



**TOWN OF LOS GATOS
SPECIAL MEETING OF THE TOWN COUNCIL: STUDY
SESSION AGENDA
DECEMBER 07, 2021
TELECONFERENCE
5:00 P.M.**

*Marico Sayoc, Mayor
Rob Rennie, Vice Mayor
Mary Badame, Council Member
Matthew Hudes, Council Member
Maria Ristow, Council Member*

PARTICIPATION IN THE PUBLIC PROCESS

How to participate: The Town of Los Gatos strongly encourages your active participation in the public process, which is the cornerstone of democracy. If you wish to speak to an item on the agenda, please follow the participation instructions on page 2 of this agenda. If you wish to speak to an item NOT on the agenda, you may do so during the “Verbal Communications” period, by following the participation instructions on page 2 of this agenda. The time allocated to speakers may change to better facilitate the Town Council meeting.

Effective Proceedings: The purpose of the Town Council meeting is to conduct the business of the community in an effective and efficient manner. For the benefit of the community, the Town of Los Gatos asks that you follow the Town’s meeting guidelines while attending Town Council meetings and treat everyone with respect and dignity. This is done by following meeting guidelines set forth in State law and in the Town Code. Disruptive conduct is not tolerated, including but not limited to: addressing the Town Council without first being recognized; interrupting speakers, Town Council or Town staff; continuing to speak after the allotted time has expired; failing to relinquish the podium when directed to do so; and repetitiously addressing the same subject. Disruption of the meeting may result in a violation of Penal Code 403.

Deadlines for Public Comment and Presentations are as follows:

- Persons wishing to make an audio/visual presentation on any agenda item must submit the presentation electronically, either in person or via email, to the Clerk’s Office no later than 3:00 p.m. on the day of the Council meeting.
- Persons wishing to submit written comments to be included in the materials provided to Town Council must provide the comments as follows:
 - For inclusion in the regular packet: by 11:00 a.m. the Thursday before the Council meeting
 - For inclusion in any Addendum: by 11:00 a.m. the Monday before the Council meeting
 - For inclusion in any Desk Item: by 11:00 a.m. on the day of the Council Meeting

***Town Council Meetings Broadcast Live on KCAT, Channel 15 (on Comcast) on the 1st and 3rd Tuesdays at 7:00 p.m.
Rebroadcast of Town Council Meetings on the 2nd and 4th Mondays at 7:00 p.m.
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www.LosGatosCA.gov/TownYouTube***

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN THIS MEETING, PLEASE CONTACT THE CLERK DEPARTMENT AT (408) 354-6834. NOTIFICATION 48 HOURS BEFORE THE MEETING WILL ENABLE THE TOWN TO MAKE REASONABLE ARRANGEMENTS TO ENSURE ACCESSIBILITY TO THIS MEETING [28 CFR §35.102-35.104]

TOWN OF LOS GATOS
SPECIAL MEETING OF THE TOWN COUNCIL: STUDY SESSION AGENDA
DECEMBER 07, 2021
5:00 PM

IMPORTANT NOTICE

This meeting is being conducted utilizing teleconferencing and electronic means consistent with Government Code Section 54953, as Amended by Assembly Bill 361, in response to the state of emergency relating to COVID-19 and enabling teleconferencing accommodations by suspending or waiving specified provisions in the Ralph M. Brown Act (Government Code § 54950 et seq.). Consistent with AB 361 and Town of Los Gatos Resolution 2021-044, this meeting will not be physically open to the public and the Council will be teleconferencing from remote locations. Members of the public can only participate in the meeting by joining the Zoom webinar (log in information provided below).

PARTICIPATION

To provide oral comments in real-time during the meeting:

- **Zoom webinar:** Join from a PC, Mac, iPad, iPhone or Android device: Please click this URL to join.
<https://us06web.zoom.us/j/89558766077?pwd=ZDJ6cDdrbm9TeHFXYkpgZmQwUEdNdz09>. Passcode: 096806. You can also type in 895 5876 6077 in the “Join a Meeting” page on the Zoom website at <https://zoom.us/join>.
- **Join by telephone:** Join by Telephone: Dial: USA 877 336 1839 US Toll-free or 636-651-0008 US Toll. Conference code: 969184

When the Mayor announces the item for which you wish to speak, click the “raise hand” feature in Zoom. If you are participating by phone on the Zoom app, press *9 on your telephone keypad to raise your hand. If you are participating by calling in, press #2 on your telephone keypad to raise your hand.

When called to speak, you will be asked to provide your full name and your town/city of residence. This identifying information is optional and not a requirement for participation. Please limit your comments to three (3) minutes, or such other time as the Mayor may decide, consistent with the time limit for speakers at a Council meeting. If you wish to speak to an item or items on the Consent Calendar, please state which item number(s) you are commenting on at the beginning of your time.

If you are unable to participate in real-time, you may email to PublicComment@losgatosca.gov the subject line “Public Comment Item #__” (insert the item number relevant to your comment) or “Verbal Communications – Non-Agenda Item.” Comments received by 11:00 a.m. the day of the meeting will be reviewed and distributed before the meeting. All comments received will become part of the record.

RULES OF DECORUM AND CIVILITY

To conduct the business of the community in an effective and efficient manner, please follow the meeting guidelines set forth in the Town Code and State law.

The Town does not tolerate disruptive conduct, which includes but is not limited to:

- addressing the Town Council without first being recognized;
- interrupting speakers, Town Council or Town staff;
- continuing to speak after the allotted time has expired;
- failing to relinquish the microphone when directed to do so;
- repetitiously addressing the same subject.

Town Policy does not allow speakers to cede their commenting time to another speaker.

REMOTE LOCATION PARTICIPANTS

The following Council Members are listed to permit them to appear electronically or telephonically at the Town Council meeting: MAYOR MARICO SAYOC, VICE MAYOR ROB RENNIE, COUNCIL MEMBER MARY BADAME, COUNCIL MEMBER MATTHEW HUDES, and COUNCIL MEMBER MARIA RISTOW. All votes during the teleconferencing session will be conducted by roll call vote.

MEETING CALL TO ORDER

ROLL CALL

OTHER BUSINESS *(Up to three minutes may be allotted to each speaker on any of the following items consistent with the Participation Instructions contained on Page 2 of this agenda.)*

1. Discuss Housing Growth Options and Related Analyses for Planning Commission and Town Council Consideration of the Draft 2040 General Plan.

VERBAL COMMUNICATIONS *(Members of the public are welcome to address the Town Council on any matter that is listed on the agenda consistent with the Participation Instructions contained on page 2 of this agenda. To ensure all agenda items are heard and unless additional time is authorized by the Mayor, this portion of the agenda is limited to 30 minutes and no more than three (3) minutes per speaker. In the event additional speakers were not able to be heard during the initial Verbal Communications portion of the agenda, an additional Verbal Communications will be opened prior to adjournment.)*

ADJOURNMENT

Writings related to an item on the Town Council meeting agenda distributed to members of the Council within 72 hours of the meeting are available for review on the official Town of Los Gatos website. Copies of desk items distributed to members of the Council at the meeting are available for review in the Town Council Chambers.

Note: The Town of Los Gatos has adopted the provisions of Code of Civil Procedure §1094.6; litigation challenging a decision of the Town Council must be brought within 90 days after the decision is announced unless a shorter time is required by State or Federal law.



**TOWN OF LOS GATOS
STUDY SESSION AGENDA**

MEETING DATE: 12/07/2021

ITEM NO: 1

DATE: December 2, 2021
TO: Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Discuss Housing Growth Options and Related Analyses for Planning Commission and Town Council Consideration of the Draft 2040 General Plan.

RECOMMENDATION:

Discuss housing growth options and related analyses for Planning Commission and Town Council consideration of the Draft 2040 General Plan.

BACKGROUND:

At the October 19, 2021 Town Council meeting, two Council Members requested an agenda item to discuss the following question:

Should staff prepare the following analysis for the Planning Commission hearing on the Draft 2040 General Plan:

- Analyze the impact of SB9 on assumptions about housing capacity. Identify how the Draft General Plan could be affected by SB9's stated right to subdivide and build ADUs, and how that might eliminate the need to rezone our existing low density residential areas, since the state has already effectively done that for us; and
- Analyze an alternative based on the RHNA allocation of 1,993 units. Identify what aspects of the current Draft 2040 General Plan would change and whether the Draft EIR would have to be modified if we were to just meet the RHNA allocation with a minimal buffer.

This Study Session provides an opportunity for the Council to discuss housing growth options and identify additional information for the Planning Commission's consideration. As a Study Session, no action on the General Plan is on the agenda in conformance with State law as discussed later in this report.

PREPARED BY: Jennifer Armer, AICP
Planning Manager

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

DISCUSSION:

The following information has been prepared in response to the requested agenda item. The Town Council should discuss what information and analyses should be provided to the Planning Commission to assist with its recommendation regarding housing growth and other policy questions associated with the Draft 2040 General Plan and Final Environmental Impact Report (EIR).

A. Senate Bill 9

Senate Bill 9 (SB 9), signed into law by Governor Newsom on September 16, 2021, and effective starting on January 1, 2022, allows all properties within a "single-family residential zone" to develop two units on an existing lot and/or to be subdivided into two parcels with up to two units on each lot through ministerial review, irrespective of existing zoning, General Plan, or subdivision standards.

At this time, there has been no direction or guidance from the State Department of Housing and Community Development (HCD) on how new housing units produced as a result of these new regulations might be able to be counted in the Housing Element update towards meeting the Regional Housing Needs Allocation (RHNA) requirements. HCD is preparing a SB 9 guidance document, expected to be available in February 2022. Until HCD provides guidance, it would be premature for Town staff or the consultant to speculate as to the effects of SB 9 on the Draft 2040 General Plan. Given that we expect HCD guidance in early 2022, the Housing Element update will likely include SB 9 units based on HCD guidance.

Additional information about the implementation of SB 9 will be considered by the Town Council when an urgency ordinance is considered on December 21, 2021. Additionally, consideration of SB 9 programs will be part of future discussions by the Housing Element Advisory Board.

B. Housing Growth Options

The staff report materials for the Planning Commission's review of the Draft 2040 General Plan and Final EIR are expected to include information in response to public comments that have been received on the Draft 2040 General Plan via email, community meetings, Farmers Market conversations, other outreach meetings, and other mechanisms. In particular, the concerns about the housing capacity of 3,854 housing units in the Draft 2040 General Plan necessitate that the staff report include, at a minimum, information about the alternatives that have been previously considered by Town Council:

- Preferred Land Use Alternative Framework (2,939 units) adopted by Town Council on April 7, 2020;

DISCUSSION (continued):

- Draft Land Use Element (3,425 units) reviewed by Town Council on November 17, 2020; and
- Draft 2040 General Plan (3,854) recommended by the General Plan Update Advisory Committee on May 5, 2021.

In addition, per the Council agenda item request, staff can add a growth option for only 1,993 units which is the Town's Regional Housing Needs Allocation.

For each growth alternative, the staff report to the Planning Commission would identify the potential modifications to the Draft 2040 General Plan to achieve the target housing capacity.

For example, the Draft 2040 General Plan could be revised so as not to increase the residential densities of the Low Density and Medium Density Residential General Plan designations from the current 2020 General Plan. In other words, Low Density Residential would remain 0 to 5 units/acre compared to 1 to 12 units/acre in the proposed 2040 General Plan and Medium Density Residential would remain 5 to 12 units/acre instead of 14 to 24 units/acre. Retaining the 2020 designations would remove an estimated 606 units from the Draft 2040 General Plan capacity. Other changes to the Draft 2040 Plan would also be needed with respect to missing middle housing and the Community Design Element.

Another approach would be to modify the implementation of the Opportunity Areas contained in this early Land Use Alternative Framework by including an overlay zone for different housing densities and height limits for properties depending on whether they are inside or outside of that zone. Additional specificity of which properties are within the overlay zones would be required since the Preferred Land Use Alternative Framework showed these areas with a general circle that crosses through numerous properties.

To achieve the Draft Land Use Element option (3,425 units), the Draft 2040 General Plan could involve removal of housing densities from the Office Professional and Service Commercial designations (313 units) and other modifications such as removal/reduction of certain Community Place Districts.

Similarly, the report to the Planning Commission can include an option for 1,993 units (or 2,392 including a 20 percent buffer) with associated modifications needed to the Draft 2040 General Plan to achieve this lower housing capacity.

DISCUSSION (continued):

C. Housing Element Implications

The 6th Cycle RHNA is 1,993 units and the 6th Cycle RHNA plus a 20 percent buffer is 2,392 residential units. To ensure that the increases in housing capacity in the Draft 2040 General Plan Land Use Element are sufficient to allow the Housing Element update to meet State requirements and the HCD recommendation of a 20 to 30 percent buffer in the number of housing units. This aligns with the best practice of developing a General Plan with capacity for multiple different methods for meeting the Town’s RHNA in recognition of the fact that HCD may not certify a Housing Element if it disagrees with the assumptions, housing sites, and/or programs. A certified Housing Element is essential for the Town to receive State infrastructure dollars.

The following table lists the example housing growth options from above and provides both the number of units from the Draft 2040 General Plan 20-year residential capacity and the portion of the capacity that is potentially eligible for the current Housing Element update.

	Residential Capacity for 2040 General Plan (20-year plan)	Potentially Eligible Units for Housing Element Update (8-year cycle)*
Preferred Land Use Alternative Framework	2,939	2,239
Initial Draft Land Use Element	3,425	2,725
Draft 2040 General Plan	3,854	3,154

* Residential Capacity minus 700 units [400 existing project units (those likely be issued Building Permits before the start of the 6th RHNA cycle) and 300 new ADUs that would be built outside the 8-year 6th RHNA cycle].

CONCLUSION:

While the Draft 2040 General Plan contains a housing growth number, the Planning Commission, after conducting a public hearing, has the latitude to recommend to the Town Council a lower housing number with commensurate changes to the document as described above. The staff report to the Planning Commission will lay out those options and staff will be available at the public hearing to explore them in more detail with the Commission.

The Council has the same housing growth choices for its consideration when it conducts its public hearing on the Draft 2040 General Plan and evaluates the Planning Commission recommendation. The Town Council is the final decisionmaker for the adoption of the General Plan.

CONCLUSION (continued):

The public is welcome to continue to submit comments on the Draft 2040 General Plan, including any preferences for growth options and related changes to the Draft 2040 General Plan to achieve the reduced numbers.

Staff looks forward to additional public input and the Town Council discussion at the Study Session regarding materials that should be provided to support the Planning Commission's review of the Draft 2040 General Plan.

Per State law, the Town Council cannot act on the draft General Plan until environmental review is completed and until the Town Council receives a recommendation from its Planning Commission.

NEXT STEPS:

The next steps in the General Plan update process include:

- Planning Commission meeting to receive verbal comments on the Revised Draft EIR via teleconference at 7:00 p.m. on Wednesday, December 8, 2021. No action will be taken at this meeting.
- Completion of the reopened public review period on the Revised Draft EIR at 5:00 p.m. on Friday, January 7, 2022.
- Preparation of Final EIR.
- Planning Commission review and recommendation to the Town Council on the Draft 2040 General Plan and Final EIR, tentatively expected in February 2022.
- Town Council consideration of the Draft 2040 General Plan and Final EIR.

PUBLIC COMMENT:

Public comments submitted for this Study Session are included as Attachment 1.

COORDINATION:

This report has been coordinated with the Town Manager's Office and Town Attorney's Office.

ENVIRONMENTAL ASSESSMENT:

A Draft EIR analyzed the Draft 2040 General Plan as required. Preparation of a Final EIR will be completed and provided for consideration by the Planning Commission and Town Council along with the Draft 2040 General Plan.

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SUBJECT: Draft 2040 General Plan

DATE: December 2, 2021

Attachment:

1. Public Comments

From: Phil Koen

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

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

Cc: jvannada; Rick Van Hoesen; David Weissman

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

Dear Shelley,

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

Thank you.

Phil Koen

December 1, 2021

Dear Town Council Members,

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

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

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

Recommendations for Changes to the Land Use designations and standards

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

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

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

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

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

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

Background

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

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

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

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

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

Discussion

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

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

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

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

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

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

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

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

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

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

A word about Planning Horizons

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

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

Summary

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

Sincerely,

Los Gatos Community Alliance

Attachment A

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

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

The error is corrected here

September 13, 2021

VIA E-MAIL [JArmer@losgatosca.gov]

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

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

Dear Ms. Armer :

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

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

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

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

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

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I. The DEIR does not comply with CEQA.

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

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

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

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

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

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

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

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

The 2040 General Plan would also greatly increase intensities for non-residential land uses. For instance, the allowed floor area ratio (“FAR”) for Mixed Use will increase six-fold from 0.5 to 3.0.⁶ In the Community Commercial district, development at up to a 3.0 FAR would be allowed. The allowed FAR for the Central Business District will increase over three-fold from 0.6 to 2.0 FAR. In the Neighborhood Commercial, Office Professional, Service Commercial, and Light Industrial designations, the permitted FAR will double, increasing from 0.5 to 1.0. Most of these intensities vastly exceed any intensities currently allowed in the Town, including under the Albright Specific Plan. (DEIR, pp. 4.11-5 to 4.11-6 [Albright Specific Plan entitled for development intensity of approximately 0.5 FAR].) Ignoring the increased intensities allowed by the 2040 General Plan and relying solely on a table of “Pending and Approved Projects,” the DEIR claims that approximately 671,680 square feet is the maximum amount of non-residential development allowed under full buildout of the General Plan. (DEIR, p. 2-16.)⁷

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Aesthetics

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

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

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

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

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

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

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

2. Air Quality

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

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

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

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

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

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

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

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

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

3. Biological Resources

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

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

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

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

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

4. Cultural and Tribal Cultural Resources

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

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

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

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

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

5. Energy

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

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

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

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

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

6. Geology and Soils

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

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

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

7. Greenhouse Gas Emissions

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

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

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

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

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

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

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

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

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

8. Hazards and Hazardous Materials

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

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

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

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

9. Hydrology and Water Quality

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

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

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

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

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

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

10. Land Use and Planning

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

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

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

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

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

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

11. Noise

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

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

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

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

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

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

12. Population and Housing

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

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

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

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

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

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

13. Public Services and Recreation

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

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

14. Transportation

Instead of decreasing VMT by at least 11.3 percent as needed to comply with the Town's VMT threshold, the 2040 General Plan increases VMT by approximately 19 percent. (DEIR, pp. 4.15-18, 4.15-23.) The DEIR does not quantify the reductions in VMT from the Individual and Town-Wide measures referenced in Mitigation Measure T-1.²⁴ Without knowing the reductions from these measures, one cannot know whether additional Individual, Town-Wide, or Regional measures are needed.

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

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

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

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

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

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

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

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

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

15. Utilities and Service Systems

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

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

Based on data from a *Draft* 2016 UWMP,²⁸ the DEIR contends that water demand will exceed supplies in 2040 conditions. (DEIR, pp. 4.16-1 to 4.16-2.) The SJWC adopted its 2020 UWMP in June 2021.²⁹ It contains different demand and supply figures than those relied on by the DEIR. The DEIR must be updated to reflect these new figures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. Wildfire

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

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

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

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

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

The DEIR considers four alternatives to the Project.³² These include the Low Growth Alternative (Alternative 1), Medium Growth Alternative (Alternative 2), High Growth Alternative (Alternative 3) and the mandatory No Project Alternative (Alternative 4). The DEIR states that these alternatives derive from the 2040 General Plan Land Use Alternatives Report (“Alternatives Report”). (DEIR, p. 6-2.) Table 6-1 wrongly lists the 2040 population estimated under the ABAG projections as 30,050, i.e., less than the 2018 population estimate of 31,472.³³

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

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

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

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

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

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

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

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

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

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

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

Jennifer Armer
September 13, 2021
Page 23

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

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

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

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

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

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

Jennifer Armer
September 13, 2021
Page 24

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

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

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


III. Conclusion

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

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

Very truly yours,

RUTAN & TUCKER, LLP



Matthew D. Francois

cc (via e-mail):

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

Exhibit A

Maximum Buildout Potential Under 2040 General Plan

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).

From: jvannada

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

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

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

To: Shelley Neis, Town Council, Staff

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

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

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

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

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

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

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

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



Survey of Voters in Los Gatos, CA 2040 General Plan Attitudes *October 2021*

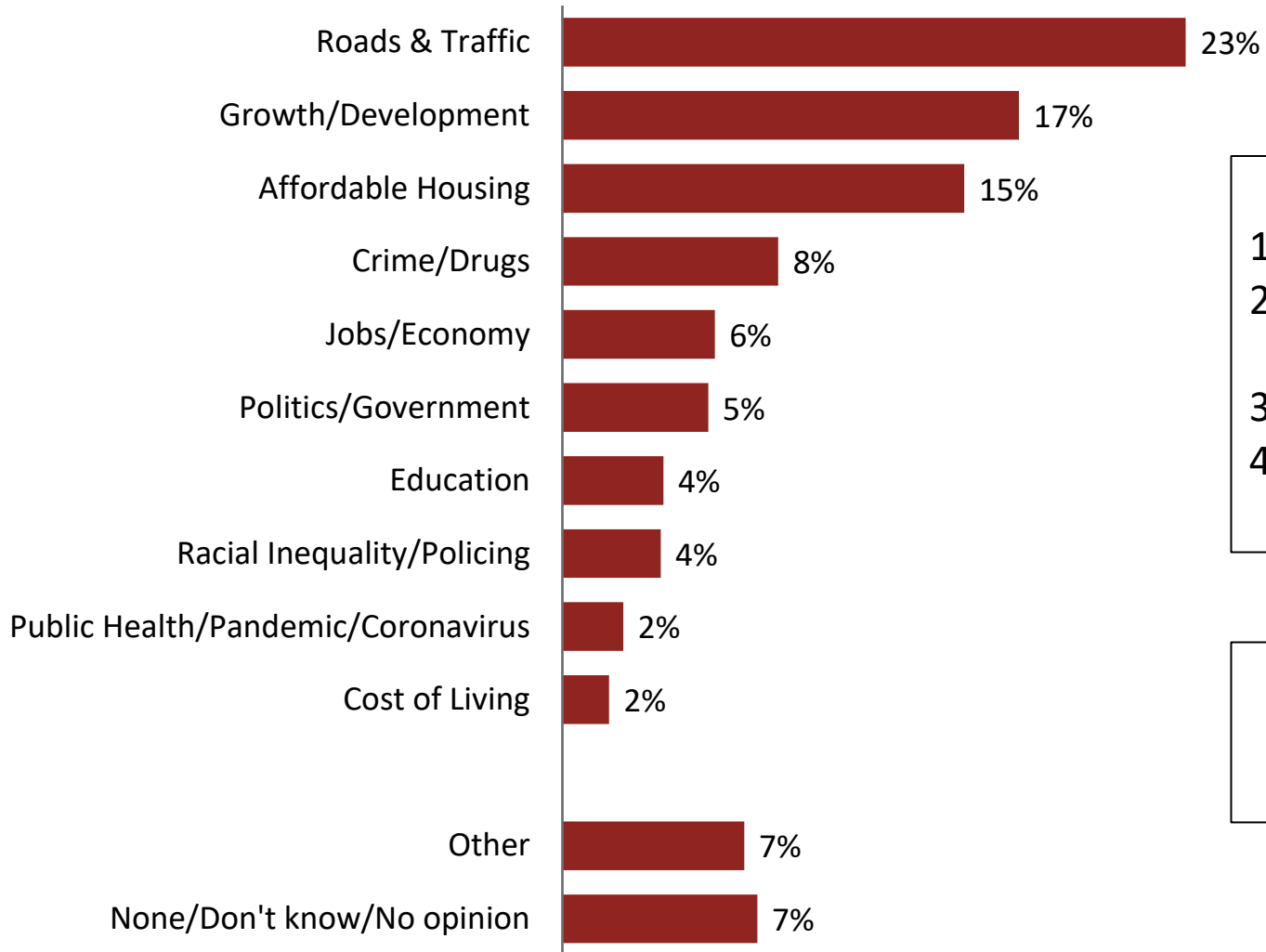
Methodology

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

Key Findings

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

Most Important Problem

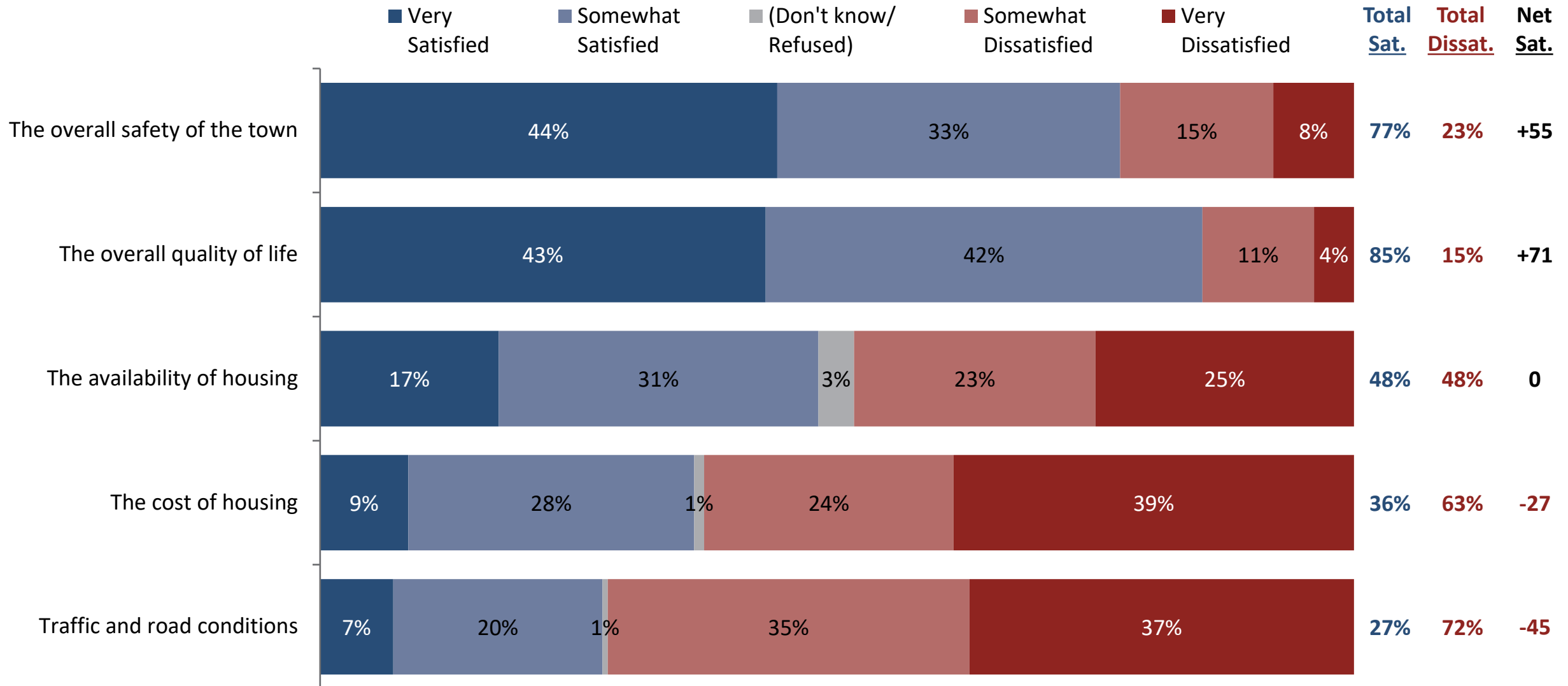


Top issues from 2019:

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

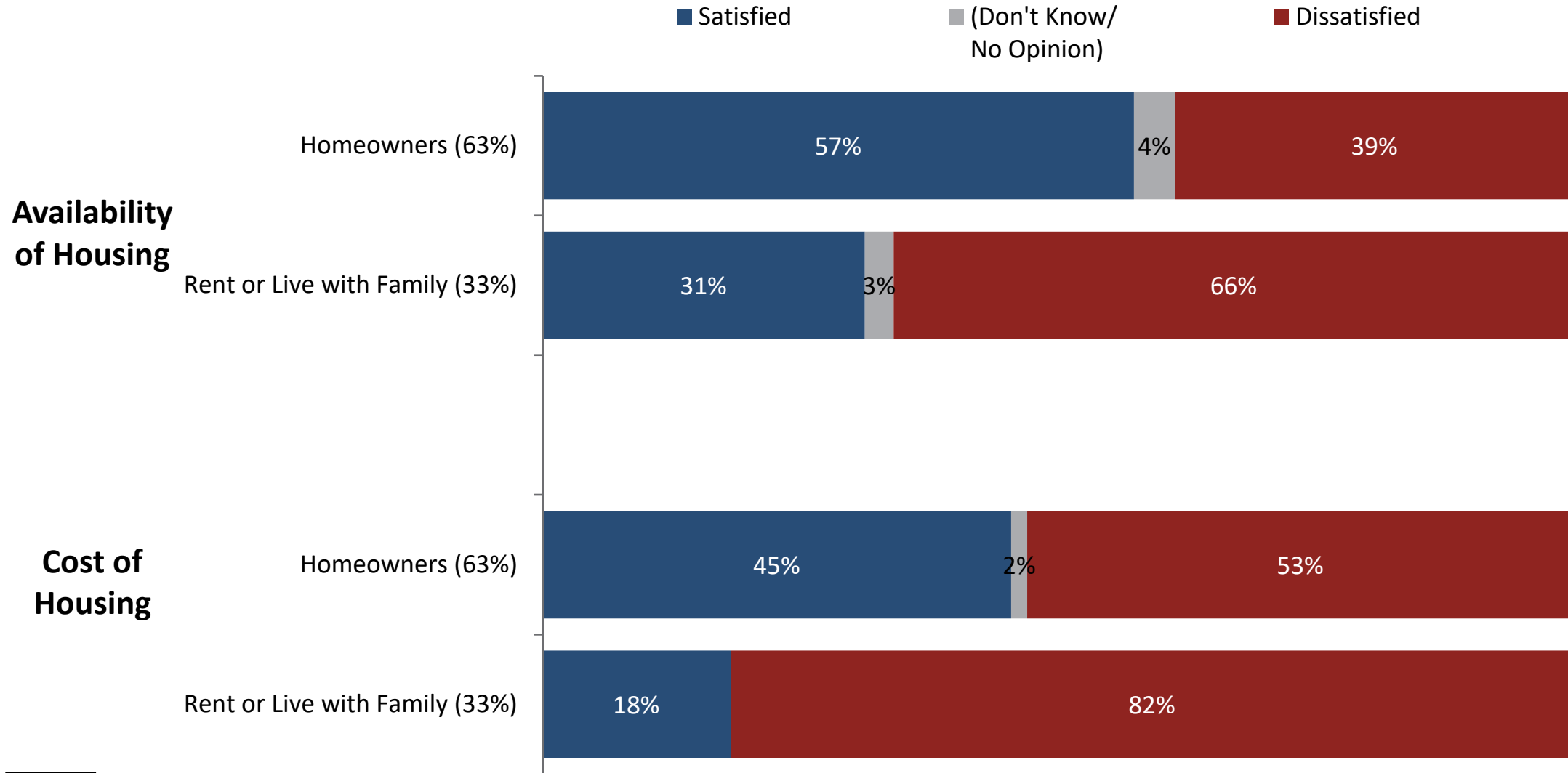
Among those that **do not own a home**, the top issue mentioned is **affordable housing** at **21%**

Los Gatos Satisfaction Ratings



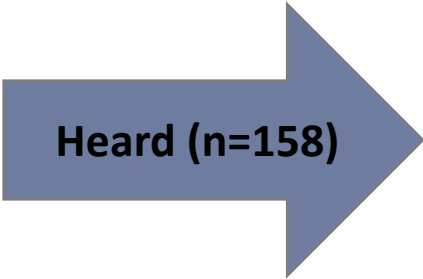
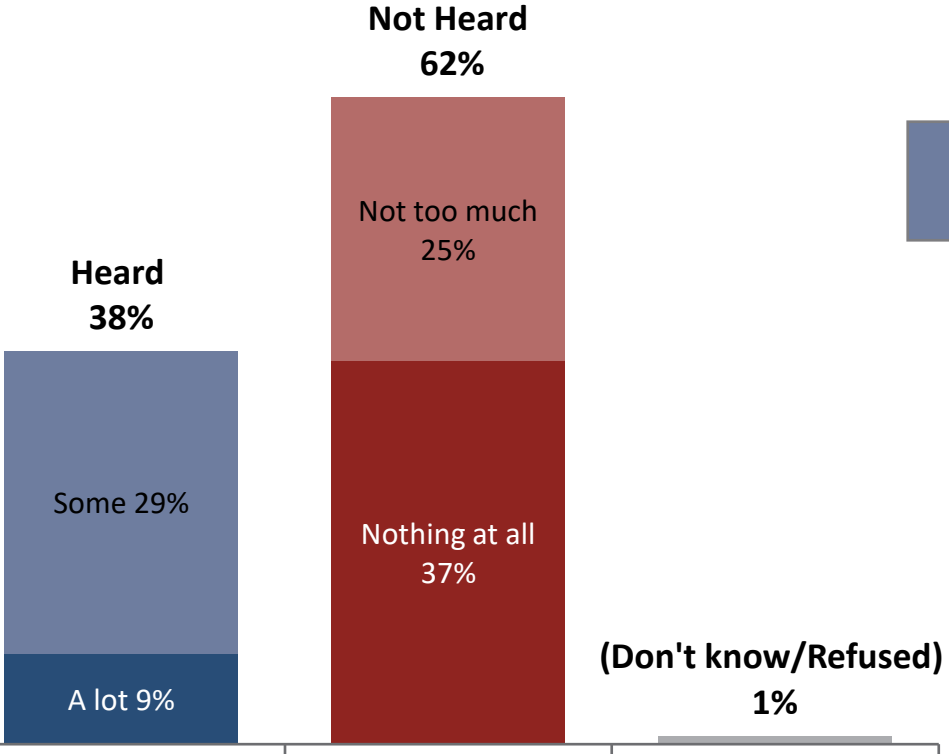
Page 49
 When asked how you are very satisfied, somewhat satisfied, somewhat dissatisfied or very dissatisfied with each of the following in Los Gatos?

Housing Satisfaction Ratings

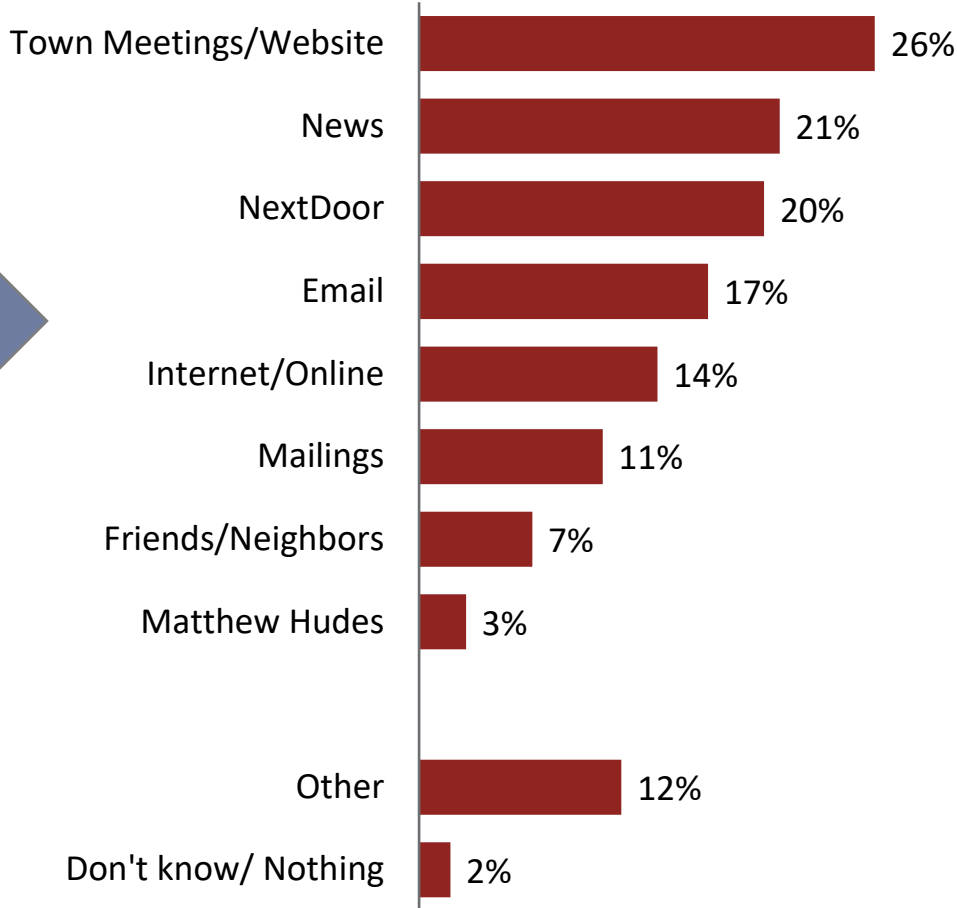


Awareness of General Plan

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

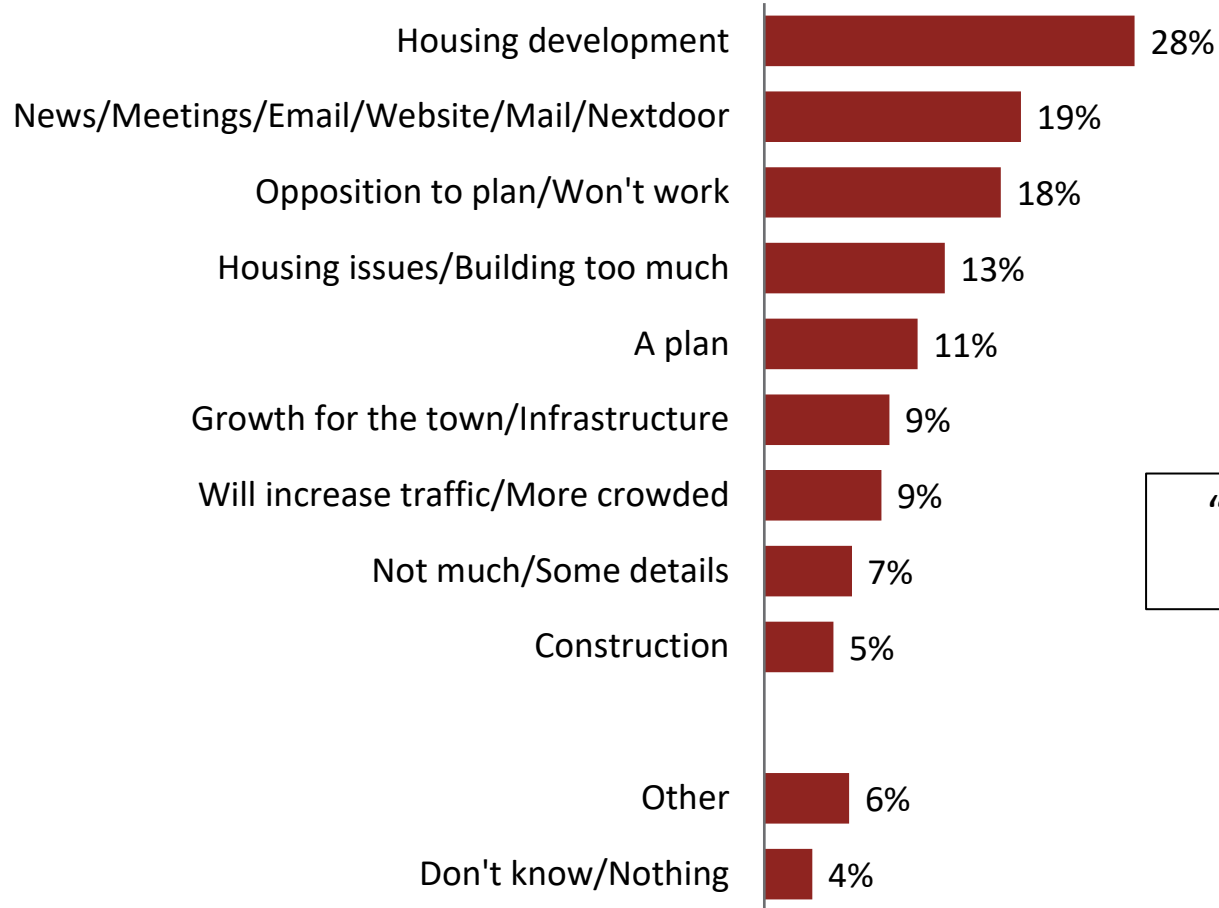


And where did you learn about the Town's 2040 General Plan?



Sources of General Plan Information

What have you heard or seen?



“A lot of things I am unhappy about.”

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

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

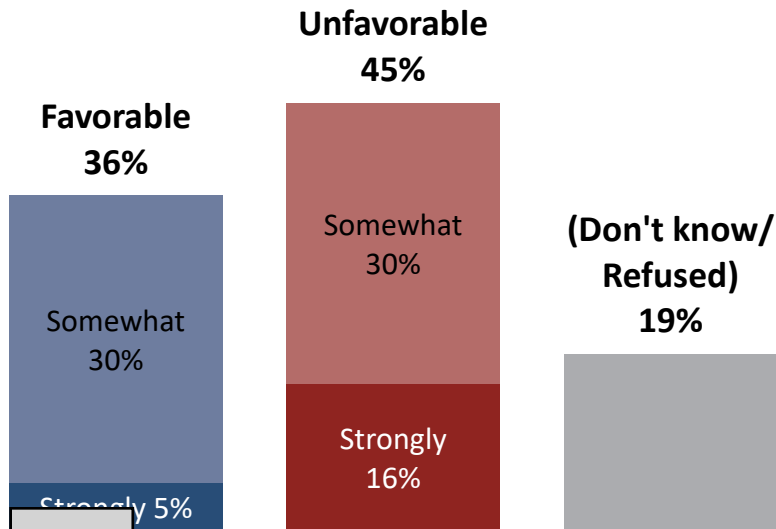
“Lots of low income multi family units and lack of planning for traffic and population increase”

Initial General Plan Rating

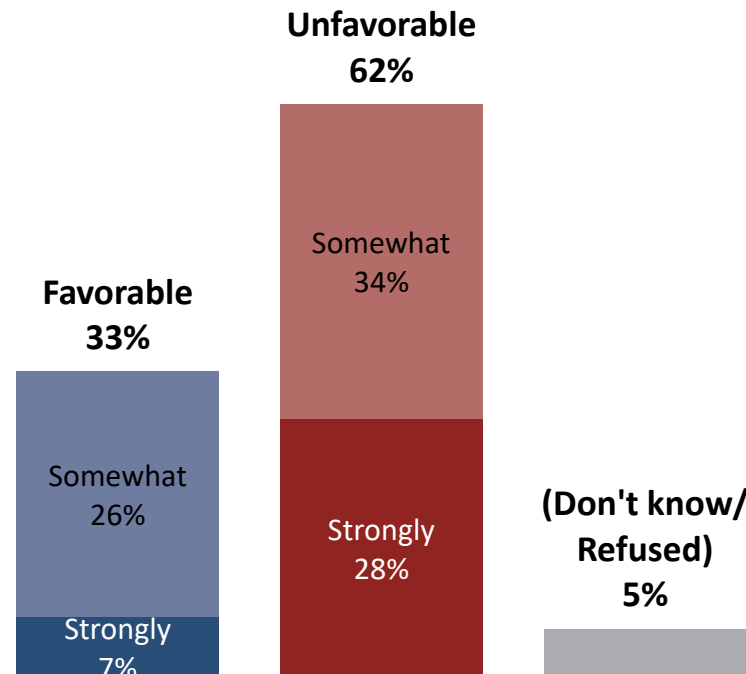
As you may know, the Los Gatos 2040 General Plan is a comprehensive strategy for the Town's future on issues like transportation, housing, the environment, and the economy.

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

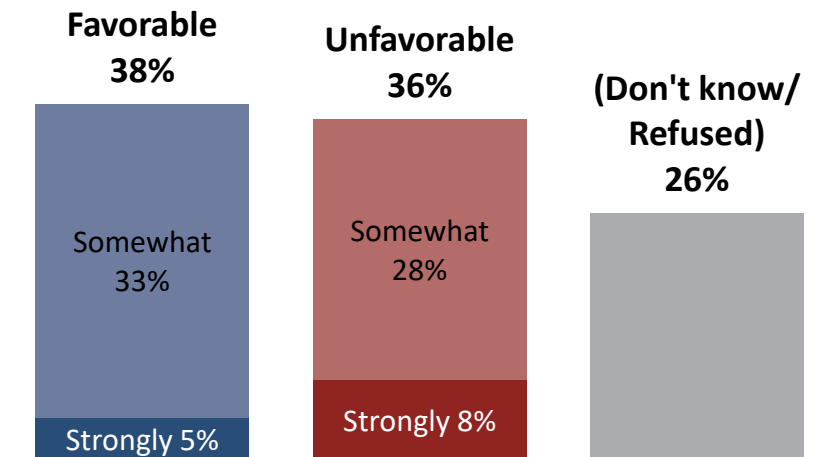
Overall



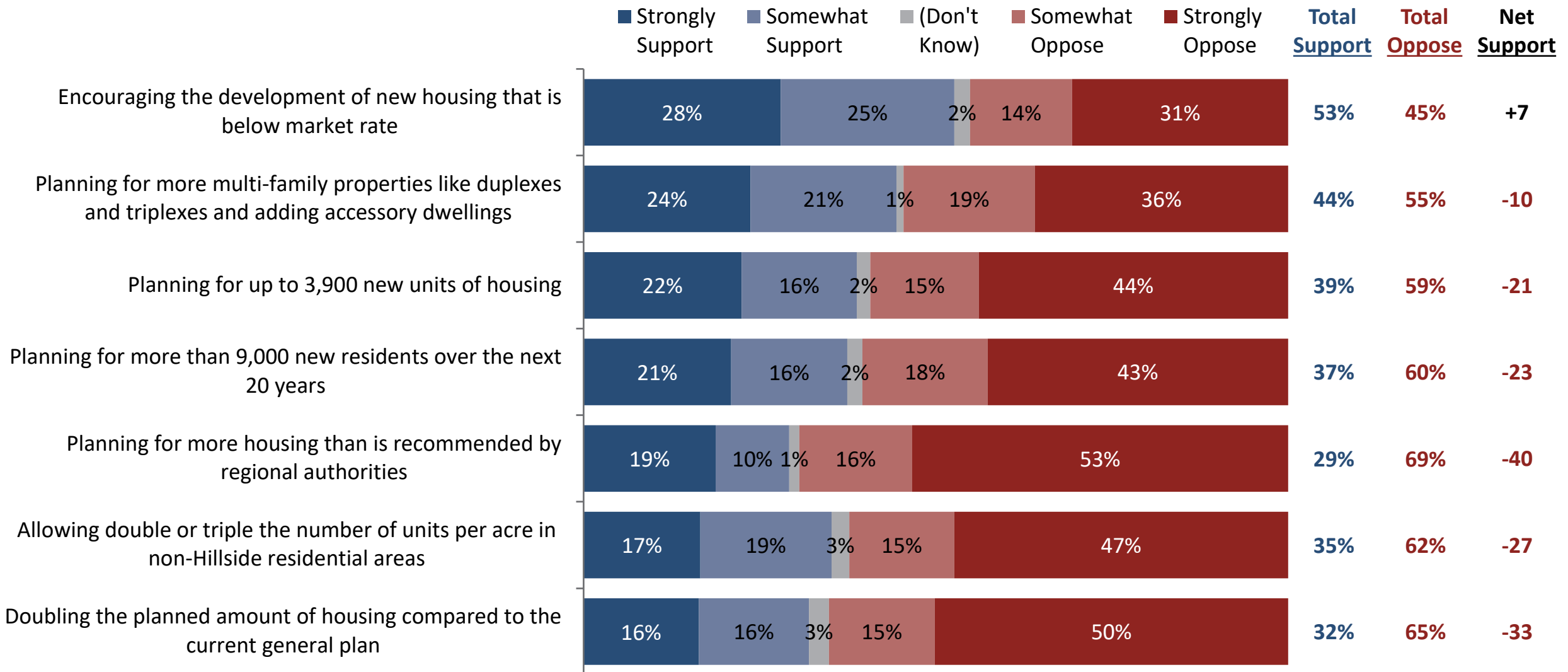
Familiar with Plan (n=158)



Not Familiar with Plan (n=239)

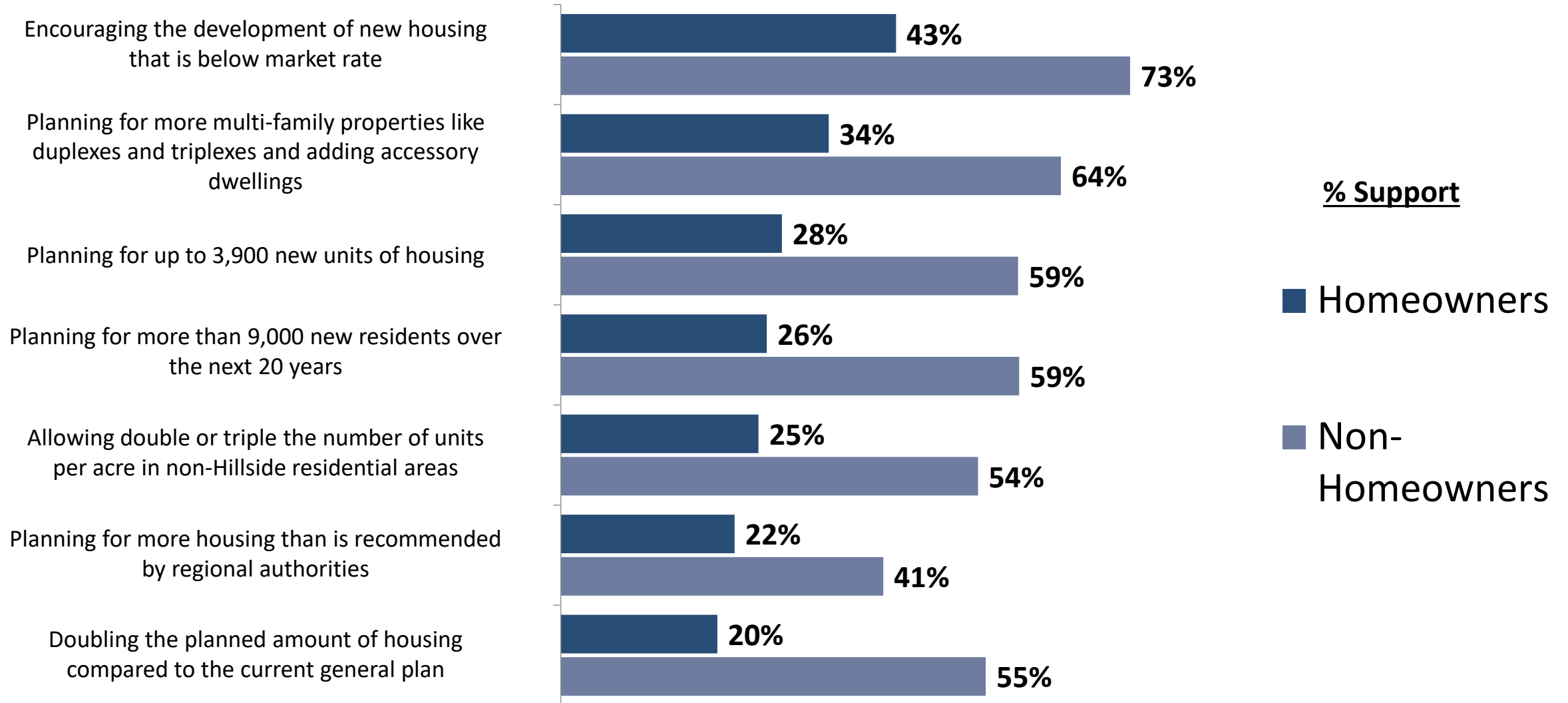


General Plan Proposed Elements



Page 54
 Now we are going to read you some of the things that could be included in the Los Gatos 2040 General Plan. Please tell me if you strongly support, somewhat support, somewhat oppose or strongly oppose each one.

Elements by Housing Status



Alternative General Plan Elements

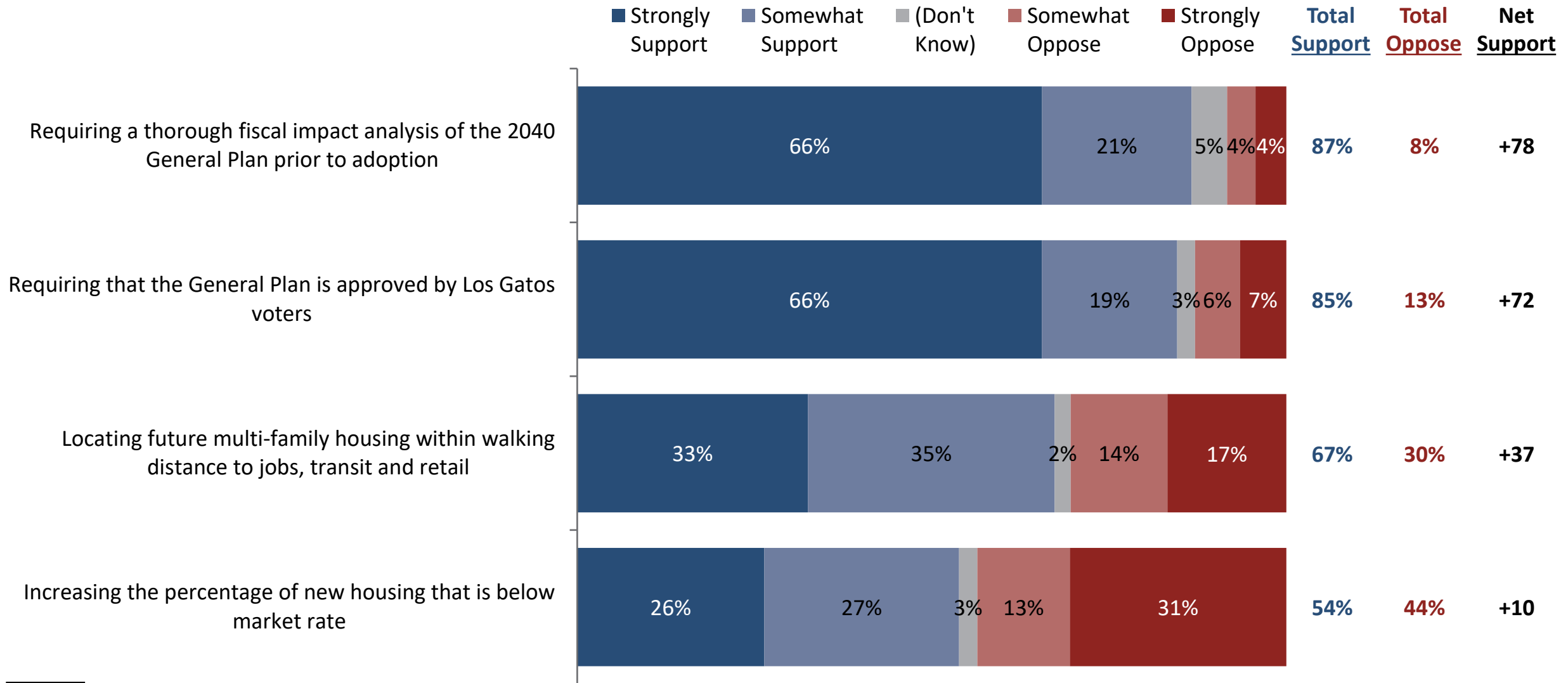
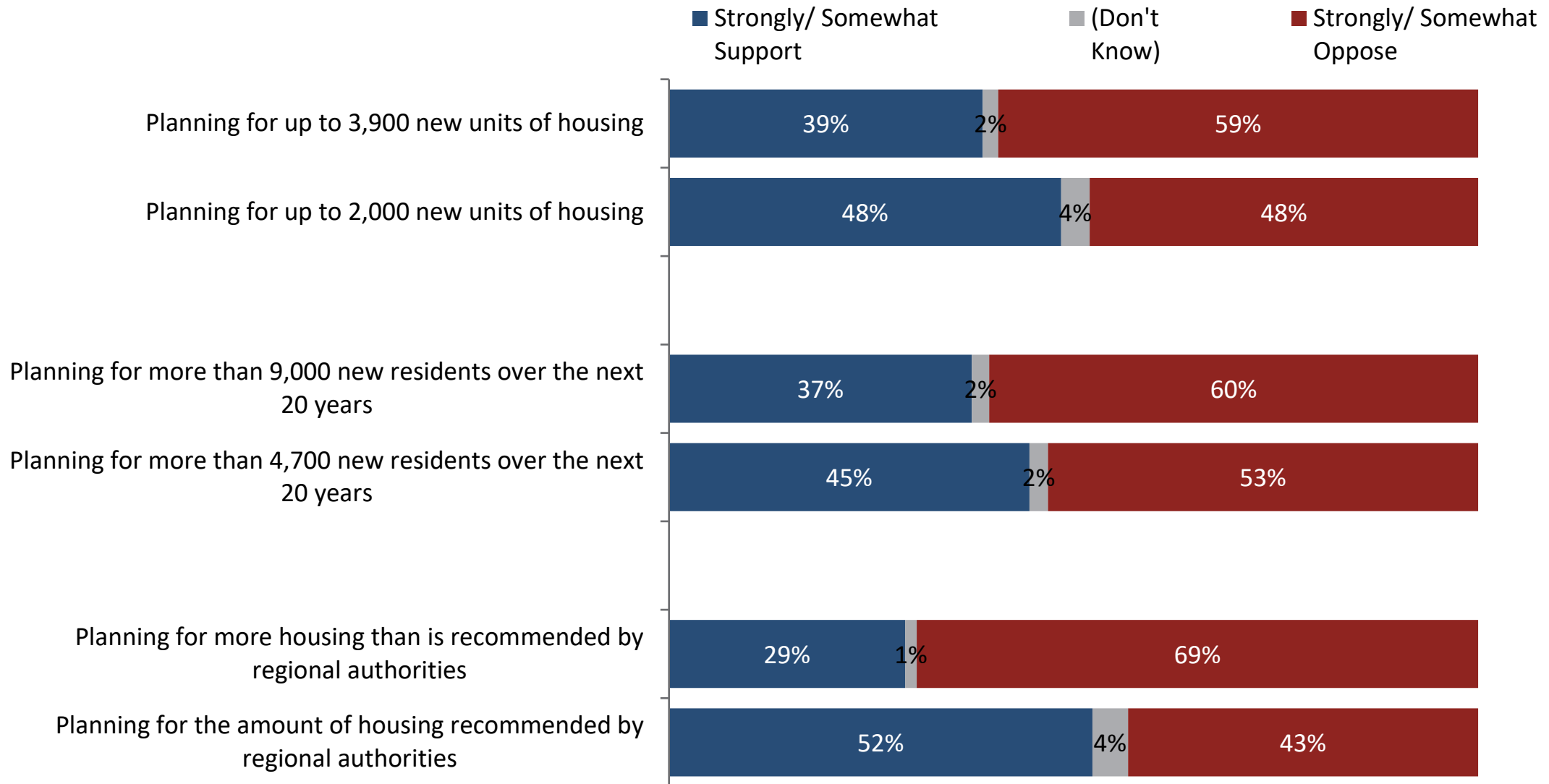
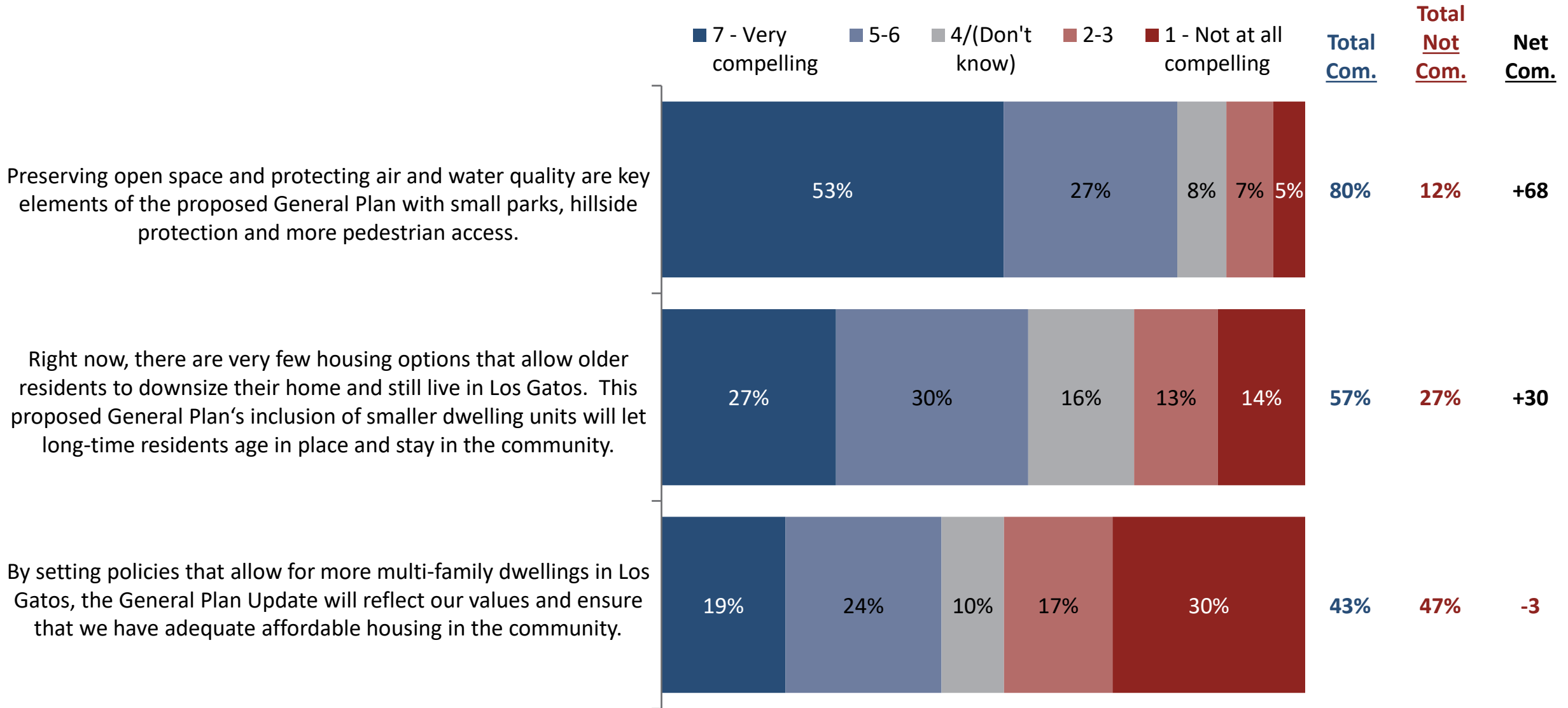


Figure 56: Survey results for alternative general plan elements. Respondents were asked to indicate their level of support or opposition for each element. The net support score is calculated as Total Support minus Total Oppose.

Proposed vs. Alternative Plans

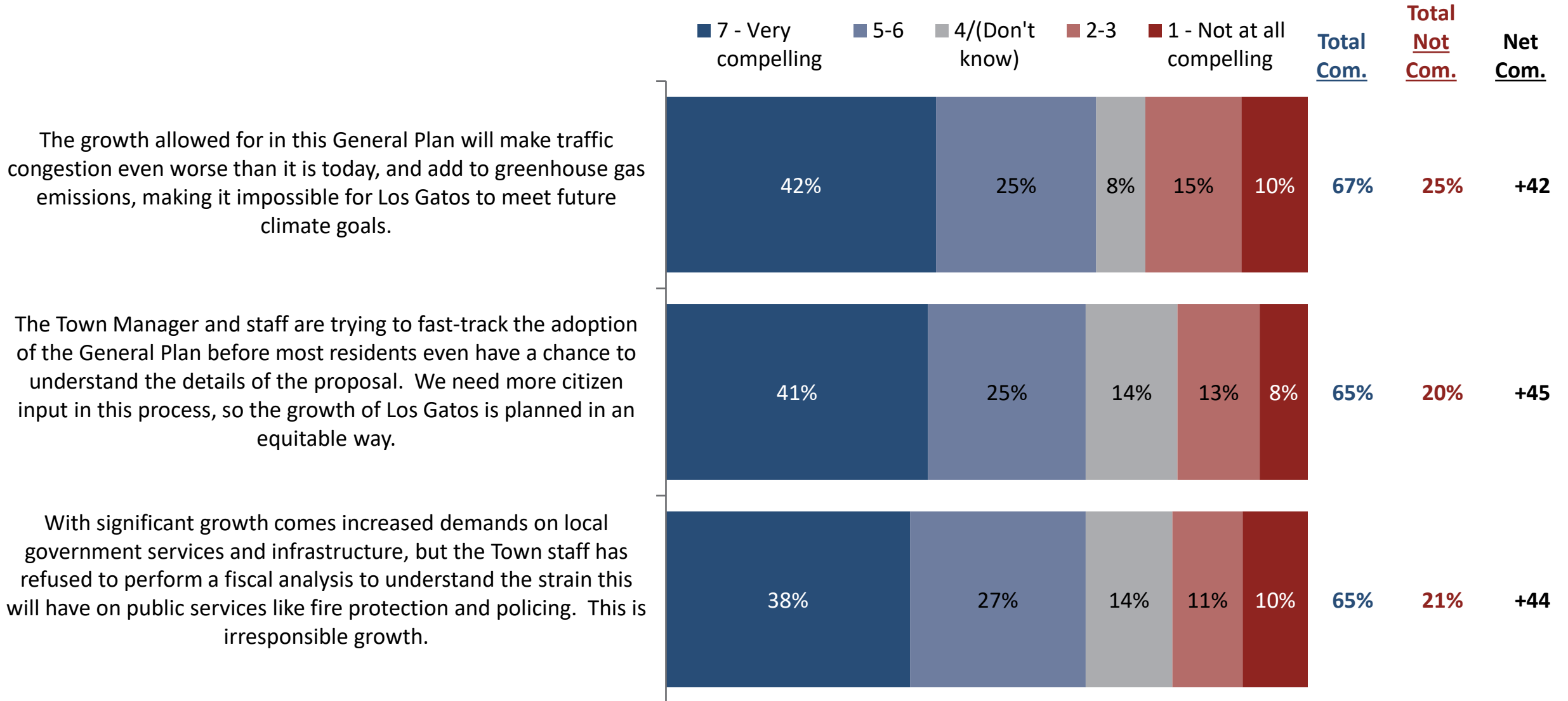


GP2040 Top Messaging



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

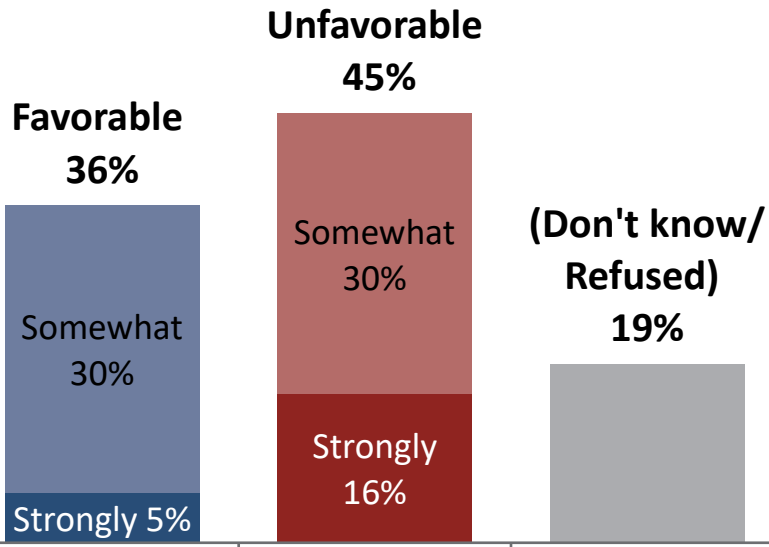
GP2040 Top Opposition Messaging



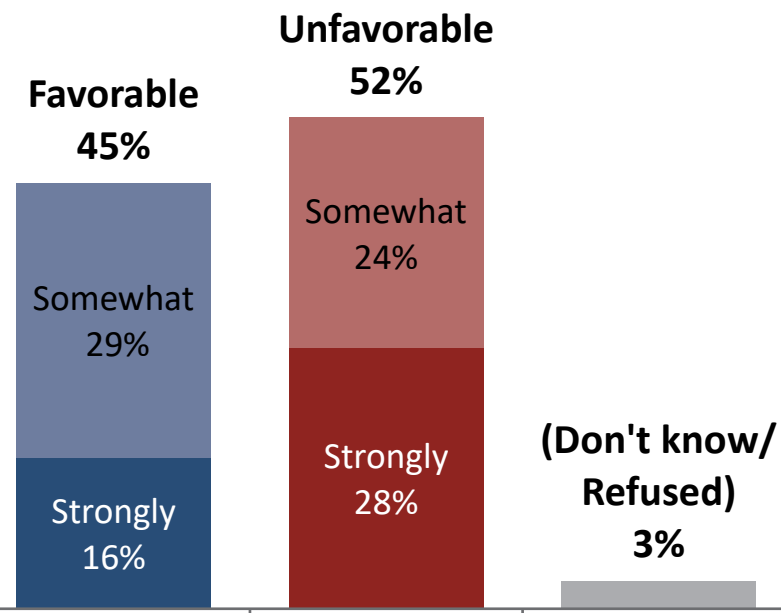
Next slide to read you some statements from people who oppose the proposed 2040 General Plan. Please rate each statement, using a scale from 1 to 7, where 1 means the statement is not at all compelling and 7 means the statement is very compelling.

Informed General Plan Rating

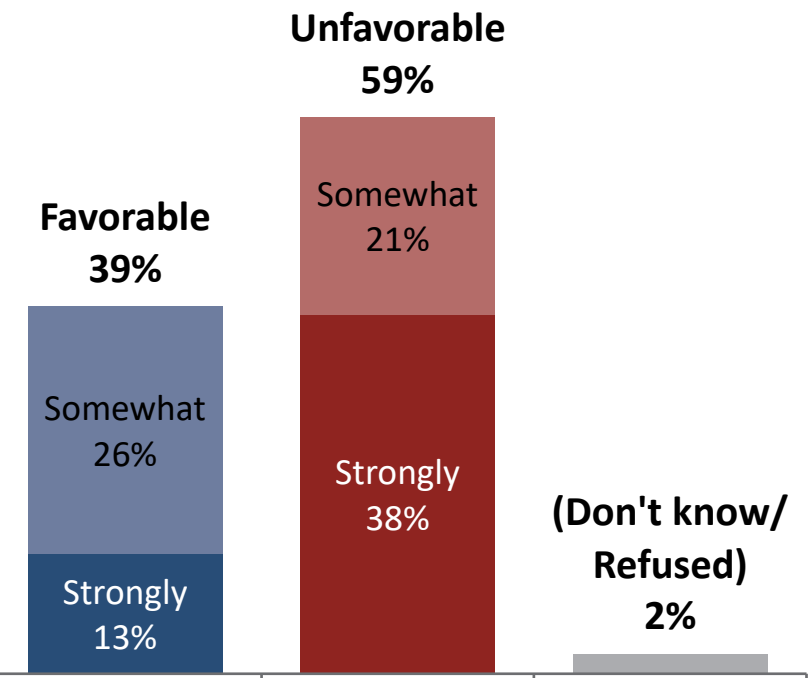
Initial Favorability



Favorability After Support



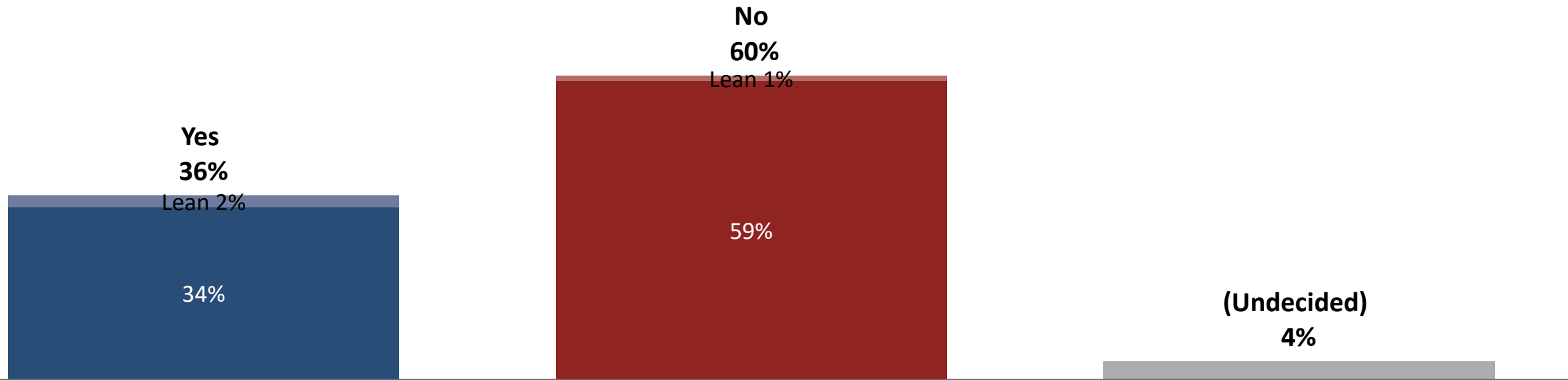
Favorability After Opposition



Informed Referendum Vote Preference

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

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





Ruth Bernstein
ruth@emcresearch.com
510.550.8922

Brendan Kara
brendan@emcresearch.com
202.686.5902

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

To All Members of the LG Town Council,

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

PLEASE do not go above the required level

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

From: Rick Van Hoesen

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

To: Phil Koen

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

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

Dear Shelley,

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

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

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

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

Please confirm receipt of this email.

Thank you

Rick



**TOWN OF LOS GATOS
STUDY SESSION AGENDA**

MEETING DATE: 12/07/2021

ITEM NO: 1

ADDENDUM

DATE: December 6, 2021
TO: Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Discuss Housing Growth Options and Related Analyses for Planning Commission and Town Council Consideration of the Draft 2040 General Plan.

REMARKS:

Public comments submitted for this Study Session and received after the preparation of the staff report are included as Attachment 2.

Attachment Previously Received with Staff Report:

1. Public Comments

Attachment Received with this Addendum:

2. Public Comments received by 11:00 a.m., Monday, December 6, 2021

PREPARED BY: Jennifer Armer, AICP
Planning Manager

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

From: Phil Koen

Sent: Friday, December 03, 2021 9:21 AM

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

Cc: Shelley Neis; Laurel Prevetti; jvannada; Rick Van Hoesen

Subject: Housing Capacity Analysis - Agenda Item 1 December 7 Council Special session

Dear Town Council,

Please find attached an example of how cities compute the maximum residential buildout based on maximum allowable zoning densities. This is from the City of Claremont's land use element. This approach is common and is a standard analytical calculation municipalities make to determine the impact of land use and zoning changes on buildout capacity.

The LGCA has provided a maximum buildout calculation for the Town based on the proposed land use changes in the draft Land Use element. This analysis can be found as Exhibit A to the Rutan and Tucker letter that is in your December 7 council package. That calculation shows the maximum buildout based on maximum allowable densities to be 74,007.

By comparison, using 2018 as a baseline, total existing residential units are 13,299 with the capacity to add 1,013 units based on the 2020 General Plan and current zoning ordinances. This is the major issue with the draft land use elements- namely the massive increase in zoning densities for all residential land uses Town wide.

The Council needs to explain the rationale for increasing zoning densities to such a magnitude to allow for a maximum buildout of 74,007 units which would 5.5x the current number of residential units.

Thank you.

Implications of Land Use Policy

Table 2-2 identifies the planned distribution of land uses. Over time, as properties transition from one use to another or property owners rebuild, land uses and intensities will gradually shift to align with the intent of this Land Use Element. Table 2-2 summarizes the land use distribution, average level development anticipated, and the resultant residential and nonresidential levels of development that can be expected from full implementation of land use policies established by this General Plan. Given the almost built-out character of Claremont and the good condition of most buildings, significant redevelopment activities may not occur over the life of this General Plan. Average development densities and potential presented in Table 2-2 reflect primarily established densities, with limited opportunities for recycling to more intensified development.

How the Numbers in Table 2-2 Have Been Derived

To help readers understand the assumptions inherent in the development and population projections presented in Table 2-2, Table 2-1 and the following paragraphs provide a guide. Table 2-1 explains what each of the columns in Table 2-2 mean, and the paragraphs on the following page describe the assumptions used to estimate development capacity of the General Plan at full implementation.

**Table 2-1
Description of Terms Used in Table 2-2**

Table 2-2 Columns	Description
Land Use Categories	The categories used in the General Plan to group land uses (18 categories, plus 5 Mixed Use sub categories). See pages 2-8 to 2-18 for descriptions of each category.
Net Acres	The amount of land included within a particular category, exclusive of public right-of-way such as streets, freeways, alleys, sidewalks, and railroads.
Estimated Average Density/Intensity	Specific assumptions estimated for each land use category, such as the number of dwelling units per acre, floor-area ratio, and residential to commercial ratio for mixed uses. These assumptions, along with net acres, are used to calculate dwelling units, population, and square footage.
Projected Dwelling Units	This number includes the number of existing homes (baseline year 2005) and future homes for each residential land use category. Dwelling units, along with person per household and vacancy rate, are used to calculate population.
Estimated Population	The sum of existing residents (baseline year 2005) and future residents for each residential land use category.
Estimated Square Feet (in tsf)	The sum of existing nonresidential square footage (baseline year 2005) and future constructed square footage for each nonresidential land use category.

Projected Dwelling Units

Projected Dwelling Units are calculated for each land use category that permits residential land use by multiplying the net acres of the residential land use categories by the average density for that particular category. The end result of 13,442 dwelling units represents the total of all such categories. The Hillside Residential Overlay is factored in by adding the maximum housing credits allowed within the cluster areas. Institutional uses, such as Pilgrim Place, are also included based upon the number of residential units within each Institutional use. Mixed Use designations also contribute to the total. Acres within each Mixed Use category are divided into residential and commercial uses, as indicated by the Residential/Commercial Ratio assumption. This ratio identifies the portion of the Mixed Use area assumed to be residential.

- **Projected Dwelling Units** = Acres x Assumed Average Density
- Example - Residential 2: 640.3 Acres x 1.0 du/ac = 640 dwelling units

Estimated Population

Estimated Population is calculated by multiplying the Projected Dwelling Units by two factors: number of persons per household (2.70) and the occupancy rate (0.976)¹. The number of persons per household and the occupancy rate will change year to year, but for projection purposes, the City has used year 2005 estimates from the California Department of Finance, Demographic Unit for the City of Claremont. College students from The Claremont Colleges are also factored in by incorporating the projected number of students (7,555) in year 2025, as projected by staff from The Colleges.

- **Estimated Population** = Projected Dwelling Units x 2.70 (person per household) x 0.976 (occupancy rate)
- Example - Residential 2: 640 Dwelling Units x 2.70 x 0.976 = 1,687 persons

Estimated Square Footage

Estimated Square Footage accounts for all building area of nonresidential buildings, meaning commercial, business park, and institutional uses. The projection for nonresidential development is calculated by multiplying the land use net acres for each land use category by an assumed average by the floor-area ratio or FAR (see pages 2-7 to 2-8 for a description of the FAR). The result is then converted from acres to square feet². This yields the estimated square feet. The numbers used in Table 2-2 are presented as a thousand square feet (tsf) for simplicity.

- **Estimated Square Footage** = Acres x Assumed Intensity
- Example - Commercial: 46.0 Acres x 0.25 FAR x 43,560 = 501,000 square feet

¹ The occupancy rate (0.976) is based on the vacancy rate (0.024), according to the 2005 Department of Finance, Demographic Unit estimates.

² One acre equals 43,560 square feet.

LAND USE, COMMUNITY CHARACTER, AND HERITAGE
PRESERVATION ELEMENT

Table 2-2
Development and Population Projections Pursuant to Land Use Policy

Land Use Categories	Net Acres	Assumed Average Density/Intensity	Full Implementation Projections		
			Projected Dwelling Units	Projected Population (A)	Projected Square Feet (in tsf)
Residential 2	640.3	1.0 du/ac	640	1,687	-
Residential 6	1,816.5	4.0 du/ac	7,266	19,147	-
Residential 15	250.3	12.0 du/ac	3,004	7,915	-
Residential 22	40.0	20.0 du/ac	800	2,108	-
<i>Mixed-Use Areas</i>	<i>73.5</i>	<i>See Below</i>	<i>531</i>	<i>1,398</i>	<i>1,977</i>
• Peppertree Mixed Use	9.1	18 du/ac - 1.0 FAR Res/Com Ratio 0.5:0.5	82	216	198
• TOD Mixed Use	12.2	18 du/ac - 1.25 FAR Res/Com Ratio 0.9:0.1	198	521	66
• Old School House Mixed Use	23.1	20 du/ac - 1.25 FAR Res/Com Ratio 0.35:0.65	162	426	818
• Foothill Corridor Mixed Use	25.6	10 du/ac - 1.0 FAR Res/Com Ratio 0.3:0.7	77	202	781
• Base Line Mixed Use	3.5	9 du/ac - 1.25 FAR Res/Com Ratio 0.4:0.6	13	33	114
Commercial	46.0	0.25 FAR	-	-	501
The Claremont Village	47.8	18 du/ac - 1.0 FAR Res/Com Ratio 0.35:0.65	301	793	1,353
Freeway Commercial	45.9	0.33 FAR	-	-	660
Office/Professional	48.5	0.35 FAR	-	-	744
Commercial Recreation	16.8	0.25 FAR	-	-	183
Business Park	87.4	0.30 FAR	-	-	1,142
Commercial /Business Park	48.9	0.45 FAR (Business Park)	-	-	266
		0.25 FAR (Commercial)	-	-	480
Public	338.2	0.10 FAR	-	-	1,473
Institutional	732.6	0.30 FAR	550 (B)	8,655 (B)	5,072 (C)
Park/Resource Conservation	922.5	N/A	-	-	-
Wilderness Park	1,863.1	N/A	-	-	-
Hillside	962.5	N/A	-	-	-
Hillside Residential Overlay	664.7	(D)	330	605	-
Total	8,645.8		13,422	42,584	13,852

- (A) Population projections are based on an average household size of 2.70 persons per household and a vacancy rate of 2.4%, based on 2005 data from the California Department of Finance, Demographic Unit.
- (B) Congregate Care and Webb Schools unit and population numbers are based on 2006 data. Student projected population based on Claremont University Consortium estimate.
- (C) Rancho Santa Ana Botanic Garden, Claremont Golf Course, and the Field Station net acres have been excluded from the calculation of square footage due to low intensity of buildings.
- (D) Average density of Hillside Residential Overlay varies and is based on developable areas of cluster sites. Within the cluster areas, a maximum of 230 units is allowed, yielding a maximum density of 0.32 du/ac.

LAND USE, COMMUNITY CHARACTER, AND HERITAGE
PRESERVATION ELEMENT

Table 2-3 summarizes the projected dwelling units, estimated population, and estimated square footage for existing conditions in 2005, and what the Land Use Plan of the General Plan will yield at full implementation.

Table 2-3
Development and Population - 2005 Conditions and
General Plan

	Dwelling Units	Population	Square Feet of Nonresidential
Baseline (2005)	12,237	37,336	8,738,000
General Plan Land Use Policy	13,422	42,584	13,852,000
Capacity for Additional Development	1,185	5,248	5,114,000

From: Phil Koen

Sent: Sunday, December 5, 2021 11:22 AM

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

Cc: Laurel Prevetti; Shelley Neis; jvannada; Rick Van Hoesen; David Weissman; Joel Paulson

Subject: Los Altos Hills SB 9 urgency ordinance - R.E. Agenda Item #5 - Special Council study session

Dear Town Council,

Given the study session's agenda item #5, the LGCA thought it would be constructive to share with you a recently enacted urgency ordinance passed by Los Altos Hills Council establishing regulations for SB 9. This might be a worthy discussion for the study session.

Thank you.

Los Gatos Community

TOWN OF LOS ALTOS HILLS
Staff Report to the City Council

November 18, 2021

SUBJECT: URGENCY ORDINANCE OF THE TOWN OF LOS ALTOS HILLS AMENDING TITLE 10 (ZONING AND SITE DEVELOPMENT) OF THE LOS ALTOS HILLS MUNICIPAL CODE TO ADD ARTICLE 15 TO CHAPTER 1 ESTABLISHING REGULATIONS FOR THE SUBDIVISION AND DEVELOPMENT OF QUALIFIED SENATE BILL 9 PROPERTIES; FILE MCA21-0002

FROM: Steve Padovan, Principal Planner 

APPROVED: Peter Pirnejad, City Manager *P.P.*

RECOMMENDATION: That the City Council:

Waive reading, introduce and adopt the attached urgency ordinance establishing regulations for the subdivision and development of qualified Senate Bill 9 properties within the Town of Los Altos Hills.

BACKGROUND

On September 16, 2021, Governor Newsom signed Senate Bill 9 (SB 9) into law, substantially altering low-density, single-family zoning throughout the state. The most significant component of this bill is that it requires ministerial approval of a one-time, two-lot subdivision and/or development projects for up to two (2) units per lot. The proposed subdivision or development project is required to meet certain qualifying location and development criteria. Although the new law supersedes varying Town regulations regarding subdivision and development standards, SB 9 preserves some authority for local agencies to enact regulations through the adoption of new objective subdivision and zoning regulations. The law is scheduled to become effective on January 1, 2022.

On October 21, 2021, staff presented a summary of the new state regulations to the City Council. Following discussion of the issues surrounding the new law, the City Council directed staff to prepare an Urgency Ordinance which would allow the Town to establish regulations prior to January 1, 2022. The urgency ordinance would be adopted pursuant to California Government Code § 36937(b) which states that ordinances adopted to protect the health, safety and welfare of the public require a four-fifths vote of the City Council and become effective immediately. Although the urgency ordinance is not required to be reviewed by the Planning Commission, the Council wanted feedback from the Commission and Town residents at a public hearing. Subsequently, the Council created an ad-hoc committee (2 commissioners) of the Planning Commission to work with staff and prepare draft regulations and discussion points for inclusion in the Urgency Ordinance (see Attachment 2). In addition, a special meeting of the Planning Commission was scheduled for November 8, 2021.

DISCUSSION

The purpose of the Urgency Ordinance is to establish objective standards and regulations to govern the subdivision of parcels and the development of new dwellings on residential parcels in Town that are subject to recently passed Senate Bill 9. The establishment of these regulations will result in the orderly subdivision and development of parcels while ensuring that the new units are consistent with the semi-rural character of the Town and to minimize impacts with regards to public infrastructure and public safety. The draft regulations establish what types of parcels are eligible for a lot-split, the size and shape of the parcels, the scale of development, and design standards for proposed dwellings. The Urgency Ordinance is effective for a period of forty-five (45) days from its date of adoption. However, within that time period, the City Council can hold a public hearing to extend the ordinance for an additional 22 months and 2 weeks. Staff is anticipating that the Urgency Ordinance will be placed on the December 16, 2021 agenda to extend the effective date of the ordinance.

Based on the initial guidance provided by staff and the City Council, the ad-hoc committee met with several residents and staff during the week of October 22nd to the 29th to discuss potential code language options. A list of talking points was created and the ad-hoc committee met with staff on November 1, 2021, to clarify and organize the list. The primary focus of the ordinance code language was to focus on limiting overdevelopment of existing parcels and to discourage lot splits by providing a floor area incentive if a parcel remains intact. Based on these ideas, staff prepared the draft ordinance.

Contents of Proposed Urgency Ordinance

The urgency ordinance establishes an applicable set of regulations to allow for the ministerial review of SB 9 projects in a comprehensive and thorough manner while being consistent with the Town's rural character and its General Plan. Its adoption will also permit staff additional time to develop a more comprehensive set of regulations that thoroughly address all issues.

The ordinance regulations contain the following sections:

- Purpose and Intent.
- Definitions. – Provides definitions and clarification for commonly used terms in the new code.
- Eligibility of properties for a subdivision. – Establishes the types of properties that cannot be subdivided due to the following: a previous SB 9 subdivision; historical designation; demolition of existing affordable housing or rental unit; existing natural hazards; environmental constraints, parcels encumbered with an open space easement; farmlands; wetlands; hazardous waste sites. These criteria are taken primarily from the state law.
- Objective standards and requirements for a subdivision. – Provides objective requirements for the ministerial evaluation of a two-lot subdivision by regulating minimum lot area, parcel width, access, grant of easements, utilities, and deed restrictions on further subdivisions and the provision of income restricted units.
- Objective standards and requirements for dwelling units on a parcel that is not being subdivided. – Continues to use the Town's current formulas to determine maximum floor

area (MFA) and maximum development area (MDA) for the existing parcel, allows for 4 units on the parcel, requires a signed affidavit that the owner intends to live on the parcel for 3 years, and places limits on SB 9 units with a maximum permitted floor area of 800 square feet, one parking space, 16-foot height limit, and rental limitations. The regulations also provide an incentive to increase the floor area of an SB 9 unit if the parcel is not subdivided.

- Objective standards and requirements for dwelling units on a subdivided parcel. – Similar to the previous section but strictly limits the number of units to 2 (no ADU or JADU) and limits the floor area of any new SB 9 units to a maximum of 800 square feet. The regulations also require that all new units are affordable to very low and low-income residents.
- Objective building design requirements for all SB 9 projects. – Provides objective standards for the development of dwelling units on all SB 9 projects. Includes materials types, exterior and roof colors, lighting, fire sprinklers, landscaping and location of structures.
- Permit review process. – Requires ministerial review of all projects.
- Fees.
- Owner Occupancy Compliance.

Planning Commission Discussion

On November 8, 2021, the Planning Commission held a public hearing to discuss the draft ordinance and the proposed code language. Four commissioners were present with the fifth being absent and unable to attend. The Commission accepted numerous public comments from residents who spoke overwhelmingly in favor of limits on SB 9 developments and staff responded to questions.

Following the conclusion of public comments, the Commission went line by line through the text of the ordinance making clarifications, corrections and deletions. The Commissioners agreed that development should be limited to the minimum required by state law (800 square feet for any new SB 9 units, 16 feet in height, etc.), that new units should be deed restricted to very low and low-income residents to aid the Town's in achieving its new RHNA figure, and that lot splits should be strongly discouraged. The code language was subsequently modified to include an incentive that allows an undivided parcel to have a primary unit, a 1,600 square foot SB 9 unit, an ADU and a JADU if the owner voluntarily places a deed restriction on their property that precludes subdivision of the parcel.

At the conclusion of their discussion, the Commission voted 3-0 (the internet connection failed and one commissioner could not reconnect to the meeting for the final 30 minutes) to forward a recommendation to the City Council to adopt the amended ordinance language. Not all issues raised at the meeting were resolved, including potential penalties for non-compliance with the 3-year residency requirement. However, the Commission was unanimous on their primary focus of limiting overdevelopment of existing parcels and to discourage lot splits. All agreed upon corrections from the meeting have been incorporated into the language of the attached urgency ordinance.

CONCLUSION

This urgency ordinance establishes a thorough and complete set of regulations that will allow staff to comprehensively review all new SB 9 related development applications starting January 1, 2022 and enforce objective standards that retain the character of the community. In addition, it will ensure that the Town remains compliant with current state law. This ordinance will also provide the basis for developing permanent regulations through future public hearings with the Planning Commission, where residents can provide additional public input and ultimately be reviewed and adopted by the City Council. Staff will also monitor and track the number of projects submitted under this article and provide updates to the City Council as requested.

PUBLIC COMMENTS/NOTICE

A public notice was placed in the local paper and posted throughout the Town at least ten days prior to the meeting. Attachment 2 contains public comments that were received as of the November 8, 2021 Planning Commission meeting and up to the preparation of this report on November 10, 2021.

FISCAL IMPACT

The preparation of the urgency ordinance has resulted in staffing costs which are borne directly by the Town. Fees currently established and approved by the City Council will be collected to cover the review of SB 9 subdivision and development projects.

ENVIRONMENTAL CLEARANCE (CEQA)

The adoption of this urgency ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to the general rule described in Section 15061(b)(3) of the CEQA Guidelines, because the ordinance does not have the potential to cause a significant effect on the environment.

ATTACHMENTS

1. Urgency Ordinance Establishing Regulations for Qualified SB 9 Subdivisions and Development
2. Public Comments Received as of November 8, 2021

ORDINANCE _____

**AN URGENCY ORDINANCE OF THE TOWN OF LOS ALTOS HILLS
AMENDING TITLE 10 (ZONING AND SITE DEVELOPMENT) OF THE
LOS ALTOS HILLS MUNICIPAL CODE TO ADD ARTICLE 15 TO
CHAPTER 1 ESTABLISHING REGULATIONS FOR THE SUBDIVISION
AND DEVELOPMENT OF QUALIFIED SENATE BILL 9 PROPERTIES**

WHEREAS, this Ordinance is adopted as an urgency ordinance pursuant to Government Code Section 65858. The facts constituting the urgency are as follows:

- a) A severe housing crisis exists in the state with the demand for housing outstripping supply.
- b) In September 2021, Governor Newsom signed into law Senate Bill 9 (“SB 9”), entitled the “California Home Act”. Among other provisions, this bill adds Sections 65852.21 and 66411.7 to the Government Code and becomes effective on January 1, 2022.
- c) SB 9 requires cities and counties, including the Town of Los Altos Hills (“Town”), to ministerially approve a parcel map for an urban lot split and/or a proposed housing development containing a maximum of two residential units within a single-family residential zone, if the two-unit or subdivision project meets certain statutory criteria. SB 9 specifies that proposed projects and subdivisions cannot be proposed in prohibited locations under Government Code Section 65913.4(a)(6)(B)-(K), such as in an earthquake fault zone, lands under conservation easement, a federally designated flood plain, and high fire hazard severity zones as defined under state law.
- d) SB 9 further restricts the standards and regulations that local agencies, including the Town, may impose on qualifying two-unit or subdivision projects. For example, SB 9 specifies that local agencies may impose only objective zoning, subdivision, and design standards that do not conflict with the statutes, but such standards must not physically preclude a unit size of 800 square feet. In addition, SB 9 permits a local agency to deny a proposed two-unit or subdivision project only if the agency’s Building Official makes a written finding based on preponderance of the evidence that the proposed project would have a specific, adverse impact upon public health and safety or the physical environment, which is a very high standard for municipalities to meet under the statute.
- e) The Town’s natural beauty including the hills and views of the Bay, and significant residential communities is a uniquely valuable public resource. A significant number of parcels within the Town are also within high fire hazard severity zones, earthquake fault zones and/or covered by conservation/open space easements. The Town has substantial interests in protecting the community against these hazards and restrictions in promoting development projects. The reasonably regulated and orderly development of single-family residential construction and subdivision projects as permitted by SB 9 is desirable, and

unregulated or disorderly development represents an ever-increasing and true threat to the health, welfare and safety of the community.

- f) The default standards contained in the new state law include no objective zoning, subdivision, and design standards, including those contained in the Town's Zoning Ordinance such as, for example, floor area, height, fencing regulations, subdivision and site development standards and regulations that require development projects including accessory dwelling units be designed to respect the visual and acoustic privacy of primary residences on contiguous lots and to preserve the scenic views of principle structures on contiguous lots.
- g) The Town has received multiple public inquiries from architects, developers, and residents regarding SB 9 development projects and the new state law, underscoring the need for the Town to update its regulatory scheme to bring it into compliance with the requirements of the bill.
- h) SB 9 specifically authorizes local agencies to impose objective zoning, subdivision, and design standards consistent with the bill's provisions, and to adopt an ordinance to implement its provisions. SB 9 further provides that such ordinances are not considered a "project" under the California Environmental Quality Act (CEQA).
- i) On November 18, 2021, the City Council considered the following amendment to the Zoning Ordinance for the purpose of amending its local regulatory scheme pertaining to single-family home developments and subdivisions in a manner that complies with the new state law and is consistent with California Government Code Sections 65852.21 and 66411.7, as amended.
- j) California Government Code Section 65858 authorizes the Town to adopt an interim urgency measure by a four-fifths (4/5ths) vote where necessary to protect the public health, safety, and welfare without following the procedures otherwise required prior to adoption of a zoning ordinance.
- k) Any interim urgency measure adopted pursuant to Government Code Section 65858 shall be of no further force and effect forty-five (45) days from its date of adoption unless extended by the legislative body. During the effective term of the urgency ordinance, Town staff intends to undertake further study and present its recommendations to the City Council regarding permanent revisions to the Town's regulatory scheme pertaining to residential development and subdivision projects and consistent with the goals and policies of the Town's General Plan, California Planning and Zoning Law, and the provisions of California Government Code Section 65858.

WHEREAS, the City Council finds and determines that the immediate preservation of the public health, safety and welfare requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code Section 65858, and take effect immediately upon adoption. Therefore, this Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare and its urgency is hereby declared.

WHEREAS, pursuant to Section 15001 of the California Environmental Quality Act (CEQA) Guidelines, this ordinance is exempt from CEQA based on the following:

- (1) This Ordinance is not a project within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately.
- (2) This Ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the Town pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the evaluation and adoption of contemplated local legislation, regulation and policies.
- (3) This Ordinance is not subject to CEQA under the general rule in CEQA Guidelines Section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2), above, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment.

NOW, THEREFORE, the City Council of the Town of Los Altos Hills does hereby ordain as follows:

SECTION I. FINDINGS.

Based on the entirety of the record as described above, the City Council for the Town of Los Altos Hills hereby makes the following findings:

1. All of the facts and recitals above are true, correct, incorporated herein and made a part hereof such that there exists a current and immediate threat to the public health, safety, and welfare requiring immediate implementation of an urgency ordinance to regulate residential development projects, subdivisions and site developments in the Town of Los Altos Hills.
2. The urgency ordinance is necessary for the immediate preservation of the public peace, health, and safety because the subdivision of lots and design and construction of single-family residences, duplexes and accessory dwelling units pursuant to Senate Bill 9 (SB 9) without adequate standards can cause: land use and site development conflicts and incompatibilities including public safety, visual, privacy, acoustic and aesthetic impacts which would negatively impact the public welfare and the unique quality and character of the Town.
3. Based on the recent amendments to state law with respect to the regulation of SB 9 units and lot subdivisions, there is a need for the Town to update its current codes.
4. Pursuant to Section 15001 of the California Environmental Quality Act (CEQA) Guidelines, this ordinance is exempt from CEQA based on the following:

- (a) This Ordinance is not a project within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately.
- (b) This Ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the Town pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the evaluation and adoption of contemplated local legislation, regulation and policies.
- (c) This Ordinance is not subject to CEQA under the general rule in CEQA Guidelines Section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2), above, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment.

SECTION II. AMENDMENT.

A new Article 15, entitled Objective Standards for Qualified Senate Bill 9 Subdivisions and Development Projects is hereby added to Chapter 1 of Title 10 of the Los Altos Hills Municipal Code to read as set forth in Exhibit A to this Ordinance, which is hereby incorporated as though set forth in full herein.

SECTION III. CONFLICTING PROVISIONS DEEMED INEFFECTIVE DURING ORDINANCE OPERATIVE PERIOD.

Any provision of the Municipal Code relating to residential development and lot subdivision standards which is in conflict with this ordinance is hereby deemed ineffective during the ordinance's operative period.

SECTION IV. SEVERABILITY.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional the remainder of this ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the Town of Los Altos Hills hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION V. EFFECTIVE DATE AND PUBLICATION.

This ordinance is an urgency ordinance enacted under California Government Code 65858. This urgency ordinance is effective upon adoption by a four-fifths (4/5) vote of the City Council.

This urgency ordinance shall be of no further force and effect forty-five (45) days from its date of adoption unless extended by the City Council.

Within fifteen days after the passage of this ordinance, the Town Clerk shall cause this ordinance or a summary thereof to be published once, with the names of those Town Councilmembers voting for or against it in a newspaper of general circulation in the Town of Los Altos Hills, as required by law.

INTRODUCED: November 18, 2021

PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

BY: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney
5007794.1

DRAFT

EXHIBIT A

Title 10. Zoning and Site Development

Chapter 1. Zoning

Article 15. Objective Standards for Qualified Senate Bill 9 Subdivisions and Development Projects

10-1.1501 Purpose and Intent.

The purpose of this article is to establish objective standards and regulations to govern the development of qualified Senate Bill 9 subdivisions and development projects on residential zoned properties within the Town of Los Altos Hills. The establishment of these regulations will result in the orderly subdivision and development of qualified Senate Bill No. 9 (2021) (“SB 9”) projects while ensuring that the new units are consistent with the semi-rural character of the Town and do not create any significant impacts with regards to public infrastructure or public safety. The regulations are established to implement the requirements under California Government Code Sections 65852.21 and 66411.7.

10-1.1502 Definitions.

For purposes of this article, the following definitions apply:

- (a) “Accessory dwelling unit” or “ADU”, means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a parcel with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multi-family dwelling is or will be situated. An accessory dwelling unit also includes an efficiency unit and a manufactured home, as defined in Section 18007 of the Health and Safety Code.
- (b) “Dwelling unit” includes an ADU, JADU, a primary dwelling unit, and a SB 9 dwelling unit.
- (c) “Junior accessory dwelling unit” or “JADU”, or “efficiency unit”, means a dwelling unit that is up to 500 square feet in size and contained entirely within an existing primary dwelling unit that provides an efficiency kitchen and a separate exterior entrance, and may include separate sanitation facilities, or may share sanitation facilities with the existing structure.
- (d) “Conservation Easement” means restrictive covenants that run with the land and bind upon successive owners that protects against future development such as preservation of open space, scenic, riparian, historical, agricultural, forested, or similar conditions. Open space and riparian easements are included in this definition.
- (e) “Existing dwelling unit” means a primary dwelling unit or other dwelling unit on a parcel that exists prior to any voluntary demolition or reconstruction or remodel where more than 50% of the exterior wall framing has been removed or altered. Any existing dwelling

unit where more than 50% of the exterior wall framing has been removed is considered a new dwelling for purposes of this article.

- (f) “Panhandle” means the narrow strip of land on a flag lot, typically less than 30 feet in width, that provides access to a public or private road.
- (g) “Primary dwelling unit” means a single-family residence on the parcel and is the larger of the two if there is an existing accessory dwelling unit on the parcel.
- (h) “Private Road” means a road, way, or street in private ownership and under private maintenance, not offered for dedication as a public road, way, place, or street, which affords the principal means of access to three or more lots or parcels which do not have frontage on a public street.
- (i) “SB 9 dwelling unit” or “SB 9 unit” means a dwelling unit that is developed using the provisions in this article and the provisions identified in California Government Code Sections 65852.21 and 66411.7.

10-1.1503 Eligibility of properties for a subdivision.

The following parcels are not eligible for a subdivision under this article:

- (a) Any parcel that was established through a prior exercise of a subdivision as provided for in this article.
- (b) Any parcel proposing to be subdivided that is adjacent to another parcel where either the owner of the parcel proposing to be subdivided or any person acting in concert with said owner has previously subdivided that adjacent parcel using the provisions in this article. For the purposes of this article, “any person acting in concert” with the owners includes, but is not limited to, an individual or entity operating on behalf of, acting jointly with, or in partnership or another form of cooperative relationship with, the property owner.
- (c) Any parcel located within an historic district or included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or a parcel within a site that is designated or listed as a Town of Los Altos Hills or Santa Clara County landmark or historic property or district pursuant to a Town of Los Altos Hills or Santa Clara County ordinance.
- (d) Any parcel where the subdivision would require the demolition or alteration of any of the following types of housing:
 - (1) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.
 - (2) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.
 - (3) A parcel or parcels on which an owner of residential real property has exercised the owner's rights under Government Code section 7060 et seq. to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.
 - (4) Housing that has been occupied by a tenant in the last three years.
- (e) Any parcel located with a “Zone F” or “Zone L” hazard zone as designated on the Geotechnical and Seismic Hazard Zones Map for the Town of Los Altos Hills unless the development complies with applicable seismic protection building code standards

adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by the Town's Building Department pursuant to Government Code section 8875 et seq.

- (f) Any parcel fully encumbered with a conservation easement or identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.
- (g) Any parcel that is designated prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure.
- (h) Any parcel containing wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993), that would prevent the development of the parcel.
- (i) Any parcel within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Government Code Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subsection does not apply to parcels that have been excluded from specific hazard zones by actions of the Town pursuant to Government Code section 51179(b), or parcels that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.
- (j) Any parcel with a hazardous waste site that is listed pursuant to Government Code Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.
- (k) Any parcel within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency (FEMA) in any official maps published by the FEMA. However, a subdivision and/or development project may be located on a parcel described in this subsection if (1) the parcel is otherwise eligible for approval under the provisions of this article and (2) the project applicant is able to satisfy all applicable federal qualifying criteria demonstrating either of the following are met:
 - (1) The site has been subject to a Letter of Map Revision prepared by the FEMA and issued to the Town.

- (2) The site meets FEMA requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.
- (l) Any parcel within a regulatory floodway as determined by the FEMA in any official maps published by the FEMA, unless the subdivision and/or development project has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations.
- (m) Any parcel containing habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

10-1.1504 Objective standards and requirements for a subdivision.

The following objective standards and regulations apply to all subdivisions under this article:

- (a) A Parcel Map and a Subdivision Application shall be submitted to the Town for all proposed subdivisions.
- (b) The subdivision shall create no more than two new parcels of approximately equal area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision. In no instance shall any resulting parcel be smaller than 1,200 square feet in area.
- (c) Existing parcels shall be split approximately perpendicular to the longest contiguous property line.
- (d) The subdivision shall not result in a new parcel with an average width that is less than the average width of the original parcel. Any panhandle on a flag lot shall not be used to calculate the average width. However, this requirement shall be waived if the subdivision applicant demonstrates that it would prohibit a subdivision that otherwise meets the requirements of subsection (b).
- (e) The front parcel line of any newly created parcel shall be the parcel line that is closest to or parallel to the public or private road that serves the parcel.
- (f) A 25-foot-wide panhandle (for a flag lot) or an ingress/egress easement shall be provided for all new parcels that do not have direct frontage on a public or private road. Driveway access to the new parcels shall be shared unless the new driveways are a minimum of 100 feet apart.
- (g) Easements for access and public and private utilities shall be provided for any newly created parcel that does not front on a public or private street.
- (h) Separate utility meters shall be provided for each parcel prior to recordation.
- (i) All newly created parcels shall be connected to public sewer or provide a private wastewater system that is fully contained within the new parcel boundaries.

- (j) No setbacks shall be required for an existing structure on the parcel from a proposed property line.
- (k) The subdivision is subject to all impact or development fees related to the creation of a new parcel.
- (l) Upon receipt of a subdivision application using the provisions of this article, the Town shall notify all owners and occupants within a 500-foot radius from the subject parcel that a parcel map has been filed with the Town.
- (m) A note on the parcel map and a recorded deed restriction in a form approved by the City Attorney's Office shall be applied to all newly created parcels indicating that the parcel was split using the provision of this article and that no further subdivision of the parcels is permitted. In addition, the deed restriction shall stipulate that all new units developed on the new parcels shall be income restricted to low and very low-income households based on the most recent Santa Clara County Area Median Income (AMI) levels.
- (n) Prior to the recordation of the parcel map, the applicant shall sign and record an affidavit stating that the applicant intends to reside in one of the proposed or existing primary dwelling units or SB 9 units for three years from the date of the approval of the subdivision. This requirement shall not apply if the applicant is a community land trust or a qualified nonprofit corporation as provided in Sections 402.1 and 214.15 of the Revenue and Taxation Code.

10-1.1505 Objective standards and requirements for new dwelling units on a parcel that is not being subdivided.

The following objective standards and regulations apply to all new development on a parcel, including primary dwellings, SB 9 dwelling units, an ADU, or a JADU attached to the primary dwelling, that are developed under the provisions of this article on a parcel that is **not** being subdivided:

- (a) The following development is permitted on the parcel:
 - (1) a primary dwelling unit and an SB 9 unit (or two SB 9 units);
 - (2) an ADU; and
 - (3) a JADU
- (b) The maximum floor area (MFA) and maximum development area (MDA) permitted on the parcel shall be determined through the Lot Unit Factor (LUF) number as defined in Section 10-1.202 of the Municipal Code, excepting that 800 square feet of additional floor area and development area beyond the MFA/MDA is permitted for an ADU and 800 square feet of additional MFA/MDA is permitted for an SB 9 unit that is not the primary dwelling.
- (c) The maximum floor area of an SB 9 unit shall be 800 square feet. Basements and bunkers are not permitted.
- (d) The minimum setback for any new SB 9 dwelling unit shall be 40 feet from the front parcel line and four (4) feet from the side and rear parcel lines.

Exception:

No setback is required for a new SB 9 dwelling unit constructed in the same location as an existing structure on the parcel.

Incentive:

If the SB 9 dwelling unit meets the 40-foot front yard and 30-foot side and rear yard setbacks, the maximum floor area can be up to 1,600 square feet where 800 square feet is included in the MFA calculated pursuant to subsection (b) above (basement or bunker not permitted). The parcel owner utilizing this incentive shall record a deed restriction in a form approved by the City Attorney's Office stipulating that no further subdivision of the parcel is permitted.

- (e) The maximum height of the SB 9 dwelling unit shall be 16 feet.
- (f) One uncovered parking space, located a minimum of 40-feet from the front parcel line and 30 feet from the side and rear parcel lines, is required for each dwelling unit, except as provided in Section [10-1.1403](#) (g)(3) of the LAHMC. The parking space shall be at least 10 feet wide by 20 feet deep.
- (g) A solid (no openings) one-hour rated fire wall is required between any SB 9 unit and the primary dwelling unit or an ADU.
- (h) Driveway access to all new units shall be compliant with the Santa Clara County Fire Department standard details and specifications for driveways and turnarounds.
- (i) The owner shall sign and record an affidavit placing a covenant that will run with the parcel to confirm that the owner will reside in either the primary dwelling unit or an SB 9 unit on the parcel for three years from the issuance of an SB 9 dwelling unit's Certificate of Occupancy and closing of all construction permits pertaining to the parcel.
- (j) All newly created dwelling units shall be connected to public sewer or provide a private wastewater system that is fully contained within the parcel boundaries.
- (k) All outdoor patios, covered patios, decks, and other hardscape shall meet the Town's minimum 40-foot front yard and 30-foot side and rear yard setbacks.
- (l) No dwelling unit shall be rented for a period of less than thirty-one (31) days and cannot be occupied as a short-term rental unit, as defined under section 10-1.1202.
- (m) An SB 9 dwelling unit may be rented separately from the primary dwelling unit.
- (n) Development projects pursuant to this section shall be subject to all impact or development fees related to the development of a new dwelling unit.

10-1.1506 Objective standards and requirements for dwelling units on a parcel subdivided pursuant to this article.

The following objective standards and regulations apply to all development on a parcel that has been subdivided or concurrently subdivided under the provisions of this article:

- (a) The following development is permitted on the parcel:
 - (1) A primary dwelling unit and an SB 9 unit; or
 - (2) Two SB 9 units.
 - (3) If there is an existing primary dwelling unit and ADU on the property, then no further development is permitted for that property.
- (b) The maximum floor area (MFA) permitted on each lot shall be 1,600 square feet.

Exception:

If there is an existing primary dwelling unit on the parcel, then the floor area of the existing residence cannot be increased, and any SB 9 dwelling unit shall not exceed 800 square feet.

- (c) The maximum development area (MDA) permitted on the parcel shall be 1,600 square feet plus an additional 2,100 square feet.

Exception:

If there is an existing primary dwelling unit on the parcel, then the maximum development area on the parcel shall be limited to the existing approved development area on the parcel plus an additional 800 square feet.

- (d) Setbacks and Floor Area: The minimum setback for any new primary dwelling unit or SB 9 dwelling unit shall be 40 feet from the front property line and four (4) feet from the side and rear property lines and the maximum floor area on the property shall be 1,600 square feet. Basements and bunkers are not permitted.

Exception:

No setback is required for a new SB 9 dwelling unit constructed in the same location as an existing structure on the parcel.

- (e) The maximum height of all new SB 9 dwelling units shall be 16 feet. If there is an existing primary dwelling on the parcel, then the maximum height of the existing residence cannot be increased.
- (f) One uncovered parking space, located a minimum of 40-feet from the front property line and 30 feet from the side and rear property lines, is required for each new dwelling unit, except as provided in Section [10-1.1403](#) (g)(3) of the LAHMC. The parking space shall be at least 10 feet wide by 20 feet deep. All parking required for an existing primary dwelling on the parcel shall be retained.
- (g) If the two SB 9 dwelling units are configured as a duplex on a parcel, a solid one-hour fire wall between the units is required. In addition, a deed restriction in a form approved by the City Attorney's Office shall be recorded stipulating that the duplex shall be maintained as two separate units.
- (h) If the parcel is fully developed with the number of units permitted under 10-1.1506 (a) above, then the applicant or property owner shall record a deed restriction in a form approved by the City Attorney's Office stipulating that no further development of the parcel is permitted.
- (i) Driveway access to all new units shall be compliant with the Santa Clara County Fire Department standard details and specifications for driveways and turnarounds.
- (j) If the proposed dwelling units are developed subsequent to a subdivision completed pursuant to this Article, the owner shall sign and record an affidavit placing a covenant that will run with the parcel to confirm that the owner intends to reside in either the primary dwelling unit or an SB 9 unit on the parcel for three years from the issuance of an SB 9 dwelling unit's Certificate of Occupancy and closing of all construction permits pertaining to the parcel.

- (k) All newly created dwelling units shall be connected to public sewer or provide a private wastewater system that is fully contained within the parcel boundaries.
- (l) All outdoor patios, covered patios, decks, and other hardscape shall meet the minimum 40-foot front yard and 30-foot side and rear yard setbacks.
- (m) No dwelling unit shall be rented for a period of less than thirty-one (31) days and cannot be occupied as a short-term rental unit, as defined under section 10-1.1202.
- (n) An SB 9 dwelling unit may be rented separately from the primary dwelling unit.
- (o) Any development constructed in accordance with this section shall be subject to all impact or development fees related to the development of a new dwelling unit.

10-1.1507 Objective building and design requirements for all SB 9 dwelling units.

All SB 9 dwelling units shall be reviewed and approved without discretionary review or a hearing. As part of the Planning Department’s ministerial approval, the following objective design requirements shall be confirmed:

- (a) The design of the dwelling unit shall be as follows:
 - (1) For a detached unit, the exterior materials and design shall match the design of any existing primary dwelling unit on the property through the use of the same exterior wall materials, identified color tones, window types, door and window trims, roofing materials and roof pitch.
 - (2) For an attached unit, the exterior materials, windows and other architectural features shall match the existing structure by employing the same building form, color tones, window design, door and window trims, roofing materials and roof pitch.
- (b) Exterior wall colors and materials shall have a light reflectivity value (LRV) of 50 or less and roof materials shall have a light reflectivity value (LRV) of 40 or less.
- (c) Exterior building lighting shall be fully shielded and downward facing and limited to one exterior light fixture per exterior doorway, or the minimum necessary to comply with the California Building Standards Code.
- (d) All new dwelling units are required to have fire sprinklers.
- (e) All portions of the SB 9 dwelling unit, include eave overhangs and other projections, shall meet the required setbacks as set forth in this article.
- (f) No roof decks are permitted on SB 9 dwelling units.
- (g) A hedge, consisting of 15-gallon minimum evergreen shrubs at 5-foot intervals, shall be planted along the parcel line (and outside of any easement) adjacent to the wall of the SB 9 dwelling unit that is closest to the parcel line.
- (h) Structures shall not be located in the following locations:
 - (1) In areas encumbered by a recorded easement, including but not limited to, public utility easements, conservation easements, access easements, pedestrian pathway easements and open space easements;
 - (2) In areas within twenty-five (25) feet of the top of a creek bank;

- (3) In areas within the critical root zone of a heritage oak as defined in Section 12-2-101 of the LAHMC. Review and approval of an arborist report prepared by a licensed or consulting arborist is required if a structure is proposed within the critical root zone of a heritage oak tree.
 - (4) Within 10 feet of a parcel line where a pathway is designated on the adopted Master Path Plan for the Town of Los Altos Hills.
 - (5) Areas with slopes greater than forty percent (40%).
- (i) All electrical and utility services to a new dwelling unit shall be undergrounded.
 - (j) Notwithstanding the foregoing subsections, any development or design standards that physically precludes an SB 9 dwelling unit from being 800 square feet in floor area shall be waived.

10-1.1508 Permit review process.

All applications for lot splits and new development using this article shall be ministerially approved without public hearings or discretionary review.

10-1.1509 Fees.

The City Council may establish and set by resolution all fees and charges, consistent with Government Code sections 65852.2 and 65852.22, and related provisions, as may be necessary to effectuate the purpose of this article.

5013263.2

From: Phil Koen

Sent: Monday, December 6, 2021 7:07 AM

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

Cc: Shelley Neis; Laurel Prevetti; jvannada; Rick Van Hoesen

Subject: Minutes of November 17, 2020 Council Meeting - RE: agenda Item #1 Council Study Session Meeting December 7, 2021

Dear Council Members,

Attached please find the minutes from the November 17, 2020 Council meeting where the Council provided specific feedback to the GPAC on the Land Use Element and the Community Design Element. The feedback can be found under agenda item #7.

Among other comments, the Council provide specific guidance regarding increasing densities for LDR and CBD land uses. Additionally there was specific guidance regarding policies that support the development of low, very low and extremely low income housing.

Please note that while the consultants presented for the first time an alternative to the Preferred Land Use Alternative Framework, the minutes do not reflect that this alternative was specifically discussed let alone supported by the Council. What is clear is the Council at the November 17 meeting did not endorse any changes to the previously adopted Preferred Land Use Alternative Framework approved by the Council on April 7, 2020.

It remains to be explained to the public, how the GPAC ignored the specific guidance provided by the Council during this meeting when drafting the 2040 General Plan, let alone adopt an entirely different land use strategy while drafting the 2040 General Plan than the Council approved Preferred Land Use Alternative Framework.

Hopefully the Council will discuss these issues at the study session.

Thank you.

Phil Koen



**Minutes of the Town Council Meeting
November 17, 2020**

The Town Council of the Town of Los Gatos conducted a regular meeting via Teleconference via COVID-19 Shelter in Place Guidelines on November 17, 2020, at 7:00 p.m.

MEETING CALLED TO ORDER AT 7:02 P.M.

ROLL CALL

Present: Mayor Marcia Jensen, Vice Mayor Barbara Spector, Council Member Rob Rennie, Council Member Marico Sayoc. (All participating remotely).

Absent: None

BOARD/COMMISSION/COMMITTEE APPOINTMENTS

The Town Council appointed applicants for the vacant positions on Town Boards, Commissions, and Committees.

- **Arts and Culture Commission**
 - Richard Capatoso was not appointed.
 - Jeffrey Janoff was not appointed.
 - Michael Miller was appointed to a 3-year term.
 - Pamela Murphy was appointed to a 2-year term.
 - Heidi Owens was not appointed.
 - Ellis Weeker was re-appointed for a 3-year term.

- **Building Board of Appeals**
 - Charles Holcomb was appointed to a 4-year term.

- **Community Health and Senior Services Commission**
 - Richard Konrad was appointed to a 3-year term.

- **Complete Streets and Transportation Committee**
 - Doug Brent withdrew his application and did not interview.
 - Bill Ehlers was re-appointed to a 3-year term.
 - Cheryl Ryan did not interview and was not appointed.
 - Gillian Verga was re-appointed to a 3-year term.

Appointments - continued

- **General Plan Committee**
 - Gerard Abraham was not appointed.
 - Joseph Mannina was appointed to a 4-year term.
 - Heidi Owens was not appointed.
 - Steve Piasecki was appointed to a 3-year term.

- **Historic Preservation Committee**
 - Barry Cheskin was appointed to a 4-year term.
 - Timothy Lundell was appointed to a 2-year term.
 - Jeffrey Siegel was not appointed.

- **Library Board**
 - Susan Buxton was appointed to a 2-year term.
 - Richard Capatoso was appointed to a 3-year term.
 - Sabiha Chunawala was re-appointed to a 3-year term.
 - David Read did not interview and was not appointed.
 - Cheryl Ryan did not interview and was not appointed.

- **Parks Commission**
 - Adriana Alves was appointed for a 2-year term.
 - Richard Capatoso was not appointed.
 - Alicia Shah did not interview and was not appointed.

- **Personnel Board**
 - Steven Bakota was appointed to a 5-year term.

- **Planning Commission**
 - Gerard Abraham was not appointed.
 - Kathryn Janoff was re-appointed to a 4-year term.
 - Anil Patel was not appointed.
 - Jeffrey Siegel was not appointed.

COUNCIL/TOWN MANAGER REPORTS

Council Matters

- Council Member Rennie stated he attended Valley Transportation Authority (VTA) Governance and Audit Committee and Board meetings, Silicon Valley Clean Energy Authority (SVCEA) Board and Risk Oversight Committee meetings, Emergency Operating Area Council meeting, and the Santa Clara County Cities Association Selection Committee meeting with Council Member Sayoc.

Council Matters - continued

- Vice Mayor Spector stated she attended the West Valley Clean Water Authority (WVCWA) Board meeting, West Valley Solid Waste Authority (WVSW) Board meeting, and two meetings of the Town's Wildfire Ad Hoc Committee.
- Council Member Sayoc stated she attended the Santa Clara County Cities Association Selection Committee with Council Member Rennie and the League of California Cities (LOCC) meeting.
- Mayor Jensen stated she attended the two meetings of the Town's Wildfire Ad Hoc Committee, General Plan Advisory Committee (GPAC) meetings, and a VTA Policy Advisory Committee meeting.

Manager Matters

- Announced free COVID-19 testing will be held on Monday November 30, 2020 at the Adult Recreation Center. Walk-ins welcome and appointments are strongly encouraged.
- Announced that the tree in Plaza Park will be lit after Thanksgiving and that the Town is installing the Chamber's light exhibits for the holidays. No tree lighting ceremony will be held due to COVID-19.

CLOSED SESSION REPORT

- Robert Shultz, Town Attorney, stated Council met in closed session as duly noted on the agenda and that there is no reportable action.

CONSENT ITEMS (TO BE ACTED UPON BY A SINGLE MOTION)

1. Approve Draft Minutes of the November 3, 2020 Town Council Meeting.
2. Receive the First Quarter Investment Report (July through September 2020) for Fiscal Year 2020/21.)
3. Authorize the Town Manager to execute a First Amendment Agreement for Consultant Services with Walter Levison for Arborist services.
4. Authorize the Town Manager to Execute Agreements for Environmental Consultant Services with EMC Planning Group, Inc. and Raney Planning and Management, Inc.
5. Authorize the Town Manager to Execute an Agreement with Hello Housing for Administration of the Town's Below Market Price Affordable Housing Program.

Item #3 was pulled by David Weissman.

**MOTION: Motion by Council Member Sayoc to approve Consent Items 1, 2, 4, and 5.
Seconded by Council Member Rennie.**

VOTE: Motion passed unanimously.

VERBAL COMMUNICATIONS

Alex Hult

- Thanked the Town for responding to COVID-19 with the parklet program; commented in support of prioritizing the local business community through the winter months.

Jeff Suzuki

- Commented in support of independent Police oversight, a hiring freeze of sworn officers and a freeze of additional discretionary spending of the Police Department.

Ali Miano

- Commented in support of independent Police oversight, a hiring freeze of sworn officers, a freeze of additional discretionary spending of the Police Department, and additional public transportation to the Town including Bay Area Rapid Transit (BART).

Lynel Gardner

- Read correspondence from Barak Obama, commented in support of a hiring freeze of sworn officers and a freeze of additional discretionary spending of the Police Department.

Russ

- Commented in support of BART and diversity within the Town.

Catherine Somers

- Thanked the Town for responding to COVID-19 with the parklet program and suggested the Town consider the formation of a task force to continue to address COVID-19 concerns.

Matt Hemis

- Inquired what the next steps are for Police reform; commented in support of independent oversight, a hiring freeze of sworn officers, and a freeze of additional discretionary spending of the Police Department; and requested the Town consider utilizing Police Department funding to train Officers in de-escalation techniques.

Alicia Spargo (Cinema Stereo)

- Commented in support of independent oversight, a hiring freeze of sworn officers, and a freeze of additional discretionary spending of the Police Department; and requested the Town consider utilizing Police Department funding to train Officers in de-escalation techniques and that the Town consider additional avenues to assist the business community during the winter months.

Kareem Syed

- Commented in support of additional oversight of Police funds, community engagement Officers, and a task force to continue to address COVID-19 concerns.

-

OTHER BUSINESS

3. Authorize the Town Manager to execute a First Amendment Agreement for Consultant Services with Walter Levison for Arborist services.

Joel Paulson, Community Development Director, presented the staff report.

Opened public comment.

David Weissman

- Commented in opposition of the first amendment agreement, unless staff revises the consulting arborists report guidelines with uniform standards.

Closed public comment.

Council discussed the item.

MOTION: Motion by Mayor Jensen to authorize the Town Manager to execute a first amendment agreement for consultant services with Walter Levison for arborist services for arborist services as contained in Attachment 1 of the staff report.
Seconded by Council Member Rennie.

VOTE: Motion passed 3/1. Vice Mayor Spector voting no.

6. Adopt A Resolution Designating the Use of Vehicle Miles Traveled as the Metric for Conducting Transportation Analyses Pursuant to the California Environmental Quality Act and Establishing the Thresholds of Significance to Comply with California Senate Bill 743.
RESOLUTION 2020-045

Ying Smith, Transportation and Mobility Manager, presented the staff report with Dan Rubins, Consultant.

Opened public comment.

No one spoke.

Closed public comment.

Council discussed the item.

Other Business Item #6 - continued

MOTION: Motion by Council Member Sayoc to adopt a resolution designating the use of vehicle miles traveled as the metric for conducting transportation analyses pursuant to the California Environmental Quality Act and establishing the thresholds of significance to comply with California Senate Bill 743 as contained in attachment 1, understanding future policies should be directed toward further VMT reductions.
Seconded by Vice Mayor Spector.

VOTE: Motion passed unanimously.

7. Provide Direction for the Land Use and Community Design Elements of the General Plan.

Jennifer Armer, Senior Planner, presented the staff report.

Opened public comment.

No one spoke.

Closed public comment.

Council discussed the item and provided individual comments not necessarily representing consensus on the following:

- The General Plan should encourage production of Missing Middle housing, especially when it can provide housing for middle and lower income households.
- The production of Missing Middle housing should be focused in areas that are within walking distance to commercial uses, such as the Opportunity Areas/Community Place Districts.
- The massing and design of Missing Middle housing should be compatible with existing neighborhoods.
- The General Plan should include policies that support low, very low, and extremely low income housing, possibly through increased minimum densities or smaller units.
- If the Town can plan for the number of housing units required by the Regional Housing Needs Allocation (RHNA) without increasing the allowed density in Low Density Residential areas, that would be preferred.
- If the Town can plan for the number of housing units required by RHNA without changing the downtown/central business district, that would be preferred.
- The Elements need to do a better job of telling the story of how the 2040 General Plan reflects the Preferred Alternative and the adopted vision. The existing charts and maps are not enough. What exhibits could tell this story so the reader can understand it at a glance?

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SUBJECT: Minutes of the Town Council Meeting of November 17, 2020

DATE: November 24, 2020

Other Business Item #7 - continued

The Town Council did express consensus on two items:

- All references to the Los Gatos Boulevard Plan and other obsolete policies should be eliminated.
- The 2040 General Plan should be forward looking as Los Gatos implements policies and actions to reduce Vehicle Miles Travelled (VMT) and facilitates housing production for all income levels in the right places. In other words, the Council is not expecting the 2040 Plan to be the same as the 2020 Plan.

ADJOURNMENT

The meeting adjourned at 9:43 p.m.

Submitted by:

/s/ Jenna De Long, Deputy Clerk



**TOWN OF LOS GATOS
STUDY SESSION AGENDA**

MEETING DATE: 12/07/2021

ITEM NO: 1

DESK ITEM

DATE: December 7, 2021
TO: Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Discuss Housing Growth Options and Related Analyses for Planning Commission and Town Council Consideration of the Draft 2040 General Plan.

REMARKS:

Public comments submitted for this Study Session and received after the preparation of the addendum report are included as Attachment 3.

Attachment Previously Received with December 7, 2021 Staff Report:

1. Public Comments

Attachment Previously Received with December 7, 2021 Addendum:

2. Public Comments received by 11:00 a.m., Monday, December 6, 2021

Attachment Received with this Desk Item:

3. Public Comments received by 11:00 a.m., Tuesday, December 7, 2021

PREPARED BY: Jennifer Armer, AICP
Planning Manager

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

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From: Phil Koen

Sent: Tuesday, December 07, 2021 7:03 AM

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

Cc: Shelley Neis; jvannada; Rick Van Hoesen; David Weissman

Subject: Agenda Item #1 - Special Meeting of the Town Council - December 7, 2021

Dear Council Members,

A critical question that the Council needs to discuss at this study session is , are there sufficient sites to accommodate the RHNA by income category?

The Land Use Element and Housing Element, working together, must ensure there are sufficient sites available through appropriate zoning action, development standards and infrastructure capacity to accommodate the development by income category of 1,993 units in total.

Historically the Town has not had a problem in providing for the development capacity for above market rate housing. The major failing has been the Town's ability to provide development capacity for below market rate housing. The 6th cycle RHNA has established that the Town must provide the development capacity for 1,167 below market rate units to be potentially developed within the eight-year cycle. The question is, does the current draft Land Use Element provide for the development of such capacity?

It is important to break the 1,993 RHNA allocation into 2 buckets – market rate housing and below market rate housing. Under the current 2020 General Plan and existing zoning laws, there is more than enough development capacity for the Town to demonstrate to HCD that there are sufficient sites to meet the required above market rate housing. Unfortunately, the same can not be said for the below market rate housing. The central focus of the Land Use Element is to ensure there is sufficient land use capacity.

To determine how many below market rate sites must be planned, HCD allows ADU's to be credited toward meeting the RHNA allocation based on the affordability and unit count. If the ADU's meet the affordability test, 200 ADU's (assumed 25 units per year are developed over the 8-year period) can be credited to the 1,167. That reduces the below market rate housing to 967 dwelling units. To ensure that sufficient capacity exists to accommodate this number throughout the planning period, HCD recommends that the Town create a buffer of at least 15% more capacity than required. That means the Town needs to create capacity through zoning changes to allow for the development of 1,112 below market rate units. The Land Use Element must define the zoning and development standards appropriate to accommodate the need for 1,112 below market rate units.

High land and development costs combined with limited supply of vacant and developable land means that below market rate housing can only be achieved by pursuing more intensive, compact and infill development or redevelopment.

HCD has established best practices for selecting sites to accommodate below market rate housing. These factors include proximity to transit, access to amenities such as parks and services, access to health care facilities and grocery stores, proximity to available infrastructure and transit hubs. Additionally, the Government Code allows for the use of higher density as a proxy for lower income affordability, as long as parcels are zoned to allow sufficient density to accommodate the economies of scale needed to produce affordable housing. Parcels that allow “at least” 20 units per acre are considered appropriate to accommodate the RHNA for below market rate housing.

The Staff memo for the December 7 Study session does not discuss any land use strategies that could be used to enable the Town to achieve the development target of 1,112 below market rate units. The memo discusses the need to meet the overall RHNA allocation of 1,993 units but fails to discuss the more difficult question regarding capacity for the development of below market rate housing. The Staff does correctly point out that the HCD may not certify a Housing Element if it disagrees with assumptions, housing sites and/or programs. The potential for disagreement will not come from assumptions regarding the development of market rate housing but rather the assumptions regarding the development of below market rate housing.

We strongly encourage the Council to discuss the appropriate land use strategies that could be used to meet the below market rate RHNA allocation. That is a core challenge facing the Town.

Los Gatos Community Alliance