties

SB 9 applies only to R-1 zoned properties, but due to historical development and zoning patterns, many of San Jose's single-family residential properties are zoned R-2 and would not qualify for SB 9. R-2 allows the construction of duplexes only on a small percentage of properties if consistent with the General Plan designation and following CEQA compliance and a publicly noticed discretionary hearing process. Given the similarities of R-2 and R-1 zone properties, staff is recommending exploring allowing housing development types consistent with SB 9 on R-2 zoned properties. If no action is taken regarding the R-2 zoning district, it would be easier to develop a duplex on a property zoned R-1.

SB 9 does not apply to sites within a historic district or on a site that is designated historic. Under the City's Opportunity Housing effort, staff was considering allowing limited SB 9 type projects on historic properties where the project will not have a negative impact on the historic resource. Staff is recommending exploring allowing SB 9 type projects on historic properties, that could include adaptive re-use of existing historic structures. For example, the conversion of older larger historic homes into multiple units has occurred previously.

Prioritization of Urban Village Planning

The Task Force approved an additional recommendation to staff to prioritize Urban Village Implementation. This recommendation is consistent with Major Strategy #5 of the Envision San José 2040 General Plan:

Promote the development of Urban Villages to provide active, walkable, bicycle-friendly, transit-oriented, mixed-use urban settings for new housing and job growth attractive to an innovative workforce and consistent with the Plan's environmental goals.

Urban Village implementation has progressed through the continued completion of Urban Village plans. To date, 13 Urban Village Plans are approved, one is in process (North 1st Street), and two have grant funding and

will be initiated in the next year (Southwest Expressway/Race Street and Eastside Alum Rock). Additionally, staff will be working with the Valley Transportation Authority per Council direction to update the Five Wounds Plans (covering Five Wounds, Little Portugal, 24th and William, and Roosevelt Park urban village plans) to allow mixed-use development to align with the opening of the 28th Street/Alum Rock BART station. Staff is also anticipating initiating work on the Capitol Caltrain Station Area plan in Spring 2022, which is an item resulting from the Monterey Corridor Working Group and supported by Task Force recommendations from the General Plan 4-Year Review.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Not a Project, File No. PP17-007, Preliminary direction to staff and eventual action requires approval from a decision-making body.

PUBLIC OUTREACH

Opportunity Housing was discussed at the following General Plan Four-Year Review Task Force meetings: December 18, 2019; February 27, 2020; July 30, 2020; and August 20, 2020. Approximately 444 members of the public attended the meetings on Opportunity Housing and provided comments and questions for staff and the Task Force. In addition, staff conducted outreach with the following neighborhood groups across the City on the topic of Opportunity Housing:

- 2/8/21 - Almaden Valley Community Association
- 2/29/21 – District 8 Community Round Table
- 3/8/21 – District 2 Leadership Group
- 3/29/21 – Shasta Hanchett Neighborhood Association Board
- 4/8/21 – District 9 Leadership Group
- 4/12/21 – SJ United District 2, 9, 10
- 4/15/21 – SJ United District 5, 7, 8
- 4/19/21 – Young Democrats of Silicon Valley
- 4/22/21 – SJ United Districts 1, 3, 4, 6
- 4/23/21 –SV@Home Housing Action Coalition
- 5/17/21 – District 1 Leadership Group

In the recommendations to the Task Force on Opportunity Housing, staff had contemplated a robust community engagement plan in the development of Opportunity Housing development standards if the City Council were to direct staff to moved forward with Opportunity Housing. Staff will conduct additional community engagement as part of the effort to implement SB 9.

Project Manager: Jerad Ferguson

Approved by: /s/ Michael Brilliot, Deputy Director for Christopher Burton, Planning Director

ATTACHMENTS
Exhibit A: Feasibility Analysis Report from Strategic Economics
Exhibit B: Information Memorandum on SB 9 and SB 10

Opportunity Housing and SB 9 Implementation

Links to Attachments A-B

Click on the title to view document

Exhibit A: Feasibility Analysis Report from Strategic Economics Exhibit B: Operations Plan
Exhibit B: Information Memorandum on SB 9 and SB 10

Correspondence received after November 24, 2021

Number of Persons in Household:	1	2	3	4	5	6	7	8
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Santa Clara County Area Median Income: \$168,500	Acutely Low	17700	20250	22750	25300	27300	29350	31350	33400
	Extremely Low	35400	40450	45500	50550	54600	58650	62700	66750
	Very Low Income	59000	67400	75850	84250	91000	97750	104500	111250
	Low Income	92250	105400	118600	131750	142300	152850	163400	173950
	Median Income	117950	134800	151650	168500	182000	195450	208950	222400
	Moderate Income	141550	161750	182000	202200	218400	234550	250750	266900

Santa Cruz County Area Median Income: \$119,300	Acutely Low	12550	14300	16100	17900	19350	20750	22200	23650
	Extremely Low	32700	37350	42000	46650	50400	54150	57850	61600
	Very Low Income	54450	62200	70000	77750	84000	90200	96450	102650
	Low Income	87350	99800	112300	124750	134750	144750	154700	164700
	Median Income	83500	95450	107350	119300	128850	138400	147950	157500
	Moderate Income	100200	114500	128850	143150	154600	166050	177500	188950

Shasta County Area Median Income: \$89,800	Acutely Low	9400	10750	12100	13450	14550	15600	16700	17750
	Extremely Low	16700	19050	23030	27750	32470	37190	41910	46630
	Very Low Income	27800	31800	35750	39700	42900	46100	49250	52450
	Low Income	44450	50800	57150	63500	68600	73700	78750	83850
	Median Income	62850	71850	80800	89800	97000	104150	111350	118550
	Moderate Income	75450	86200	97000	107750	116350	125000	133600	142250

Sierra County Area Median Income: \$90,000	Acutely Low	9450	10800	12150	13500	14600	15650	16750	17800
	Extremely Low	18900	21600	24300	27750	32470	37190	41910	46630
	Very Low Income	31500	36000	40500	45000	48600	52200	55800	59400
	Low Income	50400	57600	64800	72000	77800	83550	89300	95050
	Median Income	63000	72000	81000	90000	97200	104400	111600	118800
	Moderate Income	75600	86400	97200	108000	116650	125300	133900	142550

Siskiyou County Area Median Income: \$80,300	Acutely Low	8450	9650	10850	12050	13000	14000	14950	15900
	Extremely Low	16350	18700	23030	27750	32470	37190	41910	46630
	Very Low Income	27300	31200	35100	38950	42100	45200	48300	51450
	Low Income	43650	49850	56100	62300	67300	72300	77300	82250
	Median Income	56200	64250	72250	80300	86700	93150	99550	106000
	Moderate Income	67450	77100	86700	96350	104050	111750	119450	127200

Solano County Area Median Income: \$108,700	Acutely Low	11400	13050	14650	16300	17600	18900	20200	21500
	Extremely Low	22850	26100	29350	32600	35250	37850	41910	46630
	Very Low Income	38050	43450	48900	54300	58650	63000	67350	71700
	Low Income	60800	69450	78150	86800	93750	100700	107650	114600
	Median Income	76100	86950	97850	108700	117400	126100	134800	143500
	Moderate Income	91300	104350	117400	130450	140900	151300	161750	172200

Sonoma County Area Median Income: \$112,800	Acutely Low	11850	13500	15200	16900	18250	19600	20950	22300
	Extremely Low	25000	28550	32100	35650	38550	41400	44250	47100
	Very Low Income	41600	47550	53500	59400	64200	68950	73700	78450
	Low Income	66550	76050	85550	95050	102700	110300	117900	125500
	Median Income	78950	90250	101500	112800	121800	130850	139850	148900
	Moderate Income	94750	108300	121800	135350	146200	157000	167850	178650

Will these ever get built?
Assumes each lot = 8,000 sq ft

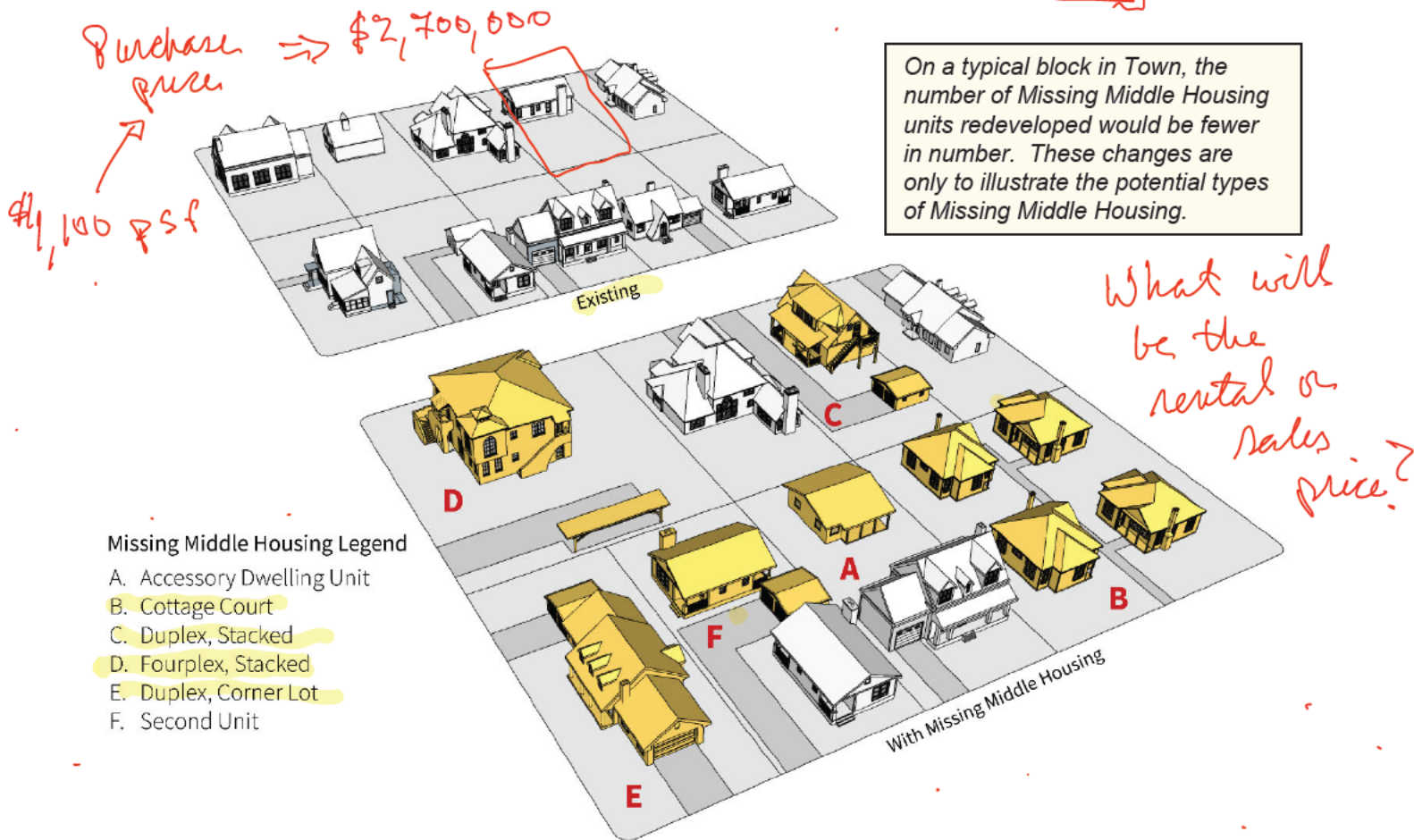


Figure 3-5 Missing Middle Housing Types Illustrated (Sample Concepts)

The following goal and policies will provide guidance on creation of missing middle housing.

LU-1

Provide opportunities for housing that can accommodate the needs, preferences, and financial capabilities of current and future residents in terms of different housing types, tenures, density, sizes, and costs.

LU-1.1

Mixed Residential Neighborhoods

Encourage creation of mixed residential neighborhoods through new and innovative housing types that meet the changing needs of Los Gatos households and expand housing choices in all neighborhoods. These housing types include, but are not limited to, single dwelling units, multi-family dwelling units, accessory dwelling units, small and micro units, use of pre-fabricated homes, and clustered housing/cottage housing.

LU-1.2

Missing Middle Housing

Support housing types and designs that increase density while remaining consistent with the building scale and character present in existing neighborhoods. This includes multi-family units or clustered residential buildings that provide relatively smaller, less expensive units within existing neighborhoods.

LU-1.3

Housing Adaptation

Encourage the adaptation of existing residential units to support multi-family use.

affordable for whom?

financially feasible?

≠ affordable housing

From: Francois, Matthew [REDACTED]
Sent: Friday, June 24, 2022 10:24 AM
To: Attorney <Attorney@losgatosca.gov>
Subject: Los Gatos: 2040 General Plan

EXTERNAL SENDER

Dear Ms. Whelan:

As you know, our firm represents Los Gatos Community Alliance (LGCA). For several months now, we have submitted letters to the Town Staff, Planning Commission, and Town Council outlining the myriad legal inadequacies with the EIR prepared for the Town's General Plan Update. Chief among those deficiencies is that the EIR did not study the impacts associated with the General Plan Update's significant upzoning in almost every land use category. We also pointed out there was no need for such upzoning to meet the Town's RHNA number and also that such upzoning would generally prohibit the Town from denying or reducing the density of a project that complied with the proposed new higher density limits under the Housing Accountability Act.

In our June 17, 2022 letter to the Town Council, we listed a series of reasonable changes to the General Plan Update that the Town Council could make to address LGCA's concerns and to ensure that the impacts of the plan it adopts have been studied in the accompanying EIR. We understand that the Council continued its discussion of the General Plan Update to next week. We're still hopeful that the Town Council will seriously and thoughtfully consider, and ultimately embrace, LGCA's requested changes. But, since that has not been the reception from the Town to LGCA's comments thus far, LGCA authorized us to prepare a draft Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief. A copy of the draft Petition and Complaint is attached hereto.

It is also important to note that after the draft General Plan Update was released in June 2021, there was public concern over the massive density changes proposed. LGCA commissioned EMC to conduct a public poll regarding the General Plan Update. The results were clear and convincing. The overwhelming majority of Town residents do not support the proposed General Plan Update. Specifically, 60 percent of Los Gatos voters indicate that they would vote to reject this plan if it were to be put on a future ballot. See summary of polling results attached.

We hope that this information is helpful to you as you advise the Town Council on their options for decision-making on the General Plan Update. LGCA continues to encourage the Town Council to take land use planning actions that are supported by the law and reflect the desires and wishes of Town residents.

Thank you for your consideration of LGCA's views on this matter. Please do not hesitate to contact me with any questions regarding this correspondence.

Sincerely yours,
Matt Francois

Matthew D. Francois

[REDACTED] | San Francisco, CA 94105

[REDACTED]

[REDACTED]

Privileged And Confidential Communication.

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Attorneys for Plaintiffs and Petitioners
LOS GATOS COMMUNITY ALLIANCE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

LOS GATOS COMMUNITY ALLIANCE,

Plaintiffs and Petitioners,

vs.

TOWN OF LOS GATOS,
TOWN COUNCIL OF THE TOWN OF LOS
GATOS, and
DOES 1 through 20, inclusive.

Case No. _____

**VERIFIED PETITION
FOR WRIT OF MANDATE
AND COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

**[California Environmental Quality Act
("CEQA"), Pub. Res. Code §§ 21168,
21168.5; Code of Civ. Proc., §§ 1085, 1094.5;
1060; 526 et seq.]**

Petitioner and Plaintiff LOS GATOS COMMUNITY ALLIANCE ("LGCA" or
"Petitioner") respectfully petitions this Court for issuance of a writ of mandate pursuant to Code of
Civil Procedure ("CCP") section 1094.5 and Public Resources Code ("PRC") section 21168, or in
the alternative pursuant to CCP § 1085 and PRC § 21168.5, and complains for the issuance of
temporary, preliminary, and permanent injunctive relief and for a declaration of its rights pursuant
to CCP §§ 526 and 1060, directed at Respondents and Defendants TOWN OF LOS GATOS
("Town") and TOWN COUNCIL OF THE TOWN OF LOS GATOS ("Town Council," and
collectively with Town and Does 1-20, "Respondents"), as follows:

///

///

1 **I. INTRODUCTION**

2 1. This action challenges the June ___, 2022 decision of the Town and Town Council
3 to approve its 2040 General Plan Update (the “Project”) and the accompanying Environmental
4 Impact Report (“EIR”)¹ for failure to comply with the California Environmental Quality Act
5 (“CEQA”), Public Resources Code § 21000 *et seq.* and 14 California Code of Regulations § 15000
6 *et seq.* (“CEQA Guidelines”).

7 2. The Project greatly increases densities and intensities in almost every land use
8 designation. Yet, the EIR does not study the reasonably foreseeable consequences of these major
9 changes. This fundamentally and irreconcilably violates CEQA. (*See, e.g.*, Public Resources Code
10 § 21065; CEQA Guidelines §§ 15146(b), 15378; *Laurel Heights Improvement Assn. v. Regents of*
11 *University of California* (1988) 47 Cal. 3d 376; *Las Virgenes Homeowners Federation, Inc. v.*
12 *County of Los Angeles* (1986) 177 Cal.App.3d 300, 307; and *Banning Ranch Conservancy v. City*
13 *of Newport Beach* (2012) 211 Cal.App.4th 1209, 1228-1229.)

14 3. Instead of the tens of thousands of additional housing units and tens of millions
15 square feet of new commercial development allowed by the Project, the EIR studied only a small
16 fraction of this development, *e.g.*, approximately 3,700 housing units and approximately 670,000
17 square feet of commercial development. The EIR’s failure to analyze the impacts of the “whole of
18 the project” undermines the EIR’s analysis of every single environmental resource from Aesthetics
19 to Wildlife.

20 4. The EIR acknowledges that it improperly relied on inconsistent and conflicting
21 baselines. The FEIR states that the EIR used future conditions as the baseline. Yet, the DEIR states
22 that it relied on existing conditions, at least as to vehicle miles traveled (“VMT”) and certain other
23 resource categories. EIRs have been overturned for relying on conflicting baseline information.
24 (*See, e.g.*, *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87
25 Cal.App.4th 99.) Courts have also stated that an EIR may not rely on a future conditions baseline
26 without any substantial evidence to support use of something other than the existing conditions
27

28 ¹ The EIR consists of the Draft EIR (“DEIR”) dated July 2021, Recirculated Draft EIR (“RDEIR”) dated November 2021, and Final EIR (“FEIR”) dated March 2022.

1 baseline. (*Neighbors for Smart Rail v. Exposition Metro Line Construction Auth.* (2013) 57 Cal.4th
2 439.) There is no substantial evidence in the record to support use of a future conditions baseline
3 here. Further, the EIR acknowledges that its analysis relies on a “plan-to-plan” comparison of
4 environmental impacts. Courts have ruled that such paper analysis violates CEQA. (*See, e.g.,*
5 *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d
6 350.)

7 5. The EIR fails to adequately analyze and address significant transportation impacts.
8 The RDEIR identifies a new significant unavoidable impact to transit vehicle operations due to
9 increased delays at intersections. Yet, the RDEIR does not impose feasible mitigation measures to
10 avoid or substantially lessen this significant impact. The RDEIR also fails to consider any
11 alternatives to this newly identified significant impact. In all these aspects, the EIR fails to comply
12 with CEQA. (Public Resources Code §§ 21002, 21002.1(a), CEQA Guidelines §§ 15126.4, 15126.6;
13 *Laurel Heights Improvement Assn., supra*, 47 Cal.3d at 400-403.)

14 6. The EIR also fails to adequately analyze and/or mitigate significant environmental
15 impacts in several resource categories. The EIR fails to properly consider or properly analyze
16 significant cumulative impacts. It fails to analyze a reasonable range of alternatives to the Project.
17 The EIR further improperly defers mitigation without specifying objective performance standards,
18 as required by CEQA.

19 7. Contrary to CEQA, the FEIR fails to provide a good faith effort at full disclosure in
20 response to the comments on the DEIR. Because the CEQA findings (“Findings”) are based on the
21 same flawed EIR analysis detailed in comment letters submitted by Petitioner and others, the
22 Findings are not supported by substantial evidence, as required. Had the analysis been done
23 correctly, the EIR would have disclosed new or substantially more severe environmental impacts.
24 Because the EIR did not address these impacts, they are likewise not included in the Findings.

25 8. Because of these fundamental and irreconcilable transgressions of CEQA, Petitioner
26 seeks a writ of mandate and/or declaratory relief requiring the Town to set aside its approvals
27 certifying the EIR and approving the Project.
28

1 **II. THE PARTIES**

2 9. Petitioner LGCA is an unincorporated, non-profit, public interest community
3 association committed to well-reasoned land use planning actions and promoting and enforcing the
4 provisions of CEQA. Members of LGCA reside in and own property in Los Gatos and will be
5 directly impacted by the Project's impacts.

6 10. Petitioner has significant interests in ensuring that Respondents adequately analyze
7 and mitigate the environmental impacts of the Project as well as properly develop a General Plan
8 that meets the Town's regional housing needs allocation ("RHNA"), including its affordable
9 housing obligations, while preserving the small town nature and character of the Town. LGCA has
10 a beneficial interest in the outcome of this case for itself and on behalf of its members.

11 11. Petitioner and/or its members testified and/or submitted comment letters and other
12 objections expressing concerns about Respondents' plans for, and inadequate consideration of, the
13 significant environmental impacts of the Project at all appropriate times up to and including the
14 Town Council hearing to certify the EIR and approve the Project on June __, 2022. Petitioner
15 objected to the certification of the EIR and approval of the Project both orally and/or in writing prior
16 to the close of the public hearing before the filing of the notice of determination.

17 12. Petitioner brings this action in the public interest, for enforcement of the important
18 public rights and environmental interests intended to be protected by CEQA and to assure
19 compliance with CEQA and other applicable provisions of law implicated by the Respondents'
20 unlawful actions.

21 13. Respondent/Defendant Town is, and at all times mentioned herein was, a municipal
22 corporation organized and existing under the laws of the State of California. The Town has a
23 mandatory duty to comply with the California Constitution, State law requirements, including
24 CEQA, the CEQA Guidelines, and California zoning laws, as well as its own Town Code, when
25 considering discretionary activities and land use regulatory actions such as the Project.

26 14. Respondent/Defendant Town Council is the elected decision-making body of the
27 Town that certified the challenged EIR and approved the contested Project.

28 15. Petitioner is ignorant of the true names and capacities of those sued herein as DOES

1 1 through 20, inclusive, and therefore sues those respondents/defendants by such fictitious names.
2 Petitioner will amend this Petition to allege the true names and capacities of these fictitiously named
3 respondents/defendants when they have been ascertained. Petitioner designates all other unknown
4 persons or entities claiming any interests in the subject of this litigation as DOE
5 respondents/defendants.

6 **III. JURISDICTION AND VENUE**

7 16. This Court has jurisdiction over this proceeding pursuant to CCP §§ 1085, 1094.5,
8 and 1060, and CEQA, including but not limited to Public Resources Code §§ 21168 and 21168.5.

9 17. Venue in this Court is proper pursuant to CCP § 394, in that Respondents are located
10 within the County of Santa Clara.

11 18. All facts and issues raised in this Petition were presented to Respondents prior to
12 Respondents' decision to certify the EIR and approve the Project on June ___, 2022. Petitioner has
13 exhausted all available administrative remedies, and submitted timely objections orally and/or in
14 writing, prior to Respondents' approval of the Project.

15 **IV. FACTUAL BACKGROUND**

16 **A. Description of Project**

17 19. On February 6, 2018, the Town of Los Gatos began the process of updating its 2020
18 General Plan with what would be known as the 2040 General Plan (the "General Plan Update" or
19 "GPU"). The putative goals of the GPU include refining the General Plan, addressing emerging
20 trends and recent State laws, and considering new issues.

21 **B. Environmental Review**

22 20. On or about July 30, 2021, the Town circulated a Notice of Completion and
23 Availability for the DEIR. The DEIR was circulated for 45 days, concluding on September 13,
24 2021. Written comments were received during this time, and a Planning Commission public hearing
25 was held on September 8, 2021, to receive oral comments.

26 21. The DEIR stated that the Project would result in significant environmental impacts
27 as to Air Quality, Cultural Resources, Geology and Soils, Greenhouse Gas Emissions, Noise, and
28 Transportation. As to Greenhouse Gas Emissions and Transportation, the DEIR found that

1 mitigation measures could not mitigate impacts to less than a significant level, and thus concluded
2 that the Project would result in significant and unavoidable impacts to these resource categories.

3 22. During this initial comment period, Petitioner submitted written comments in
4 correspondence dated September 13, 2021. Petitioner's comment letter raised numerous substantive
5 and procedural concerns with respect to the EIR's analysis, including the issues raised in the present
6 Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (the "Petition").

7 23. During the review of commentary and the preparation of the FEIR, the Town became
8 aware that the original Notice of Completion and Availability was procedurally flawed, and also
9 that Appendix C erroneously included a draft Transportation Analysis, rather than a final version.
10 Accordingly, the Town reissued the Notice of Completion and Availability of the DEIR and
11 formally recirculated Chapter 4.15, Transportation, and Appendix C, Transportation Analysis for
12 the DEIR, as well as the Executive Summary. The public review period on the RDEIR ran from
13 November 19, 2021 through January 7, 2022. A public hearing to receive comments on the RDEIR
14 was held on December 8, 2021.

15 24. During this time, additional written comments on the RDEIR were received.
16 Petitioner submitted written comments in correspondence dated January 5, 2022. Petitioner's
17 comment letter raised additional substantive and procedural concerns with respect to the EIR's
18 environmental analysis, including the issues raised in the present Petition.

19 25. On or about March 24, 2022, the Town published the FEIR for the Project. In written
20 correspondence dated April 12, 2022 and June 17, 2022, Petitioner summarized the deficiencies and
21 flaws remaining in the EIR. In it correspondence dated March 22, 2022 and June 17, 2022, LGCA
22 outlined certain specific changes the Town could make to rectify certain major fundamental flaws
23 with the EIR. Neither the Planning Commission nor the Town Council adopted these reasonable
24 and straight-forward changes.

25 **C. Public Hearings and Project Approval**

26 26. On April 13, April 25, April 27, and May 2, 2022, the Town's Planning Commission
27 held public hearings to consider and make recommendations to the Town Council as to the GPU
28 and EIR. At its final hearing, the Planning Commission recommended that the Town Council certify

1 the EIR and approve the Project.

2 27. On June ___, 2022, the Town Council voted to certify the EIR and approve the
3 Project.

4 28. Because the Town Council's actions certifying the EIR and approving the Project
5 violates CEQA in several fundamental and irreconcilable ways, Petitioner commenced this action.

6 **FIRST CAUSE OF ACTION**

7 **(Petition for Writ of Mandate for Violations of CEQA)**

8 29. Petitioner hereby incorporates the allegations of the foregoing paragraphs as though
9 set forth in full herein by this reference.

10 30. Pursuant to CEQA, before a public agency approves any discretionary project, the
11 agency must first identify, assess, and publicly disclose the project's significant environmental
12 effects. An agency may not approve a project that has the potential to have significant
13 environmental impacts if there are feasible alternatives or mitigation measures that would avoid or
14 substantially lessen the adverse environmental impacts.

15 31. In doing the things herein alleged, the Respondents failed to comply with their
16 mandatory duties under CEQA in several substantial and prejudicial respects, including without
17 limitation, the following:

18 32. The EIR fails to analyze the impacts of the "whole of the project" as required by
19 CEQA. The EIR analyzes only a small fraction of the tens of thousands of additional housing units
20 and tens of millions square feet of new commercial development allowed by the changes to the land
21 use densities under the General Plan Update. This error alone infects the EIR's analysis of every
22 single environmental resource. By greatly upzoning most residential and commercial land use
23 designations and then failing to consider the environmental impacts associated with the upzoning,
24 the EIR fails to analyze the full degree of impacts resulting from the Project.

25 33. Town Staff has contended that it is "standard" practice to assume only a fraction of
26 the growth enabled by changes to a general plan, but this is directly contrary to CEQA which
27 mandates that the FEIR analyze the "whole of an action" that may result in either a direct or
28 reasonably foreseeable indirect physical change in the environment. (*See, e.g.,* Public Resources

1 Code § 21065; CEQA Guidelines §§ 15146(b), 15378; *Laurel Heights Improvement Assn., supra*
2 [EIR found inadequate for studying only a portion of a proposed laboratory/office development
3 project]; *Las Virgenes Homeowners Federation, Inc., supra*, 177 Cal.App.3d at 307 [in upholding
4 the cumulative impact analysis of a project EIR that relied upon plan EIRs, the court reasoned that
5 the plan EIRs “necessarily addressed the cumulative impacts of buildout to the maximum possible
6 densities allowed by those plans” with mitigation measures proposed and any overriding benefits of
7 development noted]; *accord, Banning Ranch Conservancy, supra*, 211 Cal.App.4th at 1228-1229.)

8 34. Furthermore, Town Staff has indicated that the Town would monitor growth, and if
9 it reached the maximum amount studied, the Town would only then conduct additional
10 environmental review. However, this also violates CEQA, as courts have routinely rejected similar
11 claims to study environmental impacts after a project has been approved, because if post-approval
12 environmental review were condoned, EIRs would be reduced to nothing more than post hoc
13 rationalizations to support actions already taken. (*Laurel Heights Improvement Assn., supra*, 47
14 Cal.3d at 394 [“If postapproval environmental review were allowed, EIR’s would likely become
15 nothing more than *post hoc* rationalizations to support action already taken.”]; *accord, Save Tara v.*
16 *City of West Hollywood* (2008) 45 Cal.4th 116, 138; *see also City of Santa Ana v. City of Garden*
17 *Grove* (1979) 100 Cal.App.3d 521, 533 [EIR should be prepared as early in the planning process as
18 possible to enable environmental considerations to influence project, program, or design especially
19 since general plan EIRs are used as foundation documents for specific project EIRs].)

20 35. The Project Description is inaccurate, unstable, and inconsistent. It is well-settled
21 that an accurate and complete project description is necessary for an intelligent and informed
22 evaluation of the potentially significant environmental impacts of an agency’s action. (*Cf. Silveira*
23 *v. Las Gallinas Valley Sanitary Dist.* (1997) 54 Cal.App.4th 980, 990; *County of Inyo v. City of Los*
24 *Angeles* (1977) 71 Cal.App.3d 185, 192; and *City of Redlands v. County of San Bernardino* (2002)
25 96 Cal.App.4th 398, 407-408.) Here, the EIR’s project description is flawed in numerous ways:

26 a. The preferred Land Use Alternative approved by the Town Council is not the
27 project studied in the EIR. At its April 7, 2020 meeting, the Town Council embraced Land Use
28 Alternative C, calling for an additional 2,303 housing units. Yet the EIR assumes 3,738 new housing

1 units, which is more than a 60 percent increase from the land use scenario approved by the Town
2 Council. In reality, the General Plan Update allows for growth that far exceeds the Council's
3 preferred Land Use Alternative as well as what was studied in the EIR.

4 b. The EIR states that one of the "central objectives" of the 2040 General Plan
5 is to achieve the Regional Housing Needs Allocation ("RHNA") of 2,000 dwelling units for 2023-
6 2031 developed by the Association of Bay Area Governments ("ABAG"). (DEIR, pp. 2-7, 6-1.)
7 But the EIR then proceeds to analyze 3,738 dwelling units—nearly double the assumed 2023 RHNA
8 figure. The EIR further states that the 2040 General Plan "incorporates the adopted 2015 Housing
9 Element" and that the 2023 Housing Element "is not included in this General Plan Update and would
10 be updated consistent with state law." (DEIR, pp. 1-4, 2-14, 2-16, 4.13-4.) But if the Project's
11 objective truly is to embrace the 2023 RHNA allocation, then proceedings on the 2040 General Plan
12 should halt until the 2023 RHNA allocation is finalized.

13 c. Furthermore, the geographical scope of the Project is unclear. The EIR refers
14 to the eight Community Place Districts which are intended to be "[f]ocus areas for growth." (DEIR,
15 pp. ES-2, 2-1.) But the General Plan Update significantly increases densities throughout the Town,
16 not just in Community Place Districts. The EIR does not acknowledge or attempt to reconcile this
17 serious disconnect between the amount and location of growth allowed by the General Plan Update
18 and the amount and location of growth studied in the EIR.

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

26 e. Finally, Tables 2-2 and 4.11-2 of the FEIR shows a total of 3,738 units with
27 no units labeled "Hillside Residential." However, on September 20, 2021, Town Staff reported to
28 the Town Council and Planning Commission a table showing 166 units in the Hillside Residential

1 category, for a total of 3,904 units. The EIR does not analyze the impacts of 3,904 units, but only
2 the small (and even more grossly deflated) amount of 3,738 units.

3 f. In short, the Project Description has continued to change and evolve
4 throughout the process, thus robbing the EIR's analysis of its validity.

5 36. The EIR fails to adequately analyze and address significant impacts to Aesthetics by,
6 among other things:

7 a. Failing to provide visual simulations or related data regarding future buildout
8 conditions.

9 b. Omitting discussion of key policies pertaining to scenic resources, scenic
10 easements, undergrounding requirements, or view corridor protection.

11 c. Neglecting to study scenic resources within or adjacent to state scenic
12 highways.

13 d. Improperly deferring mitigation for significant visual impacts by the EIR's
14 admission that the development of formal design guidelines would occur at a later time.

15 37. The EIR also fails to adequately analyze and address significant impacts to Air
16 Quality by, among other things:

17 a. Evaluating consistency between the Project and the Bay Area Air Quality
18 Management District's 2017 Clean Air Plan ("CAP") using only six of the 85 control strategies
19 contained in the CAP.

20 b. Ignoring that Project growth is inconsistent with the growth projections
21 assumed in the CAP which are based on substantially lower ABAG population forecasts.

22 c. Using an indefensible methodology to assess impacts related to vehicle miles
23 traveled ("VMT") whereby the EIR only reaches a less than significant conclusion by comparing
24 VMT to population increase on a percentage basis.

25 d. Limiting the qualitative analysis of construction impacts only to dust control
26 measures and wholly ignoring other construction-related emissions. The EIR's conclusion that the
27 Project would result in less than significant construction impacts is not supported by substantial
28 evidence.

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

7 38. The EIR fails to adequately analyze and address significant impacts to Biological
8 Resources, including by:

9 a. Failing to address potential impacts on special-status animal and plant
10 species, including but not limited to, the California Tiger Salamander.

11 b. Concluding that impacts would be less than significant despite
12 acknowledging that infill development, or development attendant to the overall increase in density
13 for all areas within the Town, could result in significant impacts but failing to impose any mitigation
14 measures to address those impacts.

15 39. The EIR fails to adequately analyze and address significant impacts to Cultural and
16 Tribal Cultural Resources by, among other things:

17 a. Failing to acknowledge that the significant increase in densities throughout
18 the Town will lead to additional development in historic districts and thus impact important historic
19 resources within the Town.

20 b. Improperly deferring mitigation via Mitigation Measure CR-1 which requires
21 preparation of future cultural resource studies and implementation of the recommendations
22 contained in those studies. Moreover, because demolition of a historic resource generally results in
23 a significant unavoidable impact (*cf. League for Protection of Oakland's Architectural and Historic*
24 *Resources v. City of Oakland* (1997) 52 Cal.App.4th 896), the EIR's statement that Mitigation
25 Measure CR-1 would reduce impacts to less than a significant level is not supported by facts or law.

26 c. Reliance on policies that are inadequate per case law to avoid or mitigate
27 significant impacts to tribal cultural resources. (*See, e.g., Save Agoura Cornell Knoll v. City of*
28 *Agoura Hills* (2020) 46 Cal.App.5th 665.)

- 1 40. The EIR fails to adequately analyze and address significant impacts to Energy by,
2 among other things:
- 3 a. Ignoring the vast majority of physical impacts associated with increased
4 electricity generation or the burning of fossil fuels.
- 5 b. Failing to acknowledge significant impacts relating to transportation fuel
6 consumption associated with the Project’s significant and unavoidable impacts to VMT.
- 7 c. Containing inconsistent information related to regulations concerning
8 renewable resource targets.
- 9 d. Relying on dated and superseded greenhouse gas (“GHG”) reduction targets.
- 10 e. Failing to discuss or analyze the Project’s consistency with the State’s 2017
11 Scoping Plan.
- 12 41. The EIR defers mitigation for impacts relating to Geology and Soils via Mitigation
13 Measure GEO-1 by requiring that future paleontological resource studies be prepared and that
14 measures in those studies be implemented.
- 15 42. The EIR fails to adequately analyze and address significant impacts relating to
16 Greenhouse Gas Emissions by, among other things:
- 17 a. Not providing supporting data to justify the GHG reductions that would
18 purportedly result from Mitigation Measure GHG-1.
- 19 b. Omitting discussion of other feasible mitigation measures to avoid or
20 substantially reduce the Project’s significant and unavoidable GHG impact. (*Communities for a*
21 *Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 91 [“Having recognized and
22 acknowledged that incremental increases in greenhouse gases would result in significant adverse
23 impacts to global warming, the EIR was now legally required to describe, evaluate and ultimately
24 adopt feasible mitigation measures that would mitigate or avoid those impacts.”].) Failure to do so is
25 particularly egregious as the Project results in GHG emissions that are more than five times the Town’s
26 stated standard.
- 27 c. Failing to reflect a good faith effort to analyze and disclose impacts as
28 required by CEQA in that the EIR does not consider the State’s 2045 carbon neutrality goal merely

1 because it was enacted by executive order instead of by statute.

2 43. The EIR's reliance on 2016-2017 data regarding the Project's potential impacts on
3 groundwater supplies or interference with groundwater recharge does not constitute substantial
4 evidence supporting the conclusion that the Project results in less than significant hydrology
5 impacts. It is also misleading and fails to present an accurate picture of the environmental setting,
6 which includes extreme drought conditions.

7 44. The EIR fails to adequately analyze and address significant impacts relating to Land
8 Use and Planning by, among other things:

9 a. Failing to analyze the impacts of the General Plan Update, the "project" under
10 consideration.

11 b. Neglecting to reconcile the Project's significant and unavoidable impacts to
12 VMT and GHG with its conclusion that the Project is consistent with Plan Bay Area 2040.

13 c. Omitting disclosure of the significant conflicts between the growth projected
14 under the General Plan Update and that projected under Plan Bay Area 2040.

15 d. Not addressing the Project's conflicts with planning policies or regulations
16 adopted for the purpose of avoiding or mitigating an environmental effect.

17 45. The EIR fails to adequately analyze and address significant Noise impacts by, among
18 other things:

19 a. Ignoring the potential for increased development Town-wide under the
20 General Plan Update, and focusing instead on the Community Place Districts alone. Moreover,
21 even as to these limited areas of study, the EIR acknowledges that the impacts may exceed Town
22 noise thresholds, but the EIR nonetheless concludes that the impact is less than significant. This
23 conclusion conflicts with, and is not supported by, substantial evidence in the record.

24 b. Failing to analyze and address the Project's significant construction noise
25 impacts.

26 c. Failing to consider the significant impacts associated with the use of pile
27 drivers or vibratory rollers.

28 d. Relying improperly on a ratio theory to justify its conclusion that the Project

1 will result in a less than significant impact related to roadway noise. (*Kings County Farm Bureau*
2 *v. City of Hanford* (1990) 221 Cal.App.3d 692.)

3 e. Containing no analysis of increased noise levels, especially on roadways
4 where roadway noise already exceeds established noise levels.

5 f. Failing to discuss or analyze other operational noise impacts, as required.
6 For instance, the analysis does not discuss or address the requirement that new development be
7 located in areas where noise levels are appropriate for the proposed use. (General Plan Update, pp.
8 8-26 to 8-27.) There is also no cumulative discussion of operational noise impacts or roadway noise
9 levels, also as required. (CEQA Guidelines § 15130 [“An EIR shall discuss cumulative impacts of
10 a project when the project’s incremental effect is cumulatively considerable.”].)

11 46. The EIR fails to adequately analyze and address significant impacts related to
12 Population and Housing by, among other things:

13 a. Failing to acknowledge and address the Project’s potential to induce
14 substantial population growth (*e.g.*, growth exceeding ABAG population forecasts).

15 b. Ignoring the potential displacement impacts that could result from the
16 increased densities allowed by the General Plan Update.

17 47. The EIR improperly defers analysis relating to the construction of necessary fire and
18 police facilities.

19 48. The EIR fails to adequately analyze and address significant impacts related to
20 Transportation by, among other things:

21 a. Failing to consider and impose feasible mitigation measures and discuss
22 feasible alternatives to address a significant and unavoidable impact related to transit vehicle
23 operations.

24 b. Failing to consider and impose feasible mitigation measures and discuss
25 feasible alternatives to address a significant and unavoidable impact related to VMT. This is
26 especially problematic given that the Project results in VMT that is 19 percent greater than the
27 applicable VMT threshold.

28 c. Relying improperly on a ratio theory to justify its conclusion that cumulative

1 VMT impacts will be less than significant. (*Kings County Farm Bureau, supra.*)

2 49. The EIR fails to adequately analyze and address significant impacts related to
3 Utilities and Service Systems by, among other things:

4 a. Failing to consider the impacts of relocated utilities as specified in Section
5 XIX of Appendix G to the CEQA Guidelines.

6 b. Not preparing and circulating a Water Supply Assessment for public review
7 and comment along with the DEIR.

8 c. Relying on rescinded and superseded Urban Water Management Plans as
9 well as plans that did not account for Project growth.

10 d. Failing to examine potential impacts relating to alternative water supply
11 sources given the uncertainty associated with future water supplies.

12 e. Ignoring the Project's effect on the "near capacity" Guadalupe Landfill.

13 50. The EIR fails to adequately analyze and address significant impacts related to
14 Wildfire by, among other things:

15 a. Underreporting the number of buildings and persons in high and very high
16 hazard zones.

17 b. Failing to discuss or address pertinent planning policies related to the
18 provision of secondary emergency access and adequacy of water storage for fire protection.

19 c. Not considering whether the Project would expose people or structures to a
20 significant risk of loss, injury or death involving wildfires.

21 51. The EIR fails to analyze a reasonable range of alternatives to the Project. Indeed,
22 the FEIR analyzes only four alternatives to the Project, including the Low Growth Alternative, the
23 Medium Growth Alternative, the High Growth Alternative, and the required No Project Alternative.
24 The Findings acknowledges that none of these alternatives would avoid the Project's significant
25 unavoidable impacts to GHG and transportation.

26 52. All of the alternatives discuss and analyze the increased density inside and outside
27 "Opportunity Areas," which the DEIR states was eliminated due to its complex regulatory structure.
28 As such, there is no valid comparison between the alternatives and the proposed Project, as required,

1 but instead to a prior project that was admittedly eliminated from consideration.

2 53. Moreover, the FEIR narrowly confines and constrains the alternatives analysis
3 contrary to CEQA by focusing only on 2,000 housing units as its objective. As such, the EIR
4 narrowly confines and constrains the alternatives analysis contrary to CEQA. (*See, e.g., North Coast*
5 *Rivers Alliance v. A.G. Kawamura* (2016) 243 Cal.App.4th 647 [alternatives analysis predicated on
6 impermissibly narrow list of project objective is invalid].)

7 54. The EIR fails to properly analyze significant cumulative impacts by conflating the
8 analysis of project-level and cumulative impacts, which is contrary to CEQA requirements that an
9 EIR must separately consider project-level impacts and cumulative impacts. The EIR also conflates
10 the separate and distinct questions of whether a cumulative impact is significant with whether the
11 Project would make a cumulatively considerable contribution to such significant cumulative impact.
12 (CEQA Guidelines § 15130.) Further, the EIR appears to only consider the impacts of the General
13 Plan Update and no other reasonably foreseeable development, as required. (*San Franciscans for*
14 *Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 74.)

15 55. The FEIR fails to contain a good faith effort at full disclosure in response to the
16 comments on the DEIR. (CEQA Guidelines § 15204.) For instance, in response to 234 comments on
17 the DEIR and RDEIR, the FEIR includes a minimal number of edits and revisions to the DEIR and
18 RDEIR.

19 56. In response to comments on the DEIR and RDEIR, the FEIR acknowledges that it did
20 not study the actual Project that was approved. Instead, the EIR studied the Town's RHNA number
21 plus a buffer as well as units in the pipeline and accessory dwelling units. In terms of commercial
22 development, the FEIR acknowledges that it did not assume any additional commercial development
23 beyond that which is already approved and pending.

24 57. Even though the General Plan Update increases densities by 100 percent or more and
25 intensities by up to 500 percent, the EIR claims that the Project will not result in much new growth
26 based on the amount of vacant land (which still totals nearly 700 acres) and artificially deflated
27 "assumptions" about the percentage of already improved land that will be redeveloped. These
28 assumptions are not supported by any evidence, let alone substantial evidence, as required. The FEIR

1 claims that they rely on historic growth rates, but the assumptions are not correlated to such historic
2 growth patterns or even the amount of actual acreage. Even if they were, they would not be reasonable
3 or justified given the significant upzoning resulting from the Project and the legal and economic
4 ramifications associated with such upzoning.

5 58. The EIR did not analyze any additional commercial development beyond what is
6 already approved and pending. This ignores the General Plan Update's significant increase in allowed
7 floor area ratios from 0.5 up to 3.0. It also ignores the potential for additional commercial development
8 at these increased intensities on vacant lands.

9 59. The Findings are not supported by substantial evidence in the record. The Findings
10 contain no evidence to support the claim that specific economic, legal, social, technological, mobility,
11 or other considerations make infeasible other mitigation measures and alternatives to address the
12 Project's significant and unavoidable GHG and Transportation (transit and VMT) impacts.

13 60. The Findings claim that the Project would impede substantial progress towards
14 meeting the CARB 2017 Scoping Plan, SB 32, and EO B-55-18 targets, but that was not disclosed in
15 the DEIR and thus not subject to public review and comment. The Findings also first acknowledge
16 that the Project would exceed Plan Bay Area 2040 forecasts for household growth. As such, the Town
17 has acknowledged new significant environmental impacts after release of the DEIR, requiring that the
18 EIR be recirculated for public review and comment. (Public Resources Code § 21092.1; CEQA
19 Guidelines § 15088.5.) Further, only in response to comments on the DEIR does the Town purport
20 to explain how the redevelopment assumptions were derived. An agency cannot wait until the FEIR
21 to provide critical information so as to immunize itself from critical public scrutiny and comment.
22 (*Save Our Peninsula Committee, supra* [overturned EIR for, among others, providing new
23 information about riparian water rights after release of the draft EIR].)

24 61. The Findings state that the significant VMT impacts would require regional action
25 by multiple agencies in the South Bay, including the cities of Campbell and San Jose as well as the
26 counties of Santa Clara and Santa Cruz. Despite this acknowledgment, the Findings do not include
27 the relevant finding under CEQA Guidelines Section 15091 that: "Such changes or alterations are
28 within the responsibility and jurisdiction of another public agency and not the agency making the

1 finding. Such changes have been adopted by such other agency or can and should be adopted by
2 such other agency.”

3 62. It is well settled that alternatives must be considered for each significant impact,
4 whether it can be feasibly mitigated or not. (*Laurel Heights Improvement Assn., supra*, 47 Cal.3d
5 at 400-403 [held that an EIR must include a description of both mitigation measures and alternatives
6 so that decision-makers will be provided with adequate information about the range of options
7 available to reduce or avoid significant environmental impacts.].) Yet the Findings wrongly state
8 that the EIR need only consider alternatives for significant unavoidable impacts.

9 63. The Statement of Overriding Considerations (“SOC”) is likewise not supported by
10 substantial evidence in the record. It claims that the Project “updates outdated policies in a manner
11 that meets current legal requirements for General Plans.” No specific citations to policies or
12 authorities are provided to support this claim.

13 64. The SOC states that the Project focuses on infill and reuse development “with a focus
14 on increasing opportunities for housing development in key areas of the Town through increased
15 density and mixed-use projects where appropriate.” It also states that it promotes higher-density
16 development and infill while preserving established residential neighborhoods. In reality, the
17 Project increases development potential throughout the entire Town with the EIR claiming that the
18 full development allowed will not occur based on unreasonable and unjustified deflated assumptions
19 about redevelopment potential tied to historic growth rates.

20 65. The SOC also claims that the Project will reinvigorate downtown Los Gatos as a
21 “special place for community gathering, commerce, and other activities for residents and visitors.”
22 This benefit is directly at odds with what the Project actually does. The General Plan Update
23 increases allowed intensities in Los Gatos’s unique and charming Downtown by over 200 percent.

24 66. Respondents’ actions in certifying the EIR and approving the Project were not in
25 compliance with procedures required by law, were not supported by substantial evidence in the
26 public record, were not reflected in legally adequate findings, and were arbitrary, capricious, and
27 reflected a prejudicial abuse of discretion.

28 67. Petitioner has no plain, adequate and speedy remedy at law to redress the wrongs

1 described in this Petition.

2 68. Petitioner has performed any and all conditions precedent to filing this action and
3 has exhausted any and all available administrative remedies to the extent required by law by, among
4 other things, submitting written and oral comments objecting to the EIR and the Project, and the
5 failure to comply with CEQA at each stage of the City's administrative process. To the extent any
6 matter raised in this Petition was not addressed in Petitioner's comments, Petitioner is informed and
7 believes that such matters were raised by other persons or entities who objected to the Project, or
8 that Petitioner had no effective opportunity to raise such comments before the complained of actions
9 were taken, or that Petitioner was otherwise excused from or not obligated to raise such issues before
10 pursuing them in this action.

11 69. Pursuant to PRC § 21167.5, Petitioner has provided written notice of the
12 commencement of this action to the Town.

13 70. Pursuant to PRC § 21167.7 and CCP § 388, Petitioner has or will provide written
14 notice of this action, including a copy of this Petition and Complaint, to the State Attorney General.

15 71. Petitioner brings this action pursuant to PRC §§ 21168 & 21168.5, and CCP §§ 1085,
16 1088.5 & 1094.5, which require that an agency's approval of a project be set aside if the agency has
17 prejudicially abused its discretion. Prejudicial abuse of discretion occurs where the Town has failed
18 to proceed in the manner required by law, the decisions are not supported by the findings, or the
19 findings are not supported by the evidence.

20 72. Pursuant to CCP § 1085 and/or 1094.5, a writ of mandate should issue directing
21 Respondents to rescind approval of the Project and prohibiting Respondents from taking any
22 subsequent action to approve the Project until they have complied with CEQA, including, but not
23 limited to, by preparing an environmental impact report that adequately analyzes and addresses all
24 of the impacts associated with the Project.

25 **SECOND CAUSE OF ACTION**

26 **(Declaratory and Injunctive Relief)**

27 73. Petitioner hereby incorporates the allegations of the foregoing paragraphs as though
28 set forth in full herein by this reference.

74. An actual controversy exists between Petitioner and Respondents involving substantial questions regarding Respondents' approval of the Project and certification of the EIR. Petitioner maintains that Respondents' approval of the Project violates CEQA, as described above. Petitioner is informed and believes, and thereon alleges, that Respondents maintain the contrary. Accordingly, declaratory relief is appropriate and necessary to determine Respondents' authority to certify the EIR and approve the Project.

75. Petitioner is informed and believes, and thereon alleges, that certification of the EIR and any implementation of the Project by Respondents will cause irreparable and permanent harm to Petitioner and be detrimental to the public at large as set forth above.

76. Petitioner has no adequate remedy at law to prevent or mitigate the imminent harm and actions described above, has exhausted all administrative remedies, and therefore issuance of preliminary and permanent injunctive relief is necessary to restrain and enjoin Respondents, and all others acting in concert with them from in any way seeking to implement the Project and other actions, pending final resolution of this action.

77. To remedy Respondents' violations of law, as described above, Petitioner seeks a judicial declaration that Respondents' approval of the Project was invalid and contrary to law, including, but not limited to, CEQA. Such a declaration is a necessary and proper exercise of the Court's power to prevent future actions by Respondents in violation of the law.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays for judgment as follows:

1. For a Writ of Mandate:

a. Directing Respondents to rescind, vacate and set aside Respondents' certification of the EIR and approval of the Project;

b. Commanding Respondents to prepare a revised draft environmental impact report and circulate it for public review and comment, consistent with the requirements of CEQA, and to comply with all other requirements of CEQA, prior to taking any subsequent action to approve the Project;

2. For the declaratory relief requested above;

1 3. For a temporary restraining order and/or preliminary injunction ordering the
2 Respondents to refrain from proceeding with the Project (or any component thereof) while this
3 action is pending.

4 4. For a permanent injunction ordering the Respondents to refrain from proceeding with
5 the Project (or any component thereof) pending Respondents' full compliance with the procedural
6 and substantive mandates of CEQA;

7 5. For an award of attorney's fees, litigation expenses, and costs as permitted or
8 required by law, including but not limited to CCP § 1021.5, Government Code § 800, and other
9 statutory and common law; and

10 6. For such other relief as the Court deems just and proper.

11 Dated: July __, 2022

RUTAN & TUCKER, LLP

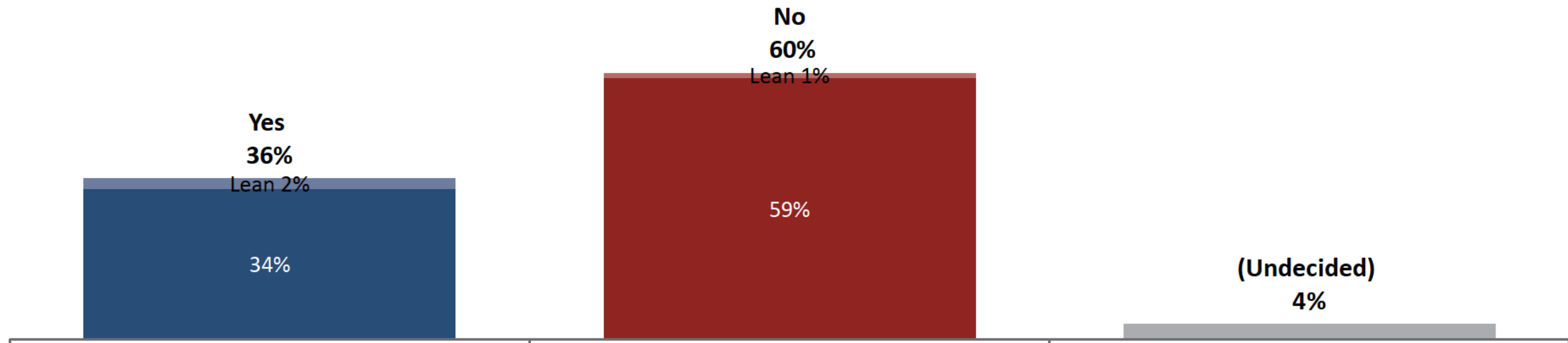
12
13 By: _____
14 Matthew D. Francois
15 Attorneys for Petitioner and Plaintiff
16 Los Gatos Community Alliance
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Informed Referendum Vote Preference

After learning more about the general plan and reasons to support and oppose it, 60% of Los Gatos voters indicate they would vote “no to reject” this plan, if it were put to a referendum on a future ballot.

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?



From: Phil Koen [REDACTED]

Sent: Sunday, June 26, 2022 11:29:37 AM

To: Matthew Hudes <MHudes@losgatosca.gov>; Mary Badame <MBadame@losgatosca.gov>; Rob Rennie <RRennie@losgatosca.gov>; Maria Ristow <MRistow@losgatosca.gov>; Marico Sayoc <MSayoc@losgatosca.gov>

Subject: explanation of redevelopment percentages

EXTERNAL SENDER

Hello Rob, Mary, Matthew, Maria, and Marico,

Please look at page 3 of the attached document I received under my Public Records request where Joel provides an explanation as to how the redevelopment percentages were determined. For over a year LGCA has asked for evidence which provides the basis for the redevelopment percentages which are used to determine the units shown in table 3.1 of the 2040 GP. The table clearly shows the redevelopment “assumptions” are the basis for determining the number of redeveloped net new units. Change the redevelopment assumption and the number of units redeveloped changes.

Also note that table 3-1 (attached) which shows 3,738 total units developed under the draft 2040 GP as the **“total residential buildout possible under the 2040 GP”**. Note the table description does not say “probable” - it says “possible”. How do we know this to be true? Does this mean that 4,000 units are “not possible”, or 5,000 unit are “not possible”? Why not?

The point here is that the percentage for each land use listed in table 3-1 represent just one assumption out of an infinite number of possible “reasonable” redevelopment assumptions. What if all the percentages were just 5 or 10 percentage points higher (e.g., 5% going to 10% or 15% going to 25%)? Why is this not a reasonable assumption? Developers will invest in the redevelopment of land based **on their view of redevelopment economics**. If they few the economics are favorable, redevelopment it will occur. This will drive more and more redevelopment. This higher level of investment means that the redevelopment percentage will increase. And the only control the Town has over redevelopment are the land use laws and zoning ordinances that “allow” this development. This is why the public needs to clearly understand the total residential development being “allowed” under the draft 2040 GP Land Use Element. This has not been disclosed.

Another key point is that the Final EIR claims on p126 (also attached) that “the DEIR assumes the General Plan is a planning and guidance document and **uses the potential growth the Town is likely to achieve by the year 2040** as it baseline for analysis of potential impacts”. It continues with “the projected 3,738 dwelling units is comprised of multiple parts and **focuses on the total buildout for the Town not just a 20-year horizon**”. This last statement seems to suggest that 3,738 units is the total buildout potential, not just what could be developed in a “20-year horizon”. How is this possible if the first statement discusses “likely to achieve by the year 2040” and the second sentence states “not just a 20-year horizon”. These statements regarding timelines appear to be in conflict and are confusing.

To add to the confusion on p 130 of the FEIR, it says “the use of the higher number (3,738 units) ensures a “worse-case scenario” has been used in assessing potential significant impacts”. Again the 2040 GP and the DEIR appear to be in conflict in so much as the 2040 GP is using 3,738 units as the development likely to be achieved by 2040 while the FEIR represents that 3,738 is a “worse-case scenario”. 3,738 units can not represent both a likely outcome and at the same time the “worst-case” scenario. Does this make sense to any of you?

Based on the above the TC should not adopt the land use element nor certify the FEIR since the “total residential buildout possible under the 2040 GP” has not been disclosed in the 2040 GP nor properly studied by the DEIR.

The public deserves to fully understand the total impact of the proposed zoning changes on our Town. The 2040 GP does not disclose this and in fact misleads and confuses the public as to the “total residential buildout possible under the 2040 GP”.

In an effort to frame the magnitude of the issue, using only the data provided by Staff in table 3-1, the LGCA has computed that the “total residential buildout possible” is 14,618 units. We have attached our analysis. Stated another way, if the 2040 GP allows 14,618 new units to be developed based on the proposed changes in land uses and zoning densities, the 2040 GP is projecting only 13% (1,959 divided by 14,618) of total land uses being redeveloped over 20 years. It is extremely reasonable to ask why is this the right answer as opposed to 25% or 30%? What substantial evidence was used to determine the numbers in table 3-1?

Thank you.

Phil Koen

From: Joe Paulson <jpaulson@osgatosca.gov>
Subject: RE:
To: Phil Koen [REDACTED] GC 6522(a)
Cc: jvannada [REDACTED] GC 6522(a); Rick Van Hoesen [REDACTED] GC 6522(a); Laure Prevetti <LPrevetti@osgatosca.gov>; Robert Schutz <RSchutz@osgatosca.gov>; Jennifer Armer <JArmer@osgatosca.gov>
Sent: December 22, 2021 8:30 PM (UTC+00:00)

Thanks for your email Phil. See responses below. I hope you have a happy holiday season.

1. Does the number of redeveloped units reported under the existing General plan (584) and the draft general plan (1,959) reflect “net new” or “gross new” units?

The units are “net new.”

2. How were the new units on vacant land computed under the draft general plan? For example if under the current general plan there can be only 75 units developed on LDR, how can 283 units be developed under the draft general plan on LDR? I would have thought it would have stayed the same at 75. The increase implies duplex or triplex have been built. Can you please provide the detail behind the increase from 75 units to 283 units.

The Draft 2040 General Plan assumed a higher density. The existing General Plan has a dwelling units per acre maximum of four assumption, while the Draft 2040 General Plan has a maximum of 12 dwelling units per acre assumption. This accounts for the difference between existing vacant land units in the 2010 General Plan compared to the Draft 2040 General Plan.

3. Any answer yet on the different numbers in the background report for development of vacant land (504) and the Staff memo of Sept 16 (429)?

We subsequently discovered errors in some of the base Assessor's data used in the Background Report which reduced the number of units on vacant land.

Joel Paulson • Community Development Director

Community Development Department • 110 E. Main Street, Los Gatos CA 95030

Ph: 408.354.6879 • jpaulson@osgatosca.gov

www.osgatosca.gov • <https://www.facebook.com/osgatosca>



General Plan update, learn more at www.osgatos2040.com



Housing Element update, learn more at <https://engagelosgatoshousing.com>

All Community Development Department (CDD) operations will be closed on Thursday, December 23, 2021 through December 31, 2021 for a Town Hall Year-End Closure. Planning, Building, and Code Compliance services will not be available during this closure, including but not limited to, online permitting system account activation, receipt/processing of online applications, project reviews, building inspections, or external communications. We will resume normal operations on Monday, January 3, 2022.

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From: Phil Koen [REDACTED] GC 6522(a)
Sent: Friday, December 17, 2021 8:56 AM
To: Joel Paulson <jpaulson@losgatosca.gov>
Cc: jvannada [REDACTED] GC 6522(a); Rick Van Hoesen [REDACTED] GC 6522(a); Laurel Prevetti <LPrevetti@losgatosca.gov>; Robert Schultz <RSchultz@losgatosca.gov>; Jennifer Armer <JArmer@losgatosca.gov>
Subject: Re:

EXTERNAL SENDER

Hi Joel,

Thank you for your reply. There were a couple of other questions that I think you were going to look into. They were:

1. Does the number of redeveloped units reported under the existing General plan (584) and the draft general plan (1,959) reflect "net new" or "gross new" units?
2. How were the new units on vacant land computed under the draft general plan ? For example if under the current general plan there can be only 75 units developed on LDR, how can 283 units be developed under the draft general plan on LDR ? I would have thought it would have stayed the same at 75. The increase implies duplex or triplex have been built. Can you please provide the detail behind the increase from 75 units to 283 units.
3. Any answer yet on the different numbers in the background report for development of vacant land (504) and the Staff memo of Sept 16 (429)?

Thank you.

Phil Koen

On Dec 7, 2021, at 4:24 PM, Joel Paulson <jpaulson@losgatosca.gov> wrote:

Phil Below are responses to your questions from our meeting last week.

Are the 1,988 units from the table in the September 16, 2021 staff report the assumed buildout?

1,988 units is the assumed, existing General Plan, buildout based on the assumptions in the table.

Why are the vacant land units in the Background Report (504) different from the table in the September 16, 2021 staff report (429)?

We are working with our Consultant to get information regarding the difference in the number of vacant land units.

How were the vacant land units in the Background Report (504) calculated?

See the footnotes for Table 3.8-2 for information on the calculations.

What do the acres represent in Table 3.3-1 of the Background Report?

The total acres for each of the included General Plan Land Use designations in the Town's jurisdiction.

Is there a study for the redevelopment assumptions that are included in the General Plan Buildout Table (Table 3-1)?

There is not a study. The assumed redevelopment potential was coordinated in conjunction with the consultant teams' economist, Applied Development Economics. The overall analysis stems from a two-fold process, first looking at the overall market demand projection that included a 0.7% growth rate, and secondly the need to satisfy and comply with the mandated RHNA numbers.

Thanks.



Joel Paulson • Community Development Director

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General Plan update, learn more at www.losgatos2040.com

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Public Records Exemptions

Enclosed please find a copy of the response documents for your public records request. The following information is provided to explain the process employed to review and produce the response documents.

Reason	Description	Pages
GC 6522(a)	6522(a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.	1-2

Sensitive Land Uses. Relative to issues of land use compatibility and adjacency, sensitive land uses typically include residences; schools; nursing homes; historic sites; open space areas; hospitals and care facilities; places of worship; and libraries.

Single-Family Residential. Single-family residential includes fully detached, semidetached (semi-attached, side-by-side), row houses, and townhouses. In the case of attached units, each must be separated from the adjacent unit by a ground-to-roof wall in order to be classified as a single-family structure. Also, these units must not share heating/air-conditioning systems or utilities.

Sphere of Influence. The Sphere of Influence is the area determined by the Local Agency Formation Commission (LAFCO) of Santa Clara County to represent the probable future physical boundary of the Town. The adoption of Spheres of Influence is required by Government Code Section 56425.

Urban Service Area. The Los Gatos Urban Service Area (USA) is established by Santa Clara County LAFCO. The USA delineates areas outside Town limits that are currently provided with urban services, facilities, and utilities; or areas proposed to be annexed into a Town within the next five years.

Vacant/Underutilized Sites. Vacant/underutilized sites includes undeveloped and underdeveloped parcels. A majority of a parcel must be undeveloped for a parcel to be considered underutilized.

3.1 General Plan Residential Buildout

Table 3-1 provides a description of the **total residential buildout possible** under the 2040 General Plan. The Land Use Diagram (Figure 3-6) and **associated land use designations and standards** are presented in Section 3.4. **Together**, these provide for **development potential** adequate to cover the Town's projected housing needs based on the Town's 2023-2031 Regional Housing Needs Allocation (RHNA).

Table 3-1 General Plan Residential Buildout

Land Use Designation		Density Range (du/ac)	Typical Density (du/ac)	Assumed Redevelopment	New Housing (Vacant Land)	New Housing (Redevelopment)
LDR	Low Density Residential	1 to 12	12	5%	283	84
MDR	Medium Density Residential	14 to 24	20	10%	224	343
HDR	High Density Residential	30 - 40	36	15%	110	268
NC	Neighborhood Commercial	10 to 20	18	10%	26	91
CC	Community Commercial	20 to 30	26	15%	-	156
MU	Mixed-Use	30 - 40	36	20%	126	605
CBD	Central Business District	20 to 30	26	15%	21	113
OP	Office Professional	30 to 40	36	15%	4	255
SC	Service Commercial	20 to 30	26	15%	10	44
Subtotal					804	1,959
Housing Units, New and Redeveloped						2,763
Housing Units, ADUs						500
Housing Units, Existing Projects						475
TOTAL NEW						3,738

Based on current (2020) persons per household in Los Gatos of 2.4 persons/household, this increase in units will increase the community's population by 8,971 persons.

Maximum Buildout Potential Under 2040 General Plan

Land Use	Acres¹	Density	FAR²
Low-Density Residential	4,460.93	1-12 du/acre 4,460.93-53,531.16 du	---
Medium-Density Residential	200.32	14-24 du/acre 2,804.48-4,807.68 du	---
High-Density Residential	77.10	30-40 du/acre 2,313-3,084 du	---
Mixed-Use	100.11 ³	30-40 du/acre 3,003.3-4,004.4 du	Up to 3.0 13,082,374.8 ft ²
Neighborhood Commercial	133.40	10-20 du/acre 1,334-2,668 du	Up to 1.0 5,810,904 ft ²
Community Commercial	Unknown	20-30 du/acre Unknown du	Up to 3.0 Unknown ft ²
Central Business District	4.18	20-30 du/acre 83.6-125.4 du	Up to 2.0 364,161.6 ft ²
Office Professional	136.38	30-40 du/acre 4,091.4-5,455.2 du	Up to 1.0 5,940,712.8 ft ²
Service Commercial	10.55	20-30 du/acre 211-316.5 du	Up to 1.0 459,558 ft ²
Light Industrial	42.39	---	Up to 1.0 1,846,508.4 ft ²
Public/Quasi Public	415.74	---	Up to 1.0 18,109,634.4 ft ²
Parks/Open Space	4,075.90	---	---
Agriculture	311.88 ⁴	1 du/ 20 acre 15.594 du	---
Streets/Right-of-Way/Utilities	1,294.85	---	---
Private Recreation	144.87	---	---
Vacant	691.43	---	---
TOTAL	11,688.02	18,302-74,007.934 du	45,613,854 ft²

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

² Calculated by converting existing acres to square footage.

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

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

Letter 9

COMMENTER: Matthew Francois, Rutan & Tucker, LLP, Los Gatos Community Alliance

DATE: September 13, 2021

Response 9.1

Commenter, without including additional information, summarizes 5 main areas of concern with the Draft EIR, including: 1) failure to analyze the impacts of the “whole of the project”; 2) the project description is not consistent; 3) inadequate analysis in certain project impacts; 4) failure to properly analyze cumulative impacts, and 5) fails to analyze a reasonable range of alternatives.

The commentor elaborates in greater detail on each of these points subsequently in the comment letter, and each is addressed in turn in the following responses to comments. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

Response 9.2

The commenter states that the Draft EIR does not consider the whole of the project as required by CEQA because the analysis looks to the potential buildout of the General Plan by the year 2040 (the General Plan target year) rather than the total number of potential housing units and commercial square footage that could be achieved if the Town is built out to the fullest extent possible for each land use under the proposed zoning and density. In making this argument, the commenter sites to CEQA Guidelines sections 15126, 15378, 15146(b), Public Resources Code section 21065, and *Laurel heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376 [EIR found inadequate for describing projects as occupying only part of a building even though university had plans to occupy the entire building]. The commenter also includes a chart to support this assertion to demonstrate the total potential buildout in which they calculate the total acres for each zoning area of the Town by the development density potential. The commenter argues that instead of 3,738 new housing units and approximately 670,000 square feet of commercial development analyzed in the Draft EIR for the year 2040, 75,000 housing units and 45 million square feet of commercial development (the maximum potential buildout under the General Plan land use designations) should have been used. These calculations rely upon the total acreage within the Town for each land use designation and appear to assume existing structures will be removed and the Town rebuilt in its entirety under the increased density to completion.

The commenter’s assertions demonstrate a misunderstanding of the purpose of a General Plan. According to the State of California 2017 General Plan Guidelines published by the Governor’s Office of Planning and Research, “The purpose of a general plan is to guide land use planning decisions.” (General Plan Guidelines, page 14).

While a general plan must address a broad range of issues, the plan should focus on those issues that are relevant to the planning area (Gov. Code § 65301(c)). The plan must address the jurisdiction’s physical development,

such as general locations, appropriate mix, timing, and extent of land uses and supporting infrastructure. The broad scope of physical development issues may range from appropriate areas for building factories to open space for preserving endangered species. This may include regional issues in addition to the more localized issues described in the planning statutes. (*Id.* at page 21).

A General Plan is not a box that must be filled to the top before it is complete, but a tool that allows the Town to designate land use areas, organize growth, and provide for infrastructure.

A general plan is a "charter for future development" within a town, city, or county (*Leshner Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540.). It embodies fundamental policy decisions to guide future growth and development. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 571 (*Goleta Valley II*)). As stated by the California Department of Housing and Community Development (HCD), "General plans serve as the local government's "blueprint" for how the city and/or county will grow and develop and include seven elements: land use, transportation, conservation, noise, open space, safety, and housing."

(<https://www.hcd.ca.gov/community-development/housing-element/index.shtml#comments>).

Thus, it states what type and how much development might occur in any area but does not mandate that it must occur and be approved.

The Draft EIR assumes the General Plan is a planning and guidance document and uses the potential growth the Town is likely to achieve by the year 2040 as its baseline for analysis of potential impacts. This is not a hypothetical number but based on existing conditions and the potential for future development in this time period. Use of projected growth is supported by CEQA and has been affirmed by the Courts. (*San Franciscans for Livable Neighborhoods v. City and County of San Francisco* (2018) 26 Cal.App.5th 596, 616, 622).

The projected 3,738 dwelling units is comprised of multiple parts and focuses on the total buildout for the Town not just a 20-year horizon. The first segment consists of existing vacant land for development and the redevelopment of sites within the Town. This first segment totals 2,763 dwelling units as noted on page 3-4 in the Land Use Element of the Draft 2040 General Plan. This portion of the units was meant to provide capacity for the bulk of the Regional Housing Needs Allocation (RHNA) for the 6th Cycle Housing Element (1,993 dwelling units), as well as a buffer of 20-30 percent which is highly recommended by HCD. The second segment consists of 500 dwellings that reflect ADU production.

This projection was calculated based on the average ADU production in the Town of 25 ADUs per year for the next 20 years, totaling 500. The third and final segment is the 475 dwelling units for existing projects. What is important to note about the 475 dwelling units is that these units are already pre-approved and are in the pipeline for construction and most, if not all, will not count toward the 6th Cycle RHNA and Housing Element based on cut-off dates for the application and entitlement process for these projects.

The assumed redevelopment potential as part of this process was coordinated in conjunction with the consultant teams' economist. The overall analysis stems from a twofold process, first looking at the overall market demand projection that included a 0.7 percent growth rate and secondly the need to satisfy and comply with the mandated RHNA numbers by HCD. The original project evaluated a housing demand ranging between 1,500 and 2,000 dwelling units (0.5 - 0.7 percent growth rate) based on local demographics and regional migrations rates.

1,529
to
1,954

The percent variation among the alternatives was a way to produce units within this range. The prescribed goal of the General Plan Update Advisory Committee (GPAC), along with the Town staff, the Planning Commission, and Town Council was to aim for the higher range, which would align with the upcoming 6th Cycle Housing Element RHNA. As part of this alignment, the Town sought to include a buffer of anticipated units, as recommended by HCD. Therefore, the empirical basis is the projection of demand based on age demographics (as described in the Alternatives Report) and the fact that if the Town can only grow through redevelopment, then these are the redevelopment rates one could reasonably see to satisfy demand. In other words, the percent redevelopment figures are not driving the growth, the growth is driving the percentages.

As with housing, the commenter alleges that the Draft EIR should have considered the total potential build-out of commercial and industrial land use designation. Again, this comment is speculative as it does not take into consideration that a majority of the Town is already built out, with less than 6 percent of all land within the Town vacant. Commercial and industrial uses make up only 2.8 percent of the total Town acreage, most of which is already developed. Any increases in the floor area ratio (FAR) for specific commercial and industrial areas would require redevelopment of already developed areas. Out of the total development capacity of non-residential square footage of 951,886 square feet, approximately 70 percent, or 679,797 square feet, is from pending and approved projects (page 4.11-11 of the Draft EIR). It is for this reason that the Draft EIR looked to pending and approved commercial and industrial projects to anticipate potential growth of commercial and industrial uses under the 2040 General Plan. Contrary to commenter's statement, 671,680 square feet does not represent maximum potential build-out under the proposed FAR for Commercial and Industrial land use designations, but rather the likely net changes in Commercial and Industrial by the year 2040 given the robust existing uses in those designated areas. CEQA analysis in an EIR must analyze potential environmental impacts using actual environmental conditions, rather than the hypothetical, maximum allowable conditions where, as here, those conditions are not a realist description of existing conditions. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 322).

Therefore, for the reasons above, no revisions to the Draft EIR are necessary in response to this comment.

Response 9.3

The commenter states that because the Draft EIR did not study the maximum build-out permitted under the land use designations in the 2040 General Plan, that the Draft EIR did not adequately analyze the potential significant and unavoidable impacts and is therefore fundamentally flawed.

As noted in Response 9.2, a General Plan Draft EIR is not required to analyze the maximum allowable conditions but should instead rely upon realistic growth and development rates. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 322). In this case, the Draft EIR looks at anticipated population growth rates, housing demand and commercial development, and the existing build-out of the Town with only a 5.92 percent lot vacancy rate to determine what a realistic baseline would be for the year 2040. The Draft EIR then utilizes this growth potential in determining potential significant environmental impacts that may result. It is unrealistic, given that 95 percent of the Town is already developed, to assume that all areas of the Town will be torn down and redeveloped under the 2040 General Plan land use densities as is proposed by the commenter. Nor is it appropriate to simply compare the existing plan with the proposed 2040 General Plan and ignore existing conditions.

Therefore, no revisions to the Draft EIR are necessary in response to this comment.

Response 9.4

The commenter again states that the Draft EIR should have looked at the maximum potential buildout of the proposed 2040 General Plan land use densities, rather than the actual growth potential analyzed in the document. In supporting this statement, the commenter cites pages 4.13-2 and 2-15 of the Draft EIR which states: "In accordance with CEQA, a program-level EIR is obligated to analyze the maximum potential buildout allowed under the subject plan or program."

An EIR must evaluate a proposed general plan's revision effects on the existing physical environment. (*Environmental Planning and Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 354; *see also* CEQA Guidelines § 15125(e)). The General Plan EIR need not be as detailed as an EIR for the specific projects that will follow (CEQA Guidelines § 15146). Its level of detail should reflect the level contained in the plan or plan element being considered (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351). Here, the Draft EIR looks at the effects of the proposed 2040 General Plan on housing and land use based upon actual conditions and growth rates within the Town.

Based on the above, page 4.13-2 of the Draft EIR is revised as follows:

In accordance with CEQA, a program-level EIR for a general plan must look at the plan's impacts on the physical environment ~~is obligated to analyze the maximum potential buildout allowed~~ under the subject plan or program. 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.

No additional revisions to the Draft EIR are necessary in response to this comment.

Response 9.5

The commenter states that development and redevelopment assumptions are not supported in the Draft EIR, and that such assumptions contradict the less than significant impact determination found on Draft EIR page 4.11-12, and again points out the difference between the project population growth versus the land use density in the 2040 General Plan.

As stated at page 4.11-11, the Town has limited land available for development. As shown in Table 4.11-1, only 5.92 percent of land in Los Gatos currently remains vacant (Draft EIR page 4.11-2). Out of the total development capacity of non-residential square footage of 951,886 square feet, approximately 70 percent, or 679,797 square feet, is from pending and approved projects (Draft EIR page 4.11-11). As shown in Table 4.11-3, of the total 926 acres available for residential development, 422 acres are subject to pending or approved projects. As explained in Response 9.2, anticipated rate of redevelopment is based upon the existing and anticipated growth rate and the vacant land available for development.

From commenter's statement, it is unclear how the vacancy and redevelopment rates contradict the Draft EIR's impact analysis. For example, page referenced by the commenter indicates a finding that the proposed General Plan will provide for orderly development and not physically divide an established community. The finding of less than significance is based upon the fact that the Town has very limited land available for new development and is comprised of many fully-developed neighborhoods (Draft EIR page 4.11-11). Therefore, change is more likely to occur through redevelopment than through new growth potential (Draft EIR page 4.11-12).

Therefore, no revisions to the Draft EIR are necessary in response to this comment.

Response 9.6

The commenter cites several cases as to the requirements of a project description in a CEQA document and alleges the Draft EIR's project description is flawed for multiple reasons. These alleged reasons are elucidated in subsequent comments.

CEQA Guidelines section 15124 provides the specific requirements that are necessary under CEQA. The cases cited by the commenter do address project descriptions for CEQA documents. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

Response 9.7

In this comment, the commenter states that the project description is flawed because the project studied is not the project approved by the Town Council, stating the Town Council approved an alternative that called for 2,303 additional housing units, not the 3,738 studied in the Draft EIR.

The project analyzed by the Draft EIR is the Draft 2040 General Plan, which was recommended by the GPAC based on the implementation of the Land Use Alternative Framework approved by Town

Council. The Town Council cannot consider or make a determination on the Draft 2040 General Plan until the environmental review is complete and available for their consideration. The information provided in the EIR is intended to assist the public, Planning Commission, and Town Council in their consideration of the Draft 2040 General Plan.

See Response 9.2, which provides the formulaic approach to determine the use of the 3,738 units for the analysis of potential environmental impacts in the Draft EIR based on the land use designations in the 2040 General Plan. This number is used consistently throughout the DEIR for analysis purposes. Although the commenter asserts that a lower number should have been used to assess potential environmental impacts, the use of the higher number ensures that a "worse-case-scenario" has been used in assessing potential significant impacts.

Therefore, no revisions to the Draft EIR are necessary in response to this comment.

How do we know that?

Response 9.8

In this comment, the commenter states that the project description is flawed because the Draft EIR analyzes 3,728 housing units which the commenter states is inconsistent with the objective of accommodation of the 2,000 dwelling units for the 2023-2031 RHNA development by the Association of Bay Area Governments (ABAG). The commenter further states that the General Plan should wait until the 2023 Housing Element Update is complete and analyze both together.

See Response 9.2 and 9.7 for response to the use of the 3,728 housing units and RHNA development goals. The 2040 General Plan appropriately relies upon the 2015 Housing Element as the most up-to-date plan approved at the time the 2040 General Plan was drafted. While the California Office of Planning and Research recommends General Plan updates every 10-15 years, SB 375 requires the Housing Element of those plans to be updated much more frequently. Most Housing Elements are updated every 5-8 years per statutory requirements. Thus, General Plans and Housing Elements are often out of cycle with each other.

Therefore, no revisions to the Draft EIR are necessary in response to this comment.

Response 9.9

In this comment, the commenter refers to a letter sent by the California Department of Fish & Wildlife (CDFW) in response to the NOP for the Draft EIR to allege that the geographic scope of the project is unclear. With regard to the CDFW, this letter is specific to the project description in the NOP and does not refer to the Draft EIR project description and thus does not support any flaw in the Draft EIR project description. Nonetheless, the geographic scope of the project is described in Section 2, *Project Description*, of the Draft EIR. As described on page 2-4 of the Draft EIR, the Planning Area for the 2040 General Plan encompasses all land area within the Town's sphere of influence, and the Planning Area serves as the "General Plan Area" (planning area) for the purposes of this EIR. Figure 2-2 on page 2-6 of the Draft EIR shows the geographic boundary or extent of the Planning Area. Accordingly, no revisions to the Draft EIR are necessary in response to this comment.

	Density Range (du/ac)		Typical Density		Redevelopment Assumptions		Draft General Plan	
Land Use Designation	Existing General Plan	Draft General Plan	Existing General Plan	Draft General Plan	Derived Draft GP Total Units	Assumed Redevelop %	New Housing (redev)	New Housing (vacant)
Low Density Residential	0 to 5	1 to 12	4	12	1,680	5%	84	283
Medium Density Residential	5 to 12	14 to 24	10	20	3,430	10%	343	224
High Density Residential	12 to 20	30 to 40	18	36	1,787	15%	268	110
Neighborhood Commercial	10 to 20	10 to 20	16	18	910	10%	91	26
Community Commercial	0	20 to 30	0	26	1,040	15%	156	
Mixed-Use	10 to 20	30 to 40	16	36	3,025	20%	605	126
Central Business District	10 to 20	20 to 30	16	26	753	15%	113	21
Office Professional	0	30 to 40	0	36	1,700	15%	255	4
Service Commercial	0	20 to 30	0	26	293	15%	44	10
Subtotal					14,618		1,959	804
Housing Units, New and Redeveloped								2,763
Housing Units, ADUs								500
Subtotal								3,263
Housing Units, Eixisting Projects								475
Total								3,738

On Jun 24, 2022, at 10:20 AM, Pat Sharp [REDACTED] wrote:

EXTERNAL SENDER

Dear Marico

When I voted for you, I thought you would look out for the best interests of the town. Now I am not so sure. I hope you stay close to the state mandated housing element and not vote for the multiple amounts from the planning Commission.

We have serious water restrictions which will only get worse. There are dangerous fire conditions. We have given up on traffic problems.

Please keep the housing element at a level the town can handle and look for ways the town can support affordable housing.

Pat Sharp
[REDACTED]

Sent from my iPhone

From: Phil Koen [REDACTED]
Sent: Monday, June 27, 2022 8:03 AM
To: Jennifer Armer <JArmer@losgatosca.gov>; Joel Paulson <jpaulson@losgatosca.gov>
Cc: Town Manager <Manager@losgatosca.gov>; Gabrielle Whelan <GWhelan@losgatosca.gov>; Rob Rennie <RRennie@losgatosca.gov>; Matthew Hudes <MHudes@losgatosca.gov>; Mary Badame <MBadame@losgatosca.gov>; Maria Ristow <MRistow@losgatosca.gov>; Marico Sayoc <MSayoc@losgatosca.gov>; [REDACTED] Rick Van Hoesen [REDACTED]
[REDACTED]; Catherine Somers [REDACTED] 'Jim Foley'
[REDACTED]; b [REDACTED] Shelley Neis <sneis@losgatosca.gov>;
Lee Fagot [REDACTED]; [REDACTED] Joanne Rodgers
[REDACTED]; Francois, Matthew [REDACTED]
Subject: Discussion of 2040 General Plan and FEIR for upcoming June 30 Special Council Meeting

EXTERNAL SENDER

Hello Jennifer and Joel,

In reviewing FEIR, it appears there are conflicting descriptions as to the projected use of 3,738 units. I would appreciate your answer to the following questions:

1. In Response 9.2, the 3,738 units are described as “the potential growth the Town **is likely to achieve by the year 2040** as its (e.g., the General Plan) baseline for analysis of potential impacts”. Additionally, “the projected 3,738 dwelling units is comprised of multiple parts and **focuses on the total buildout** for the Town **not just a 20-year horizon**”.

If the 3,738 units do focus on the total buildout for the Town, not just a 20-year horizon, why are the three segments that comprise the 3,738 all tied to either existing production, an 8-year timeline, or a 20-year projection? The first segment of 2,763 is based on an 8-year timeline of the 6th Cycle Housing Element (1,993 units) as well as a 20-30 percent buffer highly recommended by HCD to address the “no net loss rules”. The second segment is 500 dwelling units that reflect 20- year ADU production projection. The Third segment is 475 dwelling units for existing projects in the pipeline for construction. Given these segments, it is not apparent how the 3,738 units does focus on the total buildout for the Town, and not just a 20-year horizon, since there are no units included in the projection for residential units constructed beyond the 6th Cycle Housing Element. Where are the units that would be constructed beyond this 8- year timeline and why is the statement “focuses on the total buildout” accurate?

2. In Response 9.7, the reader is referred back to Response 9.2 for the formulaic approach just described. Therefore Response 9.2 and 9.7 are tied together. In 9.7 response we are told the 3,738 units ““**ensures a worse-case-scenario**” has been used in assessing potential significant impacts” for the analysis of potential environmental impacts.

If we were told that 3,738 units is the growth the Town is “**likely to achieve by the year 2040**” and is the General Plan’s baseline for analysis of potential impact, how can 3,738 units also

“ensure a worse-case-scenario” has been used in assessing potential significant impacts? The response in 9.2 and 9.7 conflict with one another. Could you please explain “likely to achieve” and “worse-case-scenario” in assessing potential significant impacts of 3,738 units?

3. Response 9.8 addresses a comment that the 2040 General Plan adoption should wait until the 2023 Housing Element Update is complete and analyze both. The response does not give a valid reason for not pursuing this path, especially since the completion of a draft Housing Element is only months away. We respectfully ask the question again. Why not first complete the 2023 Housing Element and then update the 2040 General Plan based on any required land use changes to meet the 6th Cycle RHNA allocation shortfalls?

The advantage of doing this is obvious and compelling. Once fully informed if there is a shortfall in sites to meet the 6th Cycle RHNA allocation, the Town can make targeted adjustments in the General Plan and thus avoid the massive up zoning that is currently in the draft 2040 General Plan. A Program would be added to the draft 2040 General Plan to rezone for any RHNA shortfall. Additionally, the Town could revise the flawed DEIR by reducing the scope to the limited changes proposed by the Housing Element. Based on the site analysis that Town Council just reviewed, there is only a shortage of 102 units in the above-moderate income category with an excess of units in every other income category. This 102-unit shortage can be addressed in the 2040 General Plan along with increasing the density for Mixed Use Commercial and any other specific land use density changes required.

This is the process which many local jurisdictions are taking, including Saratoga, Campbell, and Los Altos, all of whom have already issued draft 2023 Housing Elements for public review and comment. Given how far along the Town is in finalizing the 2023 Housing Element, and there is a hard deadline for submission of the 2023 Housing Element to HCD and no deadline for adopting the 2040 General Plan, what is the advantage to forcing the early and unnecessary adoption of the 2040 General Plan which relies on an outdated and irrelevant 2015 Housing Element. We can find no other local jurisdiction in ABAG who has taken the approach the Town is proposing.

Perhaps you can give the public a reason as to why the Town is pursuing the current course as opposed to first completing the 2023 Housing Element and then update the 2040 General Plan based on a certified 2023 Housing Element. We know of no legal reason preventing the Town from taking this approach and the benefits are substantial.

In advance, thank you for taking the time to respond to these questions.

Phil Koen

Los Gatos Community Alliance

								Draft 2040 General Plan Density				
	Address	APN	Parcel Size (Gross Acres)	Draft 2040 General Plan du/ac	Draft 2040 General Plan Land Use Designation	Zoning	Use	Very Low- Income Capacity	Low-Income Capacity	Moderate- Income Capacity	Above Moderate Income Capacity	Total
D-9	Los Gatos Blvd.	52302005	0.53	40	Mixed Use Commercial	C-1	Nob Hill Shopping Center	68	33	33		134
	16535 Camellia Ter.	52302006	2.81	40	Mixed Use Commercial	C-1	Nob Hill Shopping Center					
D-16	15795 Los Gatos Blvd.	52915059	0.64	40	Mixed Use Commercial	CH	Affordable Treasures	14	6	6		26
D-26	16203 Los Gatos Blvd.	52916069	0.79	40	Mixed Use Commercial	CH	Multi-Tenant Building	16	8	8		32
D-29	16492 Los Gatos Blvd.	53207086	0.23	20	Neighborhood Commercial	C-1	LG Wines & Liquors				12	12
		53207085	0.38	20	Neighborhood Commercial	C-1	Vacant					
E - North Forty Area												
E-1 N40 Phase II	14859 Los Gatos Blvd.	42407094	2.90	13	North Forty Specific Plan Area	North Forty Specific Plan Area		50	30	30	90	200
	16392 Los Gatos Blvd.	42407095	0.78	13	North Forty Specific Plan Area	North Forty Specific Plan Area						
	16260 Burton Rd.	42407053	0.44	13	North Forty Specific Plan Area	North Forty Specific Plan Area						
	16250 Burton Rd.	42407009	0.44	13	North Forty Specific Plan Area	North Forty Specific Plan Area						
	14917 Los Gatos Blvd.	42407081	3.74	13	North Forty Specific Plan Area	North Forty Specific Plan Area						
	14925 Los Gatos Blvd.	42407115	6.07	13	North Forty Specific Plan Area	North Forty Specific Plan Area						
		42407116	1.02	13	North Forty Specific Plan Area	North Forty Specific Plan Area						
E-2		42406115	1.17	20	North Forty Specific Plan Area	North Forty Specific Plan Area					26	26
		42406116	0.11	20	North Forty Specific Plan Area	North Forty Specific Plan Area						
E-3		42407010	0.26	20	North Forty Specific Plan Area	North Forty Specific Plan Area					5	5
E-4		42407052	0.43	20	North Forty Specific Plan Area	North Forty Specific Plan Area					9	9
E-5		42407054	0.26	20	North Forty Specific Plan Area	North Forty Specific Plan Area					16	16
		42407063	0.56	20	North Forty Specific Plan Area	North Forty Specific Plan Area						
E-6		42407064	0.93	20	North Forty Specific Plan Area	North Forty Specific Plan Area					19	19
E-7		42407065	0.37	20	North Forty Specific Plan Area	North Forty Specific Plan Area					7	7
F - Lark Avenue Area												
F-1		42408057	2.97	12	Low Density Residential	R-1.8	Vacant	62	37	37	111	247
		42408029	0.31	12	Low Density Residential	R-1.8	Vacant					
		42408059	1.01	12	Low Density Residential	R-1.8	Vacant					
		42408060	1.29	12	Low Density Residential	R-1.8	Vacant					
		42408058	1.41	12	Low Density Residential	R-1.8	Single-Family Home					
		42408017	2.48	24	Medium Density Residential	R-M 5-12	Single-Family Home					
		42408021	4.32	24	Medium Density Residential	R-M 5-12	Vacant					
F-2		42408074	6.41	12	Low Density Residential	R-1.8	Vacant	19	12	12	34	77
F-3	Cal Trans Parcel	N/A	4.90	24	Medium Density Residential	Re-zone to R-M 5-12	Cal Trans ROW	29	18	18	53	118

$$Σ = 257$$

								Draft 2040 General Plan Density				
	Address	APN	Parcel Size (Gross Acres)	Draft 2040 General Plan du/ac	Draft 2040 General Plan Land Use Designation	Zoning	Use	Very Low- Income Capacity	Low-Income Capacity	Moderate- Income Capacity	Above Moderate Income Capacity	Total
	G- Winchester Boulevard Area											
G-1	110 Knowles Dr.	42432077	7.34	40	High Density Residential	CM AHOZ	Office	59	59	88	88	294
G-3 (New)	206 Knowles Dr.	42432076	2.41	40	High Density Residential	CM	Office	48	24	24		96
	I - Union Avenue Area											
I-1	440 Los Gatos Alameda Rd.	52749048	0.52	20	Neighborhood Commercial	C-1	Chevron				16	16
	445 Leigh Ave.	52749049	0.29	20	Neighborhood Commercial	C-1	Office					
	J - Harwood Road Area											
J-1	14000 Blossom Hill Rd.	52732028	0.69	20	Neighborhood Commercial	C-1	Valero				14	14
	Subtotal							669	381	410	586	2,046
	ADUs							20	60	60	60	200
	Pipeline projects										202	202
	TOTAL							689	441	470	848	2,448
	RHNA Requirements							537	310	320	826	1,993
	Buffer (15 percent)							81	46	48	124	299
	RHNA + Buffer Total							618	356	368	950	2,292
	Difference							71	85	102	-102	156

1,130

Letter 9

COMMENTER: Matthew Francois, Rutan & Tucker, LLP, Los Gatos Community Alliance

DATE: September 13, 2021

Response 9.1

Commenter, without including additional information, summarizes 5 main areas of concern with the Draft EIR, including: 1) failure to analyze the impacts of the “whole of the project”; 2) the project description is not consistent; 3) inadequate analysis in certain project impacts; 4) failure to properly analyze cumulative impacts, and 5) fails to analyze a reasonable range of alternatives.

The commentor elaborates in greater detail on each of these points subsequently in the comment letter, and each is addressed in turn in the following responses to comments. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

Response 9.2

The commenter states that the Draft EIR does not consider the whole of the project as required by CEQA because the analysis looks to the potential buildout of the General Plan by the year 2040 (the General Plan target year) rather than the total number of potential housing units and commercial square footage that could be achieved if the Town is built out to the fullest extent possible for each land use under the proposed zoning and density. In making this argument, the commenter sites to CEQA Guidelines sections 15126, 15378, 15146(b), Public Resources Code section 21065, and *Laurel heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376 [EIR found inadequate for describing projects as occupying only part of a building even though university had plans to occupy the entire building]. The commenter also includes a chart to support this assertion to demonstrate the total potential buildout in which they calculate the total acres for each zoning area of the Town by the development density potential. The commenter argues that instead of 3,738 new housing units and approximately 670,000 square feet of commercial development analyzed in the Draft EIR for the year 2040, 75,000 housing units and 45 million square feet of commercial development (the maximum potential buildout under the General Plan land use designations) should have been used. These calculations rely upon the total acreage within the Town for each land use designation and appear to assume existing structures will be removed and the Town rebuilt in its entirety under the increased density to completion.

The commenter’s assertions demonstrate a misunderstanding of the purpose of a General Plan. According to the State of California 2017 General Plan Guidelines published by the Governor’s Office of Planning and Research, “The purpose of a general plan is to guide land use planning decisions.” (General Plan Guidelines, page 14).

While a general plan must address a broad range of issues, the plan should focus on those issues that are relevant to the planning area (Gov. Code § 65301(c)). The plan must address the jurisdiction’s physical development,

such as general locations, appropriate mix, timing, and extent of land uses and supporting infrastructure. The broad scope of physical development issues may range from appropriate areas for building factories to open space for preserving endangered species. This may include regional issues in addition to the more localized issues described in the planning statutes. (*Id.* at page 21).

A General Plan is not a box that must be filled to the top before it is complete, but a tool that allows the Town to designate land use areas, organize growth, and provide for infrastructure.

A general plan is a "charter for future development" within a town, city, or county (*Leshner Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540.). It embodies fundamental policy decisions to guide future growth and development. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 571 (*Goleta Valley II*)). As stated by the California Department of Housing and Community Development (HCD), "General plans serve as the local government's "blueprint" for how the city and/or county will grow and develop and include seven elements: land use, transportation, conservation, noise, open space, safety, and housing."

(<https://www.hcd.ca.gov/community-development/housing-element/index.shtml#comments>).

Thus, it states what type and how much development might occur in any area but does not mandate that it must occur and be approved.

The Draft EIR assumes the General Plan is a planning and guidance document and uses the potential growth the Town is likely to achieve by the year 2040 as its baseline for analysis of potential impacts. This is not a hypothetical number but based on existing conditions and the potential for future development in this time period. Use of projected growth is supported by CEQA and has been affirmed by the Courts. (*San Franciscans for Livable Neighborhoods v. City and County of San Francisco* (2018) 26 Cal.App.5th 596, 616, 622).

The projected 3,738 dwelling units is comprised of multiple parts and focuses on the total buildout for the Town not just a 20-year horizon. The first segment consists of existing vacant land for development and the redevelopment of sites within the Town. This first segment totals 2,763 dwelling units as noted on page 3-4 in the Land Use Element of the Draft 2040 General Plan. This portion of the units was meant to provide capacity for the bulk of the Regional Housing Needs Allocation (RHNA) for the 6th Cycle Housing Element (1,993 dwelling units), as well as a buffer of 20-30 percent which is highly recommended by HCD. The second segment consists of 500 dwellings that reflect ADU production.

This projection was calculated based on the average ADU production in the Town of 25 ADUs per year for the next 20 years, totaling 500. The third and final segment is the 475 dwelling units for existing projects. What is important to note about the 475 dwelling units is that these units are already pre-approved and are in the pipeline for construction and most, if not all, will not count toward the 6th Cycle RHNA and Housing Element based on cut-off dates for the application and entitlement process for these projects.

The assumed redevelopment potential as part of this process was coordinated in conjunction with the consultant teams' economist. The overall analysis stems from a twofold process, first at the overall market demand projection that included a 0.7 percent growth rate and secondly the need to satisfy and comply with the mandated RHNA numbers by HCD. The original project evaluated a housing demand ranging between 1,500 and 2,000 dwelling units (0.5 - 0.7 percent growth rate) based on local demographics and regional migrations rates.

1,529
to
1,954

The percent variation among the alternatives was a way to produce units within this range. The prescribed goal of the General Plan Update Advisory Committee (GPAC), along with the Town staff, the Planning Commission, and Town Council was to aim for the higher range, which would align with the upcoming 6th Cycle Housing Element RHNA. As part of this alignment, the Town sought to include a buffer of anticipated units, as recommended by HCD. Therefore, the empirical basis is the projection of demand based on age demographics (as described in the Alternatives Report) and the fact that if the Town can only grow through redevelopment, then these are the redevelopment rates one could reasonably see to satisfy demand. In other words, the percent redevelopment figures are not driving the growth, the growth is driving the percentages.

As with housing, the commenter alleges that the Draft EIR should have considered the total potential build-out of commercial and industrial land use designation. Again, this comment is speculative as it does not take into consideration that a majority of the Town is already built out, with less than 6 percent of all land within the Town vacant. Commercial and industrial uses make up only 2.8 percent of the total Town acreage, most of which is already developed. Any increases in the floor area ratio (FAR) for specific commercial and industrial areas would require redevelopment of already developed areas. Out of the total development capacity of non-residential square footage of 951,886 square feet, approximately 70 percent, or 679,797 square feet, is from pending and approved projects (page 4.11-11 of the Draft EIR). It is for this reason that the Draft EIR looked to pending and approved commercial and industrial projects to anticipate potential growth of commercial and industrial uses under the 2040 General Plan. Contrary to commenter's statement, 671,680 square feet does not represent maximum potential build-out under the proposed FAR for Commercial and Industrial land use designations, but rather the likely net changes in Commercial and Industrial by the year 2040 given the robust existing uses in those designated areas. CEQA analysis in an EIR must analyze potential environmental impacts using actual environmental conditions, rather than the hypothetical, maximum allowable conditions where, as here, those conditions are not a realistic description of existing conditions. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 322).

Therefore, for the reasons above, no revisions to the Draft EIR are necessary in response to this comment.

Response 9.3

The commenter states that because the Draft EIR did not study the maximum build-out permitted under the land use designations in the 2040 General Plan, that the Draft EIR did not adequately analyze the potential significant and unavoidable impacts and is therefore fundamentally flawed.

As noted in Response 9.2, a General Plan Draft EIR is not required to analyze the maximum allowable conditions but should instead rely upon realistic growth and development rates. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 322). In this case, the Draft EIR looks at anticipated population growth rates, housing demand and commercial development, and the existing build-out of the Town with only a 5.92 percent lot vacancy rate to determine what a realistic baseline would be for the year 2040. The Draft EIR then utilizes this growth potential in determining potential significant environmental impacts that may result. It is unrealistic, given that 95 percent of the Town is already developed, to assume that all areas of the Town will be torn down and redeveloped under the 2040 General Plan land use densities as is proposed by the commenter. Nor is it appropriate to simply compare the existing plan with the proposed 2040 General Plan and ignore existing conditions.

Therefore, no revisions to the Draft EIR are necessary in response to this comment.

Response 9.4

The commenter again states that the Draft EIR should have looked at the maximum potential buildout of the proposed 2040 General Plan land use densities, rather than the actual growth potential analyzed in the document. In supporting this statement, the commenter cites pages 4.13-2 and 2-15 of the Draft EIR which states: "In accordance with CEQA, a program-level EIR is obligated to analyze the maximum potential buildout allowed under the subject plan or program."

An EIR must evaluate a proposed general plan's revision effects on the existing physical environment. (*Environmental Planning and Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 354; *see also* CEQA Guidelines § 15125(e)). The General Plan EIR need not be as detailed as an EIR for the specific projects that will follow (CEQA Guidelines § 15146). Its level of detail should reflect the level contained in the plan or plan element being considered (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351). Here, the Draft EIR looks at the effects of the proposed 2040 General Plan on housing and land use based upon actual conditions and growth rates within the Town.

Based on the above, page 4.13-2 of the Draft EIR is revised as follows:

In accordance with CEQA, a program-level EIR for a general plan must look at the plan's impacts on the physical environment ~~is obligated to analyze the maximum potential buildout allowed~~ under the subject plan or program. 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.

No additional revisions to the Draft EIR are necessary in response to this comment.

Response 9.5

The commenter states that development and redevelopment assumptions are not supported in the Draft EIR, and that such assumptions contradict the less than significant impact determination found on Draft EIR page 4.11-12, and again points out the difference between the project population growth versus the land use density in the 2040 General Plan.

As stated at page 4.11-11, the Town has limited land available for development. As shown in Table 4.11-1, only 5.92 percent of land in Los Gatos currently remains vacant (Draft EIR page 4.11-2). Out of the total development capacity of non-residential square footage of 951,886 square feet, approximately 70 percent, or 679,797 square feet, is from pending and approved projects (Draft EIR page 4.11-11). As shown in Table 4.11-3, of the total 926 acres available for residential development, 422 acres are subject to pending or approved projects. As explained in Response 9.2, anticipated rate of redevelopment is based upon the existing and anticipated growth rate and the vacant land available for development.

From commenter's statement, it is unclear how the vacancy and redevelopment rates contradict the Draft EIR's impact analysis. For example, page referenced by the commenter indicates a finding that the proposed General Plan will provide for orderly development and not physically divide an established community. The finding of less than significance is based upon the fact that the Town has very limited land available for new development and is comprised of many fully-developed neighborhoods (Draft EIR page 4.11-11). Therefore, change is more likely to occur through redevelopment than through new growth potential (Draft EIR page 4.11-12).

Therefore, no revisions to the Draft EIR are necessary in response to this comment.

Response 9.6

The commenter cites several cases as to the requirements of a project description in a CEQA document and alleges the Draft EIR's project description is flawed for multiple reasons. These alleged reasons are elucidated in subsequent comments.

CEQA Guidelines section 15124 provides the specific requirements that are necessary under CEQA. The cases cited by the commenter do address project descriptions for CEQA documents. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

Response 9.7

In this comment, the commenter states that the project description is flawed because the project studied is not the project approved by the Town Council, stating the Town Council approved an alternative that called for 2,303 additional housing units, not the 3,738 studied in the Draft EIR.

The project analyzed by the Draft EIR is the Draft 2040 General Plan, which was recommended by the GPAC based on the implementation of the Land Use Alternative Framework approved by Town

Council. The Town Council cannot consider or make a determination on the Draft 2040 General Plan until the environmental review is complete and available for their consideration. The information provided in the EIR is intended to assist the public, Planning Commission, and Town Council in their consideration of the Draft 2040 General Plan.

See Response 9.2, which provides the formulaic approach to determine the use of the 3,738 units for the analysis of potential environmental impacts in the Draft EIR based on the land use designations in the 2040 General Plan. This number is used consistently throughout the DEIR for analysis purposes. Although the commenter asserts that a lower number should have been used to assess potential environmental impacts, the use of the higher number ensures that a "worse-case-scenario" has been used in assessing potential significant impacts.

Therefore, no revisions to the Draft EIR are necessary in response to this comment.

Response 9.8

In this comment, the commenter states that the project description is flawed because the Draft EIR analyzes 3,728 housing units which the commenter states is inconsistent with the objective of accommodation of the 2,000 dwelling units for the 2023-2031 RHNA development by the Association of Bay Area Governments (ABAG). The commenter further states that the General Plan should wait until the 2023 Housing Element Update is complete and analyze both together.

See Response 9.2 and 9.7 for response to the use of the 3,728 housing units and RHNA development goals. The 2040 General Plan appropriately relies upon the 2015 Housing Element as the most up-to-date plan approved at the time the 2040 General Plan was drafted. While the California Office of Planning and Research recommends General Plan updates every 10-15 years, SB 375 requires the Housing Element of those plans to be updated much more frequently. Most Housing Elements are updated every 5-8 years per statutory requirements. Thus, General Plans and Housing Elements are often out of cycle with each other.

Therefore, no revisions to the Draft EIR are necessary in response to this comment.

Response 9.9

In this comment, the commenter refers to a letter sent by the California Department of Fish & Wildlife (CDFW) in response to the NOP for the Draft EIR to allege that the geographic scope of the project is unclear. With regard to the CDFW, this letter is specific to the project description in the NOP and does not refer to the Draft EIR project description and thus does not support any flaw in the Draft EIR project description. Nonetheless, the geographic scope of the project is described in Section 2, *Project Description*, of the Draft EIR. As described on page 2-4 of the Draft EIR, the Planning Area for the 2040 General Plan encompasses all land area within the Town's sphere of influence, and the Planning Area serves as the "General Plan Area" (planning area) for the purposes of this EIR. Figure 2-2 on page 2-6 of the Draft EIR shows the geographic boundary or extent of the Planning Area. Accordingly, no revisions to the Draft EIR are necessary in response to this comment.

From: Abbie Steinbacher [REDACTED]
Sent: Monday, June 27, 2022 10:36 AM
Subject: General Plan 2040 🗨️

EXTERNAL SENDER

Hi,

My family and I have lived in Los Gatos for the past 7 years and are hoping to make this our forever town. I am reaching out to voice my opinion of NOT supporting General Plan 2040. My husband and I will be voting for Town Council this fall based on your choices — and will be encouraging our friend group here to do the same.

Best,
Abbie Steinbacher

From: THOMAS J. FERRITO [REDACTED]
Sent: Monday, June 27, 2022 2:55 PM
To: Rob Rennie <RRennie@losgatosca.gov>; Maria Ristow <MRistow@losgatosca.gov>; Mary Badame <MBadame@losgatosca.gov>; Marico Sayoc <MSayoc@losgatosca.gov>; Matthew Hudes <MHudes@losgatosca.gov>; Town Manager <Manager@losgatosca.gov>
Subject: The General Plan

EXTERNAL SENDER

Dear Town Council Members:

It was my privilege to have served on the Los Gatos Town Council for twelve years eight months between 1978 and 1990.

During that time I fought daily to maintain the quality of life of Los Gatos as well as it's the small town charm and character by adopting and maintaining restrictive land use policies. Among other things, I fought developments proposing increased density (except along transit routes to encourage ridership), inordinately large homes and secondary dwelling units which would have caused increased parking and traffic issues for which the town's infrastructure was, and still is, inadequate.

During subsequent decades various Town Councils failed to continue this fight while the State has took over some local land use policies and mandated others to the detriment of the small cities and towns in California. The State is continuing to do so, and unlike Los Gatos, some cities and towns have, and are, opposing the State.

Unfortunately, it appears that, instead of joining in opposition to the local land use policies and mandates of the State, the Los Gatos Town Council is poised to "appease" the State (as the press recently quoted Council Member Ristow) by doubling housing density.

San Jose can be as dense and high rise at it wishes, but Los Gatos need not be the same as San Jose.

I urge the Town Council to fight for the quality of life of the residents of Los Gatos by rejecting the staff General Plan proposal and by joining other small cities and towns opposing the land use policies and mandates of the State.

Tom Ferrito