



## 2040 General Plan

### Final Environmental Impact Report SCH# 2020070175

*prepared by*

**Town of Los Gatos**

Planning Division, Department of Community Development  
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Los Gatos, California 95030  
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*prepared with the assistance of*

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**June 2022**



**RINCON CONSULTANTS, INC.**

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# Executive Summary

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This Final Environmental Impact Report (Final EIR) is an informational document prepared by the Town of Los Gatos (Town) to evaluate the potential environmental impacts that would result from the 2040 General Plan. The lead agency, Town of Los Gatos, is required to evaluate comments on environmental issues received during the public comment period from persons who have reviewed the Draft EIR and to prepare written responses to those comments. This document, together with the Draft EIR and partially recirculated Draft EIR (incorporated by reference in accordance with CEQA Guidelines Section 15150 and located for review here:

<https://losgatos2040.com/documents.html>), will comprise the Final EIR for this project. This Final EIR contains individual responses to each comment received during the public review period for the Draft EIR. In accordance with *CEQA Guidelines Section 15088(b)*, the written responses describe the disposition of significant environmental issues raised.

## Project Description

The 2040 General Plan is a comprehensive update of the Town's 2020 General Plan, and establishes the community's vision for future development of the Town over the next 20 years. As part of the General Plan update process, the 2040 General Plan has been reorganized and reformatted, with updated goals and policies that reflect the community's vision of Los Gatos. The Town's General Plan Land Use Map has also been updated to reflect the community's vision and three themes that thread through the 2040 General Plan: growth management, sustainability and resiliency, and community health and well-being.

State law (Government Code Sections 65300 through 65303.4) sets forth the requirement for each municipality to adopt and periodically update its General Plan, and sets the requirement that a General Plan include the following eight mandatory subject areas, or "elements": Land Use, Circulation, Housing, Open Space, Conservation, Noise, Safety, and Environmental Justice. State law also allows for optional elements that can be organized or combined at the Town's discretion. As described below, the 2040 General Plan has been organized into the following eight updated elements: Community Design; Environment and Sustainability; Hazards and Safety; Land Use; Mobility; Open Space, Parks, and Recreation; Public Facilities, Services, and Infrastructure; and Racial, Social, and Environmental Justice Element. Together, these elements, along with the 2015-2023 Housing Element, cover all topics required to be included in a General Plan under State law, as described above. Each element describes the existing conditions and context for its related topic areas, followed by goals, policies, and implementation programs to guide the Town's management and development through 2040.

The 2040 General Plan would emphasize infill and reuse development within the Town limits with a focus on increasing opportunities for housing development in key areas of the Town through increased density and mixed-use projects where appropriate. New development would occur primarily where existing roads, water, and sewer are in place and in a manner that would minimize the impact of development on existing infrastructure and services.

The 2040 General Plan also provides the policy framework to guide future development toward land uses that support walking and biking. The 2040 General Plan places a greater emphasis on reestablishing more complete neighborhood areas that meet the daily needs of residents to be

located within a one-mile distance. Focus areas for growth in Los Gatos include Pollard Road, Winchester Boulevard, Lark Avenue, Los Gatos Boulevard, Union Avenue, Harwood Road, North Santa Cruz Avenue, and Downtown.

## Alternatives

As required by the California Environmental Quality Act (CEQA), the EIR examines alternatives to the proposed project. Studied alternatives include the following three alternatives.

- Alternative 1: Low Growth
- Alternative 2: Medium Growth
- Alternative 3: High Growth
- Alternative 4: No Project

Refer to Section 6, *Alternatives*, in the Draft EIR for analysis of these alternatives and a discussion of the environmentally superior alternative.

## Areas of Known Controversy/Issues to be Resolved

The EIR scoping process did not identify any areas of known controversy related to the proposed project.

## Summary of Impacts and Mitigation Measures

Table 1, below, lists the environmental impacts of the proposed 2040 General Plan, the proposed mitigation measures, and residual impacts or significance after mitigation. Impacts are defined as significant, unavoidable adverse impacts that require a statement of overriding consideration, pursuant to Section 15093 of the *CEQA Guidelines* if the proposed 2040 General Plan is approved; significant, adverse impacts that can be feasibly mitigated to less than significant levels and that require findings to be made under Section 15091 of the *CEQA Guidelines*; adverse impacts that are less than those allowed by adopted significance thresholds; and no impact.

**Table 1 Summary of Environmental Impacts and Mitigation Measures**

Impact	Mitigation Measure (s)	Residual Impact
<b>Aesthetics</b>		
<b>Impact AES-1.</b> The 2040 General Plan will facilitate a higher percentage of growth through redevelopment of lands that have development potential opposed to vacant land. Adherence with goals and policies in the 2040 General Plan would ensure visual access to natural features surrounding the Town. With adherence to these policies, impacts on scenic vistas would be less than significant.	None required	Less than significant

Impact	Mitigation Measure (s)	Residual Impact
<p><b>Impact AES-2.</b> There are no designated State scenic highways in Los Gatos. The 2040 General Plan would not facilitate new land uses or growth in areas of the Town adjacent to State Route 9, a designated State scenic highway. Therefore, the 2040 General Plan would have no impact.</p>	None required	No impact
<p><b>Impact AES-3.</b> Goals and policies from the 2040 General Plan indicate that development would integrate into the community visually and protect and enhance the neighborhoods in which development occurs. Adherence to the prescribed goals and policies in the Land Use and Community Design Elements of the 2040 General Plan for new construction, parking, gateways, and streetscapes would direct the quality of the Town's visual character such that the changes would achieve 2040 General Plan goals to improve overall visual quality throughout the planning area. Impacts to visual character and quality would be less than significant.</p>	None required	Less than significant
<p><b>Impact AES-4.</b> New development facilitated by the 2040 General Plan would result in new sources of light and glare. New development would occur in already urbanized areas of the Town, where lights are glare are already common. Light and glare would also be minimized by the 2040 General Plan policies. Impacts would be less than significant.</p>	None required	Less than significant
<b>Agriculture and Forest Resources</b>		
<p><b>Impact AG-1.</b> Development proposed in the 2040 General Plan is designed to encourage the continued operation of existing agriculture in and surrounding the Town and would not result in the conversion of active agricultural land. Therefore, impacts would be less than significant.</p>	None required	Less than significant
<b>Air Quality</b>		
<p><b>Impact AQ-1.</b> The 2040 General Plan would be consistent with BAAQMD's 2017 Clean Air Plan, and the rate of increase for vehicle miles traveled under buildout of the 2040 General Plan would not exceed the rate of service population increase associated with the 2040 General Plan. This impact would be less than significant.</p>	None required	Less than significant

Impact	Mitigation Measure (s)	Residual Impact
<p><b>Impact AQ-2.</b> Development facilitated by the 2040 General Plan would result in the temporary generation of air pollutants during construction, which may contribute to existing air quality violations in the Basin. Therefore, impacts would be less than significant with mitigation.</p>	<p><b>AQ-1 Construction Emissions Reduction.</b> New discretionary projects in the General Plan Area that exceed the construction screening criteria of the Bay Area Air Quality Management District (BAAQMD) shall be conditioned to reduce construction emissions of reactive organic gases, nitrogen oxides, and particulate matter (<math>PM_{10}</math> and <math>PM_{2.5}</math>) by implementing the BAAQMD's Basic Construction Mitigation Measures (described below) or equivalent, expanded, or modified measures based on project and site specific conditions.</p>	Less than significant

**Basic Construction Mitigation Measures**

1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day, with priority given to the use of recycled water for this activity when feasible.
2. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
3. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping shall be prohibited.
4. All vehicle speeds on unpaved roads shall be limited to 15 mph.
5. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
6. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
7. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
8. A publicly visible sign shall be posted with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall

Impact	Mitigation Measure (s)	Residual Impact
	respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.	
<b>Impact AQ-3.</b> Buildout of the 2040 General Plan may expose sensitive receptors to additional sources of toxic air contaminants. However, implementation of policies from the 2040 General Plan would require new developments to reduce exposure to toxic air contaminants. Impacts would be less than significant.	None required	Less than significant
<b>Impact AQ-4.</b> The light industrial development allowed in the 2040 General Plan may create objectionable odors that could affect a substantial number of people. Impacts related to odors would be less than significant with mitigation.	<b>AQ-2 Odor Reduction.</b> Land Use Element Policy LU-11.5 Industrial Compatibility shall be updated in the 2040 General Plan to read:  Require that industrial projects be designed to limit the impact of truck traffic, air, odor, and noise pollution on adjacent sensitive land uses.	Less than significant
<b>Biological Resources</b>		
<b>Impact BIO-1.</b> Development facilitated by the 2040 General Plan could result in isolated impacts to habitat for special-status species and impacts to migratory bird nest sites. Impacts would be less than significant.	None required	Less than significant
<b>Impact BIO-2.</b> The 2040 General Plan would facilitate development that could result in construction within riparian habitat, and direct placement of fill in wetlands. However, compliance with existing regulations, and implementation of 2040 General Plan policies would reduce potential impacts to less than significant.	None required	Less than significant
<b>Impact BIO-3.</b> Development facilitated by the 2040 General Plan could result in construction within streams and associated riparian zones that serve as wildlife movement corridors. However, implementation of 2040 General Plan policies preserving streams and wildlife movement corridors, as well as open space would reduce impacts to less than significant.	None required	Less than significant

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Impact	Mitigation Measure (s)	Residual Impact
<p><b>Impact BIO-4.</b> Development facilitated by the 2040 General Plan would result in removal of trees. However, the 2040 General Plan policies encourage tree preservation and replacement. Development would also be subject to tree protection requirements set forth in the Town Code. Impacts would be less than significant.</p>	None required	Less than significant
<p><b>Impact BIO-5.</b> There are no Habitat Conservation Plans or Natural Community Conservation Plans applicable to the 2040 General Plan. Therefore the 2040 General Plan would have no impacts.</p>	None required	No impact
<b>Cultural Resources</b>		
<p><b>Impact CUL-1.</b> Development facilitated by the 2040 General Plan would have the potential to impact historical resources and unique archaeological resources. Impacts would be potentially significant but mitigable.</p>	<p><b>CR-1 Cultural Resources Study Implementation Program.</b> If a project requires activities that have the potential to impact cultural resources, the Town shall require the project applicant or proponent to retain a qualified archaeologist meeting the Secretary of the Interior's (SOI) Professional Qualification Standards (PQS) in archaeology and/or an architectural historian meeting the SOI PQS standards in architectural history to complete a Phase 1 cultural resources inventory of the project site (NPS 1983). A Phase 1 cultural resources inventory shall include a pedestrian survey of the project site and sufficient background archival research and field sampling to determine whether subsurface prehistoric or historic remains may be present. Archival research shall include a records search conducted at the Northwest Information Center (NWIC) and a Sacred Lands File (SLF) search conducted with the Native American Heritage Commission (NAHC). The technical report documenting the Phase 1 cultural resources inventory shall include recommendations to avoid or reduce impacts to cultural resources. These recommendations shall be implemented and incorporated in the project.</p>	Less than significant
<p><b>Impact CUL-2.</b> Development envisioned in the 2040 General Plan would require ground disturbance that could encounter human remains. Implementation of 2040 General Plan policies and compliance with existing regulations would reduce potential impacts to human remains to less than significant.</p>	None required	Less than significant

Impact	Mitigation Measure (s)	Residual Impact
<p><b>Impact CUL-3.</b> Development envisioned in the 2040 General Plan could involve ground disturbance and excavation, which would have the potential to impact previously unidentified tribal cultural resources. However, with adherence to policies contained in the 2040 General Plan and compliance with existing regulations would, impacts to tribal cultural resources would be less than significant.</p>	None required	Less than significant
<b>Energy</b>		
<p><b>Impact E-1.</b> The development and population growth facilitated by the 2040 General Plan would result in an increase of overall consumption of energy compared to existing conditions. However, the 2040 General Plan is based on a land use strategy that would promote greater overall energy efficiency in community and municipal operations. 2040 General Plan policies and implementation programs would ensure that development under the 2040 General Plan would comply with existing energy efficiency regulations and would encourage new development to take advantage of voluntary energy efficiency programs. Wasteful, inefficient, or unnecessary consumption of energy would not occur and impacts would be less than significant.</p>	None required	Less than significant
<p><b>Impact E-2.</b> Construction and operation of projects facilitated by the 2040 General Plan would comply with relevant provisions of the State's CalGreen and Title 24 of the California Energy Code. Impacts would be less than significant.</p>	None required	Less than significant
<b>Geology and Soils</b>		
<p><b>Impact GEO-1.</b> Construction and occupancy of new buildings under the 2040 General Plan could result in exposure of people or structures to a risk of loss, injury, or death from seismic events. Adherence to the requirements of the California Building Code and implementation of the goals and policies of the 2040 General Plan would minimize the potential for loss, injury, or death following a seismic event and would reduce this impact to less than significant.</p>	None required	Less than significant

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Impact	Mitigation Measure (s)	Residual Impact
<p><b>Impact GEO-2.</b> Construction of new development under the 2040 General Plan would include ground disturbance that would result in loose or exposed soil that could be eroded by wind or during a storm event, resulting in the loss of topsoil. Compliance with applicable regulations, including the Clean Water Act, and implementation of goals and policies of the 2040 General Plan would minimize the potential for erosion and loss of topsoil and would ensure this impact would be less than significant.</p>	None required	Less than significant
<p><b>Impact GEO-3.</b> Development facilitated by the 2040 General Plan may result in the construction of structures on expansive soils, which could create a substantial risk to life or property. However, all new development would be required to comply with the standards of the California Building Code, which would ensure that expansive soils are remediated or that foundations and structures are engineered to withstand the forces of expansive soil. Compliance with the requirements of the California Building Code would reduce this impact to less than significant.</p>	None required	Less than significant
<p><b>Impact GEO-4.</b> New development facilitated by the General Plan update would occur where existing sewer systems are in place, minimizing the need for development of new wastewater disposal systems. Therefore, the project would not result in a significant impact to soils that are incapable of supporting septic tanks or alternative wastewater disposal systems.</p>	None required	Less than significant
<p><b>Impact GEO-5.</b> Development facilitated by the 2040 General Plan has the potential to result in impacts to paleontological resources. Impacts would be less than significant with mitigation incorporated.</p>	<p><b>GEO-1 Paleontological Resource Studies.</b> The Town shall require paleontological resource studies for projects that involve ground disturbance in project areas mapped as high paleontological sensitivity at the surface or subsurface determined through environmental review. Additionally, in the event that a paleontological resource is disclosed, construction activities in the area shall be suspended, a qualified paleontologist shall be retained to examine the site, and protective measures shall be implemented to protect the paleontological resource.</p>	Less than significant

Impact	Mitigation Measure (s)	Residual Impact
<b>Greenhouse Gas Emissions</b>		
<p><b>Impact GHG-1.</b> Implementation of 2040 General Plan would generate annual GHG emissions of approximately 323,446 MT of CO<sub>2</sub>e per year, or 5.29 MT of CO<sub>2</sub>e per service person per year, in 2040. This would exceed the 2040 efficiency threshold of 1.02 MT of CO<sub>2</sub>e per service person per year. Even with implementation of mitigation, GHG emissions would not be reduced to below the efficiency threshold. Therefore, impacts would be significant and unavoidable with mitigation.</p>	<p><b>GHG-1 Implement Community GHG Emissions Reduction Measures.</b> The Town shall implement GHG emissions reduction measures by the following sectors: Energy, Transportation, and Waste. Further details regarding measures and their specifics can be found in Section 4.8, <i>Greenhouse Gas Emissions</i>, of this EIR.</p>	<p>Even with implementation of Mitigation Measure GHG-1, the 2040 General Plan would result in emissions that exceed GHG efficiency thresholds and, thus, State targets. Therefore, with implementation of the identified mitigation measures, impacts related to generation of GHG emissions under the proposed 2040 General Plan would be significant and unavoidable with mitigation incorporated.</p>
<p><b>Impact GHG-2.</b> The proposed 2040 General Plan emissions during construction and operation would exceed the State and Town-derived GHG emission targets. Therefore, the proposed 2040 General Plan would conflict with the goals of the CARB 2017 Scoping Plan, SB 32, and EO B-55-18. Therefore, impacts would be significant and unavoidable with mitigation.</p>	<p><b>GHG-1 Implement Community GHG Emissions Reduction Measures</b> require Further details regarding measures and their specifics can be found in Section 4.8, <i>Greenhouse Gas Emissions</i>, of this EIR.</p>	<p>Even with implementation of Mitigation Measure GHG-1 requiring community GHG reduction measures, the proposed 2040 General Plan would result in GHG emissions that exceed the 2030 and 2040 Los Gatos efficiency thresholds and, thus, State targets. Therefore, with implementation of the identified mitigation, impacts related to the proposed 2040 General Plan consistency with applicable GHG reduction plans would be significant and unavoidable with mitigation incorporated.</p>
<b>Hazards and Hazardous Materials</b>		
<p><b>Impact HAZ-1.</b> Implementation of the 2040 General Plan could result in an incremental increase in the overall routine transport, use, and disposal of hazardous materials in Los Gatos and increase the risk of hazardous materials releases. Compliance with applicable regulations related to hazardous materials and compliance with General Plan policies would minimize the risk of releases and exposure to these materials. Impacts would be less than significant.</p>	None required	Less than significant

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Impact	Mitigation Measure (s)	Residual Impact
<b>Impact HAZ-2.</b> Implementation of the 2040 General Plan could result in hazardous emissions or handling of hazardous or acutely hazardous materials within 0.25 mile of an existing or proposed school, but compliance with existing regulatory requirements would minimize risks to schools and students, resulting in a less than significant impact.	None required	Less than significant
<b>Impact HAZ-3.</b> Implementation of the 2040 General Plan could facilitate development on hazardous materials sites. Compliance with applicable regulations relating to site cleanup and the 2040 General Plan policies would minimize hazards from development on contaminated sites. Impacts would be less than significant.	None required	Less than significant
<b>Impact HAZ-4.</b> There are no airports within two miles of Los Gatos and the Town is not in an airport influence area. There would be no impact.	None required	No impact
<b>Impact HAZ-5.</b> The 2040 General Plan policies for disaster response are guided by local and regional emergency response plans and support effective response to natural and manmade disasters. Therefore, the 2040 General Plan would not interfere with these types of adopted plans and impacts would be less than significant.	None required	Less than significant
<b>Hydrology and Water Quality</b>		
<b>Impact HWQ-1.</b> Development facilitated by the 2040 General Plan would result in an increase in pollutants in stormwater and wastewater, and alter drainage patterns. Compliance with NPDES permit requirements, Los Gatos Municipal Code requirements, and 2040 General Plan goals and policies would prevent substantial erosion and siltation, and discharges of pollutants, including pollution associated with drainage, erosion, and stormwater, and minimize adverse effects on water quality. This impact would be less than significant.	None required	Less than significant

Impact	Mitigation Measure (s)	Residual Impact
<b>Impact HWQ-2.</b> Construction and occupancy of new structures under the 2040 General Plan could result in the depletion of groundwater supplies or the interference with groundwater recharge. Implementation of the goals and policies of the 2040 General Plan would maximize the potential for infiltration and ensure the sustainable use of groundwater, and would reduce this impact to less than significant.	None required	Less than significant
<b>Impact HWQ-3.</b> Development facilitated by the 2040 General Plan could be subject to flood hazards and could impede or redirect flood flows to adjacent areas. Compliance with applicable provisions of the Los Gatos Municipal Code would require new development to be designed and constructed such that the risk and damage of flooding is not exacerbated by implementation of the 2040 General Plan. Impacts related to flooding and flood hazards would be less than significant.	None required	Less than significant
<b>Impact HWQ-4.</b> The Town of Los Gatos is not within an area at risk from inundation by seiche or tsunami, and therefore would not be at risk of release of pollutants due to project inundation. There would be no impact.	None required	No impact
<b>Land Use and Planning</b>		
<b>Impact LU-1.</b> Implementation of the proposed General Plan would provide for orderly development in the Town of Los Gatos and would not physically divide an established community. Impacts would be less than significant.	None required	Less than significant
<b>Impact LU-2.</b> Implementation of the proposed project would be generally consistent with applicable regional land use plans, policies, or regulations such as ABAG/MTC's Plan Bay Area 2040. Impacts would be less than significant.	None required	Less than significant
<b>Impact LU-3.</b> Implementation of the proposed project would not conflict with existing Specific Plans, Overlay Zones, or Historic Districts. Impacts would be less than significant.	None required	Less than significant
<b>Impact LU-4.</b> There are no Habitat Conservation Plans or Natural Community Conservation Plans applicable to the 2040 General Plan. Therefore the 2040 General Plan would have no impacts.	None required	No impact

Impact	Mitigation Measure (s)	Residual Impact
<b>Noise</b>	<p><b>Impact N-1.</b> Construction of individual projects facilitated by the 2040 General Plan would temporarily generate increased noise levels, potentially affecting nearby noise-sensitive land uses. Provisions in the Los Gatos Town Code and 2040 General Plan policies would limit noise disturbance to the extent feasible. Construction noise may still exceed noise standards temporarily, but exceedances would not be substantial. Impacts would be less than significant with mitigation.</p> <p><b>N-1 Construction Noise Reduction.</b> For projects involving construction equipment that are located within 25 feet of noise-sensitive receptors the following mitigation would be required:</p> <ul style="list-style-type: none"> <li>▪ <b>Equipment Staging Areas.</b> Equipment staging shall be located in areas that will create the greatest distance feasible between construction-related noise sources and noise-sensitive receptors.</li> <li>▪ <b>Electrically-Powered Tools and Facilities.</b> Electrical power shall be used to run air compressors and similar power tools and to power any temporary structures, such as construction trailers or caretaker facilities.</li> <li>▪ <b>Smart Back-up Alarms.</b> Mobile construction equipment shall have smart back-up alarms that automatically adjust the sound level of the alarm in response to ambient noise levels. Alternatively, back-up alarms shall be disabled and replaced with human spotters to ensure safety when mobile construction equipment is moving in the reverse direction.</li> <li>▪ <b>Additional Noise Attenuation Techniques.</b> During the clearing, earth moving, grading, and foundation/conditioning phases of construction, temporary sound barriers shall be installed and maintained between the construction site and the sensitive receptors. Temporary sound barriers shall consist of sound blankets affixed to construction fencing or temporary solid walls along all sides of the construction site boundary facing potentially sensitive receptors.</li> </ul>	<p>With implementation of 2040 General Plan policies, Los Gatos Town Code requirements, and Mitigation Measure N-1, impacts would be reduced to less than significant.</p>
<p><b>Impact N-2.</b> Development facilitated by the 2040 General Plan would introduce new on-site noise sources associated with residential, commercial, and industrial land uses and would contribute to increases in traffic noise. The continued regulation of on-site noise, consistent with the Los Gatos Town Code, and implementation of goals and policies in the 2040 General Plan would minimize disturbance to adjacent land uses. Impacts would be less than significant.</p>	None required	Less than significant

Impact	Mitigation Measure (s)	Residual Impact
<p><b>Impact N-3.</b> Construction of individual projects facilitated by the 2040 General Plan could temporarily generate groundborne vibration, potentially affecting nearby land uses. Compliance with the Los Gatos Town Code would limit vibration disturbance on residential receptors and hotels where sleeping receptors could be present. Impacts would be potentially significant but mitigable.</p>	<p><b>N-2 Construction Vibration Reduction.</b> The Town shall include the following measures as standard conditions of approval for applicable projects involving construction to minimize exposure to construction vibration:</p> <ol style="list-style-type: none"> <li>1. Avoid the use of pile drivers and vibratory rollers (i.e., compactors) within 50 feet of buildings that are susceptible to damage from vibration.</li> <li>2. Schedule construction activities with the highest potential to produce vibration to hours with the least potential to affect nearby institutional, educational, and office uses that the Federal Transit Administration identifies as sensitive to daytime vibration (FTA 2006).</li> <li>3. Notify neighbors of scheduled construction activities that would generate vibration.</li> </ol>	<p>Implementation of Mitigation Measure N-2 would reduce potential impacts to a less than significant level.</p>
<b>Population and Housing</b>		
<p><b>Impact PH-1.</b> Implementation of General Plan 2040 would facilitate the construction of new housing in Los Gatos that could increase Town's population in excess of ABAG population forecasts. Current growth and development trends in Los Gatos do not predict full buildout and impacts would be less than significant.</p>	None required	Less than significant
<p><b>Impact PH-2.</b> Implementation of General Plan 2040 would not result in the displacement of substantial numbers of housing or people. To the contrary, General Plan 2040 would facilitate the development of new housing in accordance with State and local housing requirements, while preserving existing residential neighborhoods. Impacts would be less than significant.</p>	None required	Less than significant
<b>Public Services and Recreation</b>		
<p><b>Impact PSR-1.</b> Development facilitated by the 2040 General Plan would result in an increase in the Town's population. This would increase demand for fire, police, school, and other Town services and potentially create the need for new police, fire, school, or other service facilities. However, compliance with policies in the 2040 General Plan, payment of Town required public facilities impact fees, and management of future growth would avoid adverse environmental effects associated with the provision of new or physically altered fire, police, school, or</p>	None required	Less than significant

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Impact	Mitigation Measure (s)	Residual Impact
<p>other public facilities. This impact would be less than significant.</p>		
<p><b>Impact PSR-2.</b> Development associated with the 2040 General Plan would add population to the Town that would increase use of parks and recreation facilities. However, park facilities have adequate capacity and with compliance with the 2040 General Plan policies, impacts related to construction of park facilities would be less than significant.</p>	None required	Less than significant
<b>Transportation</b>		
<p><b>Impact T-1.</b> Development and growth envisioned in the 2040 General Plan would increase use and demand of existing transit facilities in Los Gatos. The 2040 General Plan includes goals and policies that would encourage transit use and bicycling and walking while also encouraging development or expansion of existing facilities to accommodate increased use. However, transit ridership and operations would be affected from congestion and sharing lanes with other vehicles. Therefore, impacts of the 2040 General Plan would be significant and unavoidable.</p>	<p>There are no feasible mitigation measures to reduce potentially significant effects related to transit operations and ridership.</p>	Impacts would be significant and unavoidable.
<p><b>Impact T-2.</b> Development and growth envisioned in the 2040 General Plan would modify roadway circulation. Modifications would conform to state and local standards and improve roadways. Therefore, the 2040 General Plan would not conflict with programs, Plans, ordinances, or policies pertaining to roadways. Impacts of the 2040 General Plan</p>	None required.	Impacts would be less than significant, and no mitigation measures are indicated.
<p>Would be less than significant.</p> <p><b>Impact T-3.</b> Development and growth envisioned in the 2040 General Plan would increase the demand and use for bicycle and pedestrian facilities. However, the 2040 General Plan includes goals and policies to provide adequate facilities for bicycle and pedestrian use. Therefore, the 2040 General Plan would not conflict with programs, plans, ordinances, or policies pertaining to bicycle and pedestrian facilities. Impacts of the 2040 General Plan would be less than significant.</p>	None required	Less than significant

Impact	Mitigation Measure (s)	Residual Impact
<p><b>Impact T-4.</b> Development and population growth facilitated by the 2040 General Plan would increase VMT in Los Gatos. VMT per service population and population growth in 2040 would exceed applicable thresholds specific to the Town. Therefore, the 2040 General Plan would result in VMT-related impacts. Impacts would be significant and unavoidable.</p>	<p><b>T-1 VMT Reduction Strategies.</b> For projects that would generate VMT, one or more VMT reduction strategies included in the <i>SB 743 Implementation Decisions for the Town of Los Gatos</i> (July 2020) document shall be required to reduce VMT of the project. Examples of VMT reduction strategies that shall be implemented are provided within Section 4.15, Transportation, on pages 4.15-30 through 4.15-32. The VMT reduction strategies are organized by their relative scale for implementation (i.e., individual site level, Town-wide level, and regional level).</p>	<p>Impacts would be significant and unavoidable even with mitigation</p>
<p><b>Impact T-5.</b> The proposed 2040 General Plan is a program-level plan that does not directly address project-level design features. Roadway improvements and site access measures would be designed and reviewed in accordance with Town standards. This impact would be less than significant.</p>	<p>None required</p>	<p>Less than significant</p>
<p><b>Impact T-6.</b> The proposed 2040 General Plan identifies circulation improvements and policies that would support emergency access throughout Los Gatos. This impact would be less than significant.</p>	<p>None required</p>	<p>Less than significant</p>
<b>Utilities and Service Systems</b>		
<p><b>Impact U-1.</b> Development facilitated by the 2040 General Plan would increase the demand for water supply and water infrastructure. However, the San Jose Water Company projects that Town water supply is sufficient to meet the projected water demand under buildout associated with the 2040 General Plan. This impact would be less than significant.</p>	<p>None required</p>	<p>Less than significant</p>
<p><b>Impact U-2.</b> Development facilitated by the 2040 General Plan would increase demand for wastewater collection and treatment. However, goals and policies in the 2040 General Plan would ensure sufficient wastewater treatment capacity. Impacts would be less than significant.</p>	<p>None required</p>	<p>Less than significant</p>

Town of Los Gatos  
**2040 General Plan**

Impact	Mitigation Measure (s)	Residual Impact
<p><b>Impact U-3.</b> Development facilitated by the 2040 General Plan would increase the demand for electric power, natural gas, telecommunications, and stormwater facilities. However, development facilitated by the 2040 General Plan would occur in developed areas of the Town where these facilities exist and relocation, if applicable, would generally occur in previously disturbed or developed areas. This impact would be less than significant.</p>	None required	Less than significant
<p><b>Impact U-4.</b> Development facilitated by the 2040 General Plan would increase waste sent to area landfills. However, landfills serving the Town of Los Gatos would have adequate capacity to accept the additional waste. Further, the 2040 General Plan contains policies to increase recycling. Impacts would be less than significant.</p>	None required	Less than significant
<b>Wildfire</b>		
<p><b>Impact W-1.</b> The proposed 2040 General Plan policies address emergency access, response, and preparedness. The policies enforce maintaining an emergency management plan. Therefore, the 2040 General Plan would not impair an emergency response plan or emergency evacuation plan. Impacts would be less than significant.</p>	None required	Less than significant
<p><b>Impact W-2.</b> The 2040 General Plan does not facilitate urban development in areas most susceptible to wildfire. Prevailing wind and slopes could potentially spread fire and related pollution towards where urban development is envisioned. Flooding or landslides would be minimized through strategic land use planning. Additionally, the 2040 General Plan includes policies that would reduce the risk wildfire and landslides for development facilitated by the plan. Impacts would be less than significant.</p>	None required	Less than significant
<p><b>Impact W-3.</b> The 2040 General Plan facilitates growth primarily as infill and redevelopment within urbanized areas of the Town where infrastructure and roads currently exist. The General Plan policies require maintenance of fire access roads, which could have temporary or ongoing noise impacts and vegetation removal impacts. Impacts would be less than significant.</p>	None required	Less than significant

# 1 Introduction

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## 1.1 Environmental Review Process

Pursuant to the California Environmental Quality Act (CEQA), lead agencies are required to consult with public agencies having jurisdiction over a proposed project and to provide the general public with an opportunity to comment on the Draft EIR.

On July 9, 2020, the Town of Los Gatos circulated a Notice of Preparation (NOP) and Initial Study for a 30-day period to identify environmental issue areas potentially affected if the proposed project were to be implemented. The NOP was mailed or otherwise provided to public agencies, the State Clearinghouse, organizations, and individuals considered likely to be interested in the proposed project and its potential impacts. Comments received by the Town of Los Gatos on the NOP and Initial Study are provided in Appendix A of the Draft EIR and are summarized in Table 1-1 of the Draft EIR. These comments were taken into account during the preparation of the Draft EIR.

The Draft EIR was made available for public review on July 30, 2021, and was distributed to local and State agencies. Copies of the Notice of Availability of the Draft EIR were mailed to a list of interested parties, groups and public agencies. The Draft EIR and an announcement of its availability were posted electronically on the Town's website, and a paper copy was available for public review at the Los Gatos Public Library. The Notice of Availability of the Draft EIR was also posted at the office of the Santa Clara County Clerk.

The 45-day CEQA public comment period began on July 30, 2021, and ended on September 13, 2021. The Town of Los Gatos received 14 comment letters on the Draft EIR. Copies of written comments on the Draft EIR received during the comment period, as well as responses to those comments, are included in Section 4 of this document. On September 8, 2021, during the 45-day CEQA public comment period, the Planning Commission held a hearing on the project. The Town received spoken comments from an individual on the Draft EIR during the Planning Commission hearing. Spoken comments and responses to the comments are also included at the end of Section 4 of this document.

After the close of the first comment period on the Draft EIR, the Town became aware of a procedural error in the original Notice of Completion and Availability and noted that Appendix C erroneously included a draft rather than a final Transportation Analysis. The Town reopened the public comment period on the Draft EIR for an additional 45-day period and provided an updated Notice of Availability with the statutory language required under CEQA Guidelines section 15087. As part of this reopened comment period, Chapter 4.15, *Transportation*, of the Draft EIR was revised to elaborate on transit impacts and cumulative VMT impacts. The Town recirculated revised the Transportation section and its Appendix, as well as the Executive Summary which includes a summary of transportation impacts. No other sections of the Draft EIR were recirculated. This second comment period extended from November 15, 2021, to January 7, 2022.

While the Town conducted a partial recirculation, because the Notice of Availability was also recirculated, agencies, organizations, and individuals were invited to submit comments on not only the recirculated Transportation section and Executive Summary of the Draft EIR, but also the other sections of the Draft EIR, which were not recirculated. During the second comment period the Town received three comment letters.

## 1.2 Document Organization

This Response To Comments (RTC) document consists of the following sections:

- *Section 1: Executive Summary.* This section provides an executive summary that is primarily focused on presenting impacts and mitigation measures for the proposed project.
- *Section 2: Introduction.* This section discusses the purpose and organization of this RTC Document and the Final EIR and summarizes the environmental review process for the project.
- *Section 3: List of Commenters.* This section contains a list of the agencies and private groups, organizations, and individuals that submitted written and spoken comments during the public review period on the Draft EIR.
- *Section 4: Comments and Responses.* This section contains reproductions of all comment letters received on the Draft EIR, and paraphrased description of the single spoken comment received. A written response for each CEQA-related comment received during the public review period is provided. Each response is keyed to the corresponding comment.
- *Section 5: Draft EIR Revisions.* Revisions to the Draft EIR that are necessary in light of the comments received and responses provided, or necessary to amplify or clarify material in the Draft EIR, are contained in this section. Underlined text represents language that has been added to the Draft EIR; and text with ~~strikeout~~ has been deleted from the Draft EIR and is thus contained as part of this Final EIR.

## 2 List of Commenters

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This section presents a list of comment letters received during the public review periods and describes the organization of the letters and comments that are provided in Section 4, *Comments and Responses*, of this document.

### 2.1 Organization of Comment Letters and Responses

The 17 letters are presented in the following order: State agencies (1), regional and local public agencies (4), private groups and organizations (7), and individuals (5). No Federal agencies provided written comments. Each comment letter has been numbered sequentially and each separate issue raised by the commenter has been assigned a number. The responses to each comment identify first the number of the comment letter, and then the number assigned to each issue. For example, Response 1.1 indicates that the response is for the first issue raised in comment Letter 1. The single spoken comment provided to the Town at the Planning Commission hearing on September 8, 2021, follows the letters.

### 2.2 Comments Received

The following letters were submitted to the Town during the first public review period for the Draft EIR, which occurred between the dates of July 30, 2021, and ended on September 13, 2021:

Town of Los Gatos  
**2040 General Plan**

Letter Number and Commenter	Agency/Group/ Organization	Page Number
<b>State Agencies</b>		
1. Mark Leong, District Branch Chief	California Department of Transportation	22
<b>Regional and Local Agencies</b>		
2. Rob Eastwood, Community Development Director	City of Campbell	25
3. Lisa Brancatelli, Assistant Engineer II	Valley Water	28
4. Jane Mark, Planning Manager	Midpeninsula Regional Open Space District	43
<b>Private Groups and Organizations</b>		
5. Giuliana Pendleton, Environmental Advocacy Assistant	Santa Clara Valley Audubon Society	50
6. Giuliana Pendleton, Environmental Advocacy Assistant	Santa Clara Valley Audubon Society	62
7. Janet McBride, Executive Director	Bay Area Ridge Trail Council	73
8. Don Capobres	Harmonie Park Development/Grosvenor Americas	77
9. Rutan & Tucker, LLP	Los Gatos Community Alliance	90
<b>Individuals</b>		
10. Phil Koen		177
11. Eric Thune		183
12. Lou Albert		186
13. Marc Caligiuri		188
14. Mitzi Anderson		190

The following letters were submitted to the Town during the second public review period for the Draft EIR, including the recirculated Transportation section and Executive Summary sections of the Draft EIR.

Letter Number and Commenter	Agency/Group/Organization	Page Number
15. Giuliana Pendleton, Environmental Advocacy Assistant	Santa Clara Valley Audubon Society	192
16. Rutan & Tucker, LLP	Los Gatos Community Alliance	195
17. Robert Swierk, Transportation Planner	Valley Transportation Authority	209

In addition to the 17 comment letters listed in the table above, the Town received spoken comments from an individual at a Planning Commission meeting on September 8, 2021, during the first comment period of the Draft EIR. The individual identified themselves as Giuliana Pendleton. Ms. Pendleton mentioned an affiliation with the Audubon Society but does not specify if her comments are being provided on behalf of the Audubon Society. Spoken comments provided by this individual are addressed at the end of Section 4 of this document.

## 3 Comments and Responses

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Written responses to each comment letter and a single spoken comment received on the Draft EIR are provided in this section. All letters received during the public review period on the Draft EIR are provided in their entirety. The spoken comment is summarized based on notes taken during the Planning Commission meeting when the comment was spoken.

Please note that text within individual letters that has not been numbered does not specifically raise environmental issues nor relate directly to the adequacy of the information or analysis within the Draft EIR, and therefore no comment is enumerated or response required, pursuant to *State CEQA Guidelines* Sections 15088 and 15132.

Rewrites to the Draft EIR necessary in light of the comments received and responses provided, or necessary to amplify or clarify material in the Draft EIR, are included in the responses. Underlined text represents language that has been added to the Draft EIR; text with ~~strikeout~~ has been deleted from the Draft EIR. All rewrites are then compiled in the order in which they would appear in the Draft EIR (by page number) in Section 5, *Draft EIR Text Revisions*, of this Final EIR document. Page numbers cited in this section correspond to the page numbers of the Draft EIR. When mitigation measure language has been changed, it has been changed in both the text on the stated Draft EIR page and the summary table (Table 1) in the Executive Summary of the Draft EIR.

# LETTER 1

CALIFORNIA STATE TRANSPORTATION AGENCY

GAVIN NEWSOM, GOVERNOR

## California Department of Transportation

DISTRICT 4  
OFFICE OF TRANSIT AND COMMUNITY PLANNING  
P.O. BOX 23660, MS-10D | OAKLAND, CA 94623-0660  
[www.dot.ca.gov](http://www.dot.ca.gov)



September 13, 2021

SCH #: 2020070175  
GTS #: 04-SCL-2020-00932  
GTS ID: 20062  
Co/Rt/Pm: SCL/VAR/VAR

Jennifer Armer, Senior Planner  
Town of Los Gatos  
110 E. Main Street  
Los Gatos, CA 95030

### **Re: Town of Los Gatos 2040 General Plan Update Draft Environmental Impact Report (DEIR)**

Dear Jennifer Armer:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the Town of Los Gatos 2040 General Plan Update. We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system. The following comments are based on our review of the July 2021 DEIR.

#### **Project Understanding**

The project proposes a comprehensive update to the Town of Los Gatos General Plan, which would provide the basis for future land use and resource decisions made by the Town Council and Planning Commission. The 2040 General Plan would emphasize infill and reuse development within the Town limits through increased density and mixed-use projects. The Plan would also provide a framework for guiding future developments toward land uses that support walking and biking.

1.1

#### **Travel Demand Analysis**

Caltrans supports the Town's effort to implement Transportation Demand Management (TDM) measures to reduce resident and employee-based Vehicle Miles Traveled (VMT). The project VMT analysis and significance determination are undertaken in a manner consistent with the Office of Planning and Research's (OPR) Technical Advisory. Caltrans acknowledges the mitigation and TDM strategies

1.2

incorporated into the DEIR and supports the implementation and monitoring of these strategies. 1.2

**Lead Agency**

As the Lead Agency, the Town of Los Gatos is responsible for all project mitigation, including any needed improvements to the State Transportation Network (STN). The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures. 1.3

Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, please contact Llisel Ayon at [Llisel.Ayon@dot.ca.gov](mailto:Llisel.Ayon@dot.ca.gov). Additionally, for future notifications and requests for review of new projects, please email [LDIGR-D4@dot.ca.gov](mailto:LDIGR-D4@dot.ca.gov).

Sincerely,



MARK LEONG  
District Branch Chief  
Local Development - Intergovernmental Review

c: State Clearinghouse

## Letter 1

**COMMENTER:** Mark Leong, District Branch Chief, California Department of Transportation

**DATE:** September 13, 2021

### **Response 1.1**

The commenter states their understanding of the proposed project in the form of a summary.

In the context of brief summary, the commenter's understanding of the proposed project is accurate as proposed and evaluated in the Draft EIR.

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

### **Response 1.2**

The commenter states that the Draft EIR analysis of vehicle miles traveled (VMT) impacts are consistent with the Office of Planning and Research's Technical Advisory and supports the Town's effort to implement Transportation Demand Management (TDM) measures to reduce VMT.

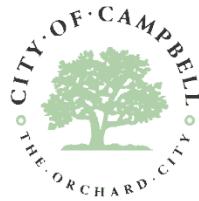
Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 1.3**

The commenter states that the Town is responsible for implementing and monitoring mitigation measures included in the Draft EIR.

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

## LETTER 2



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**CITY OF CAMPBELL**  
Community Development Department

September 10, 2021

Jennifer Armer, AICP, Senior Planner  
Town of Los Gatos Community Development Department  
110 E. Main Street  
Los Gatos CA 95030  
Sent via email to [GP2040@losgatosca.gov](mailto:GP2040@losgatosca.gov) and [JArmer@losgatosca.gov](mailto:JArmer@losgatosca.gov)

**Re: Comments on Los Gatos 2040 General Plan Update Draft Environmental Impact Report**

Dear Mrs. Armer:

Thank you for the opportunity to review and comment on the Town of Los Gatos 2040 General Plan Update Draft Environmental Impact Report (EIR). On behalf of the City of Campbell, please find our comments below.

The General Plan Update EIR identifies that buildout under the Town's General Plan will result in significant and unavoidable impacts regarding Vehicle Miles Traveled (VMT) and greenhouse gas emissions. The EIR identifies mitigation measures to reduce VMT impacts, including improvements to bicycle and pedestrian networks and regional coordination efforts, as highlighted on page 4.15-26 of the document.

The City of Campbell shares a common border with Los Gatos along the Town's northern perimeter with an integrated street and trail network between the two communities including major arterials (Winchester, Bascom / Los Gatos), the Los Gatos Creek Trail, and identified and planned bicycle and public transit routes. Improvements to this integrated transportation network across jurisdictions holistically supports a reduction in VMT for both Campbell and Los Gatos, as many of our residents and workers reside or work in either community and together use these shared streets, bike networks and transit networks.

As such, Campbell encourages the Town to holistically partner with the City of Campbell on identifying and implementing shared infrastructure improvements to reduce VMT at a sub-regional level, creating economies of scale and leveraging resources to benefit both

2.1

communities. Campbell is currently completing its Envision General Plan Update, Housing Element, and accompanying Draft EIR, scheduled to be published in 2022. We anticipate through this process identifying strategies to address VMT reduction and create improvements to our transportation system that would benefit from a sub-regional partnership with Los Gatos. | 2.1

In addition to these broader comments, Campbell also has an interest in ensuring traffic operations and traffic safety are adequately addressed at key intersections where Campbell and Los Gatos share borders. Specifically, as the Los Gatos General Plan identifies higher density housing and development planned for the area on the south side of Knowles, east of Winchester, Campbell wants to ensure that there are no significant impacts to traffic safety at the shared Knowles / Winchester intersection and at nearby intersections (Winchester / Hacienda). | 2.2

We look forward to engaging with Los Gatos in the future on sub-regional coordination and in addressing these issues.

Please do not hesitate to contact me with any questions at (408) 866-2141.

Sincerely,



Rob Eastwood, AICP  
Community Development Director  
City of Campbell

cc: Campbell City Council  
Brian Loventhal, City Manager, City of Campbell  
Todd Caruso, Public Works Director, City of Campbell  
Matthew Jue, Traffic Engineer, City of Campbell

## Letter 2

**COMMENTER:** Rob Eastwood, Community Development Director, City of Campbell

**DATE:** September 10, 2021

### Response 2.1

The commenter states that the Draft EIR for the proposed project identifies significant and unavoidable impacts pertaining to VMT and greenhouse gas (GHG) emissions. The commenter encourages the Town to partner with the City of Campbell on infrastructure improvements to reduce VMT.

The commenter correctly summarizes the VMT impacts of the proposed project. As described on pages 4.8-25 through 4.8-30 of the Draft EIR, implementation of the proposed project would result in significant and unavoidable impacts related to GHG emissions. As described on pages 4.15-23 through 4.15-26, the proposed project would result in significant and unavoidable impacts related to VMT. The Draft EIR does not preclude the Town from coordinating with the City of Campbell to reduce VMT in the future. However, coordination between the Town and the City of Campbell does not constitute mitigation to reduce impacts of the proposed project. Coordination does not constitute mitigation because coordination alone does not demonstrate a measurable reduction in either VMT or GHG emissions. Accordingly, no additional analysis or further revisions to the Draft EIR are required in response to this comment.

### Response 2.2

The commenter expresses the City of Campbell's interest in ensuring traffic operations and safety are adequately addressed at key shared borders. Specifically, the commenter cites high density housing and development along the Knowles/Winchester intersection as areas where traffic impacts may occur.

As described on page 4.15-27 of the Draft EIR, the 2040 General Plan is a program-level document that does not directly address project-level design features or building specifications. Los Gatos maintains improvement standards that guide the construction of new transportation facilities to minimize design hazards for all users of the system. Through the Town's environmental review process, land use proposals that would add traffic to streets not designed to current standards are evaluated. If needed, mitigation measures would be identified therein, and the project would be conditioned to construct or provide funding for an improvement that would minimize or eliminate the hazard. Typical improvements include shoulder widening, adding turn pockets, adding sidewalks or crosswalks, realigning sharp curves, prohibiting certain turning movements, signalizing intersections, and increasing sight distance, among other measures. Accordingly, as described on page 4.15-27 of the Draft EIR, impacts related to transportation hazards would be less than significant. Therefore, no revisions to the Draft EIR are required in response to this comment.

## LETTER 3

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**From:** Lisa Brancatelli <LBrancatelli@valleywater.org>  
**Sent:** Monday, September 13, 2021 5:00 PM  
**To:** Jennifer Armer <JArmer@losgatosca.gov>  
**Cc:** Colleen Haggerty <CHaggerty@valleywater.org>; Usha Chatwani <uchatwani@valleywater.org>; Rechelle Blank <rblank@valleywater.org>  
**Subject:** NOA- DEIR - The Town of Los Gatos 2040 General Plan Update

EXTERNAL SENDER

Hello Jennifer,

Valley Water has reviewed the Draft Environmental Impact Report (DEIR) and the 2040 General Plan, received on August 5, 2021.

Within the Town of Los Gatos, Valley Water has various water supply facilities and right of way along those facilities and creeks. Any work, including any new public trails or access points, on Valley Water's fee title property, will require the issuance of a Valley Water permit as per Valley Water's Water Resources Protection Ordinance and requires Valley Water to be considered a responsible agency under CEQA.

Based on our review of the 2040 General Plan and DEIR we have the following comments:

1. The General Plan and DEIR both reference Valley Water's Urban Water Management Plan and Water Supply Master Plan. Both of these documents have been updated in the last couple of years. Valley Water's Board of Directors approved the 2040 Water Supply Master Plan in November 2019, and the 2020 Urban Water Management Plan in May 2021. The Master Plan is still based on the "Ensure Sustainability" strategy and increases its water conservation goal to 10,000 acre-feet per year by 2040. Valley Water will also be adopting a Water Conservation Strategic Plan in the coming months, which could also be referenced in the final version of the Town's General Plan.

3.1

## **2040 General Plan**

2. Element 4 – Community Design Element, Element 5 – Mobility Element, and Element 7 – Open Space and Existing Neighborhoods Element include goals, policies, and implementation programs that include connections to existing trails, such as CD-11.6 that require developments adjacent to the Los Gatos Creek Trail to provide secondary access to the trail. Please note, any new trail connections located on or open to Valley Water property must be open to the general public and permitted by Valley Water. Any new connections may also require modification of the existing Joint Use Agreement for the trail to allow the new access.

3.2

Trail connections that are not located at existing street crossings of the creek, can negatively affect Valley Water's maintenance operations. Connections to the trail need to be planned by the Town to minimize the number and best locate access points based on planned future development/re-development. The Town should have an overall plan for trail access points as Valley Water will not allow access points to be constructed at each development along the creek or have multiple connection points within any particular development.

3. Element 6.1 – Water Reuse and Conservation, Valley Water appreciates the Town's commitment to maintaining water supplies and expanding water conservation efforts. Policy PFS-1 provides measures to reduce and avoid impacts to water supply from new development; however, many of these measures are general. By leveraging Valley Water's Model Water Efficient New Development Ordinance (MWENDO), more tangible elements can be incorporated. The Town should consider the following additions to:

3.3

- Consider adopting the MWENDO
- Encourage non-potable reuse of water like graywater and rainwater/stormwater in new development and remodels
- Require dedicated landscape meters where applicable.
- Require installation of separate submeters to each unit in multi-family developments and individual spaces within commercial buildings to encourage efficient water use.

4. Element 6.3 – the second paragraph under the Natural Drainage Systems section is unclear. All creeks listed except Smith and San Tomas Aquino Creek flow to the Guadalupe River. Also, the Guadalupe River is not within the Town limits.

3.4

5. Element 7 – Open Space, Parks, and Recreation, OSPR-5.1 and OSPR-5.3, which specify removing concrete lining in channels and restoring them to a more natural state is a worthy goal to strive for. However, such projects in urban settings require significant land rights acquisition in order to restore the creek while managing flood flow capacities. Currently, Valley Water does not have any capital projects in planning or design for the suggested work and flood protection improvements are still needed in many areas of the County in order to protect people and property from flooding. In addition, the Town and the community would need to be committed to the effort since any alteration of the creeks would require additional land in order to convey the flood flows in the channel

3.5

without hardscape slope protection. Costs for such an endeavor could be controlled if buildings are set back from the creek to avoid the high cost of purchasing buildings. Also, please note that much of the channelized sections of Los Gatos Creek were constructed by Caltrans and are owned and maintained by Caltrans, and any effort to restore those areas would require their involvement.

6. 7.3 Implementation Program E, Valley Water should be consulted where the trail is on Valley Water property. 3.6
7. 8.3 – Biological Resources, setbacks from riparian corridors are necessary to protect the sensitive ecology of riparian corridors, provide adequate space to maintain creeks and levees, and if necessary, construct flood protection improvements. Valley Water supports the development of a riparian corridor policy with definitive setback requirements from the riparian corridor of creeks and waterways. Protection of water resources and associated riparian habitat discussions should reference the “Guidelines and Standards for Land Use Near Streams”, developed by the Water Resources Protection Collaborative and adopted by the Town. 3.7
8. 8.3 ENV-5.1 and ENV-6.4, Use of native plants should be in conformance with the Guidelines and Standards mentioned above. For conformance with the Guidelines and Standards locally native riparian species used need to be grown from plant stock sourced from the Los Gatos Creek watershed; Design Guides #2 and #4 of the Guidelines and Standards promote the use of local ecotypes of native species. Local ecotypes are not sourced at conventional nurseries nor are they available in large container sizes. Such plants typically require a custom nursery contract to collect and grow the plants with a one-year lead time and the resulting plants are smaller than 1 gallon in size and are used for riparian habitat mitigation or restoration. Alternatively, Design Guide #3 provides guidance for use of plantings for aesthetic purposes that can be purchased at conventional nurseries and will not negatively impact the existing locally native riparian plants. 3.8
9. 8.10 – Hydrology and Water Quality, Groundwater Management, Valley Water recommends the Groundwater Management section be replaced with the text below to better reflect groundwater management and conditions. 3.9

Valley Water manages the groundwater sub-basin with the primary objectives to recharge the basin, conserve water, increase water supply, and prevent waste or reduction of the water supply. Historically, over-extraction of the groundwater sub-basin has resulted in occurrences of subsidence in Santa Clara County. Subsidence occurs when underground water levels drop and clay layers compact, resulting in the sinking of the ground surface and a loss of aquifer capacity. To avoid any further subsidence Valley Water works to maintain the sub-basin by augmenting natural percolation of rainfall and local stream runoff via managed aquifer recharge using local and imported surface water. Valley Water’s managed recharge program includes 18 major recharge systems with in-stream and off-stream facilities. In addition to directly replenishing groundwater, Valley Water reduces the need for groundwater pumping through treated and untreated surface water deliveries, water conservation, and recycled water programs.

Based on these efforts, permanent subsidence was effectively halted around 1970, and groundwater levels recovered to sustainable levels. In 2019, Valley Water’s Groundwater Management Plan was approved by the Department of Water Resources as an Alternative to a Groundwater Sustainability Plan for Sustainable Groundwater Management Act compliance. While groundwater levels and storage decline during droughts, Valley Water’s comprehensive groundwater management activities provide for subsequent recovery, and groundwater in the sub-basin is sustainably managed.

10. 8.10- Hydrology and Water Quality, Water Quality, Valley Water recommends the second paragraph in the Groundwater Quality section be replaced with the text below to focus on the Santa Clara Subbasin and more accurately describe water quality conditions. 3.10

A few water quality challenges have been detected in the sub-basin. High mineral salt concentrations have been identified in the upper aquifer zone along San Francisco Bay and the lower aquifer zone underlying Palo Alto. Elevated nitrate concentrations are sporadically observed in the Santa Clara Valley Sub-basin. However, drinking water standards are met at public water supply wells without the use of treatment methods beyond disinfection. Valley Water and public water suppliers conduct extensive monitoring of groundwater quality to understand conditions and trends and work with regulatory agencies to protect groundwater quality.

11. 8.10 – Hydrology and Water Quality, Policy ENV-16.3, Valley Water recommends adding ‘groundwater’ to this policy. 3.11

12. 8.10 – Hydrology and Water Quality, Policy ENV-16.5 Creek Dedication includes a requirement that development adjacent to a creek include a dedication of the creek land to the Town and granting of a maintenance easement to Valley Water. Valley Water may be interested in obtaining easements in some locations, but not along all creeks and at all sites. Valley Water supports protecting creek lands through public ownership or conservation easements and will consider acceptance of easements on a case-by-case basis. Also, the term “designated creek” in the policy should be defined. 3.12

13. 8.10 – Hydrology and Water Quality, Policy ENV-17.6, the General Plan includes in this Policy: “Participate in the regulation of groundwater use to protect it as a natural resource and conserve it for potential use during extended drought.” 3.13

It should be noted that the regulation of groundwater use is a complex and controversial issue and pumping regulation has never been implemented in Santa Clara County. As the Groundwater Sustainability Agency for the Santa Clara Subbasin, Valley Water has the authority to regulate or limit groundwater pumping. Valley Water’s Board of Directors adopted Resolution 18-04, which states that continued collaboration with groundwater pumpers is the preferred way to address future challenges and outlines the steps that would be taken if pumping regulation were being considered.

14. 8.10 – Hydrology and Water Quality, Policy ENV-17.8, Much of the Town is within the recharge area of the Santa Clara Plain Groundwater Basin, excluding hillside areas. Natural groundwater recharge is an important component of the region’s water supply. As the EIR discusses, new development can increase impervious surface which reduces natural groundwater recharge. The General Plan includes policy ENV-17.8 to encourage low-impact development to limit impervious surfaces. Valley Water recommends that this policy be explicitly expanded to ensure that existing natural recharge is maintained or expanded by new development and redevelopment. 3.14

*Encourage Low-Impact Development (LID) measures to limit the amount of impervious surface in new development and redevelopment to maintain or increase the retention, treatment, and infiltration of urban stormwater runoff from pre-development conditions. LID measures should also apply to major remodeling projects and to public and recreation projects where possible.*

15. 8.12 Program B, updates to the tree policy should take into account preservation of local riparian natives as described in the Guidelines and Standards Design Guide 1 and by following Design Guides 2, 3, and 4 when selecting the appropriate tree species for sites adjacent to the riparian corridor. 3.15

16. Section 9.4 – Flood and Inundation Hazards, the discussion regarding dam inundation should also note that the Town of Los Gatos is also within the inundation area of Vasona Dam. 3.16

17. The role of Valley Water in Haz 5.5 on page 9-14 is not clear, as Valley Water currently does not have any stormwater retention facilities within the Town, and none are currently planned. 3.17

**Draft EIR**

18. Page 4.4-11, “Local Regulations” should also reference the “Guidelines and Standards for Land Use near Streams”. 3.18

19. Page 4.9-21, Goal HAZ-13, the last paragraph contains the statement: “If groundwater contamination is identified, the RWQCB or the Santa Clara Valley Water District would need to characterize the vertical and lateral extent of the contamination and remediation activities prior to the commencement of any construction activities that would disturb the subsurface.” 3.19

Please correct this statement to remove reference to Valley Water in this context. The RWQCB is the regulatory agency with the authority to direct site investigation and cleanup.

20. Pages 4.10-1 and 4.10-2, Section b Regional Groundwater, this section appears to confuse Valley Water’s managed aquifer recharge program (which includes groundwater replenishment through creeks and percolation 3.20

ponds countywide) with the treated groundwater/surface water re-injection program, which is very limited, with only one cleanup site participating in this program. Valley Water recommends the section be replaced with the text below, which includes several other updates and corrections.

The groundwater sub-basin is managed by Valley Water, whose primary objective is to recharge the groundwater basin, conserve water, increase water supply, and prevent waste or reduction of Valley Water's water supply. Subsidence occurs when underground water levels drop and clay layers compact, resulting in the sinking of the ground surface and a loss of aquifer capacity. To avoid any further subsidence Valley Water works to maintain the sub-basin by augmenting natural percolation of rainfall and local stream runoff via managed aquifer recharge using local and imported surface water. Valley Water' managed recharge program includes 18 major recharge systems with in-stream and off-stream facilities. In addition to directly replenishing groundwater, Valley Water reduces the need for groundwater pumping through treated and untreated surface water deliveries, water conservation, and recycled water programs.

In 2017, approximately 100,000 acre-feet (AF) of local and imported surface water replenished groundwater through Valley Water's managed aquifer recharge program. Valley Water also reduced groundwater demands by approximately 192,000 AF in 2017 through treated and recycled water deliveries and water conservation programs. Based on the efforts of Valley Water, the groundwater elevation in the groundwater basin has recovered from prior overdraft. Groundwater storage at the end of 2017 reached 338,900 AF, with 25,700 AF added in 2017. As stated in the 2017 Valley Water Annual Groundwater Management Report, the groundwater supply has reached a "normal" stage (stage 1) of Valley Water's Water Shortage Contingency Plan and indicates good water supply conditions. While groundwater levels and storage decline during droughts, Valley Water's comprehensive groundwater management activities provide for subsequent recovery, and groundwater in the sub-basin is sustainably managed.

21. Page 4.10-1, the second paragraph under the Natural Drainage Systems section is unclear. All creeks listed except Smith and San Tomas Aquino Creek flow to the Guadalupe River. Also, the Guadalupe River is not within the Town limits.

22. On page 4.10-4, it appears the Flood Hazards section should be item "e" not "a". Also, the discussion in this section should include flood hazards due to dam inundation.

23. Page 4.10-8, the discussion pertaining to Valley Water's Ordinance needs to be updated for accuracy. Valley Water's Ordinance 06-01 (known as the Water Resources Protection Ordinance) replaced Ordinance 83-2 in 2006 and requires a permit from Valley Water where Valley Water has a property interest (either in fee title or an easement) or has a facility impacted by the work proposed. The Town did not directly adopt Ordinance 06-01, but rather the "Guidelines and Standards for Land-Use near Streams." The Guidelines and Standards were developed cooperatively between Valley Water, the County, all 15 cities within Santa Clara County, with citizens, business, and agricultural interests to streamline the permitting process and protect stream and streamside resources. We suggest a section be included in this section of the DEIR to discuss the Guidelines and Standards as that provides a framework for the Town's environmental goals for creek-side development.

24. Page 4.10-8, The section under Santa Clara Valley Water District Groundwater Management Plan provides a general overview of Valley Water but does not include information on the Groundwater Management Plan. Valley Water recommends adding the following paragraph:

Valley Water's groundwater management goals, strategies, activities, and metrics are described in the 2016 Groundwater Management Plan for the Santa Clara and Llagas Subbasins. This plan, adopted by the Valley Water's Board of Directors, was submitted to the Department of Water Resources as an Alternative to a Groundwater Sustainability Plan. In 2019, Valley Water's Groundwater Management Plan was approved by the Department of Water Resources as an Alternative to a Groundwater Sustainability Plan for Sustainable Groundwater Management Act compliance. As required by the Sustainable Groundwater Management Act, Valley Water will submit updates every five years, with the first update due by January 1, 2022.

25. Page 4.10-14, Impact Analysis HWQ-2, third full paragraph: SCVWA should be revised to SCVWD.

26. The Impact Analysis on Page 4.10-16 appears to be mislabeled as Impact Analysis HWQ-2 and should be revised to HWQ-3.

27. The Impact Analysis on Page 4.10-18 appears to be mislabeled as Impact Analysis HWQ-3 and should be revised to HWQ-4. 3.27

28. Discussions of flooding and policies about flooding should specify what storm events are to be analyzed when ensuring post-development runoff is maintained to pre-development levels. The analysis should be for both 1% flood events and smaller more frequent storms to ensure flood impacts are minimized. 3.28

Please note that some comments address policies and discussions found in both the General Plan and DEIR should be addressed in both documents as appropriate. 3.29

We appreciate the opportunity to comment on the Town of Los Gatos 2040 General Plan and associated DEIR. If you have any questions or need further information, you can reach me at (408) 630-2479, or by e-mail at [LBrancatelli@valleywater.org](mailto:LBrancatelli@valleywater.org). Please reference Valley Water File No. 26043 on future correspondence regarding this project.

Thank you,

**LISA BRANCATELLI**

ASSISTANT ENGINEER II (CIVIL)

Community Projects Review Unit

[Lbrancatelli@valleywater.org](mailto:Lbrancatelli@valleywater.org)

Tel. (408) 630-2479 / Cell. (408) 691-1247

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Santa Clara Valley Water District is now known as:



Clean Water • Healthy Environment • Flood Protection

5750 Almaden Expressway, San Jose CA 95118

[www.valleywater.org](http://www.valleywater.org)

## Letter 3

**COMMENTER:** Lisa Brancatelli, Assistant Engineer II, Valley Water

**DATE:** September 13, 2021

### **Response 3.1**

The commenter states that the 2040 General Plan and Draft EIR reference Valley Water's Urban Water Management Plan and Water Supply Master Plan, and that both documents have been updated in recent years. The commenter also expresses an opinion that the 2040 General Plan could reference Valley Water's pending Water Conservation Strategic Plan.

Portions of this comment pertain the 2040 General Plan and not the Draft EIR. The Draft EIR does not reference Valley Water's Urban Water Management Plan or Water Supply Master Plan. As described on pages 4.16-1 through 4.16-3, the Draft EIR references the San José Water Company's Urban Water Management Plan. According to Valley Water's website, San José Water Company is the only water service provider for the Town.

Therefore, no additional revisions to the Draft EIR or further analysis are required in response to this comment.

### **Response 3.2**

The commenter states that Element 4 and Element 7 of the 2040 General Plan should address trail connections that may negatively affect Valley Water's maintenance operations. This comment does not pertain to the Draft EIR or CEQA.

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

### **Response 3.3**

The commenter is appreciative of the Town's commitment to maintaining water supplies and expanding water conservation efforts but that measures within Policy PFS-1 are too general. The commenter goes on to suggest several potential additions to the policy.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 3.4**

The commenter states that the second paragraph under the Natural Drainage Systems section of the 2040 General Plan is unclear.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 3.5**

The commenter states that Goals OSPR-5.1 and OSPR-5.3 of the 2040 General Plan are worthy to strive for but that such project require significant land rights acquisitions.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 3.6**

The commenter expresses an opinion that Valley Water should be consulted regarding implementation of 2040 General Plan 7.3 Implementation Program E.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 3.7**

The commenter supports the development of a riparian corridor policy in the General Plan and suggests that the “Guidelines and Standards for Land Use Near Streams,” developed by the Water Resources Protection Collaborative and adopted by the Town be referenced.

This comment does not pertain to the Draft EIR or CEQA. However, as discussed in Response 3.18 below, a description of the guidelines has been added to the Draft EIR aligned to the commenter’s suggestion. Additionally, many of the recommendations provided in the Guidelines and Standards for Land Use Near Streams are similar to policies contained in the proposed 2040 General Plan. For example, the guidelines recommend using native species for plantings in riparian zones, and this is similar to General Plan policy ENV-5.1, which requires the use of native plant species for new projects or development. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 3.8**

The commenter suggests that Policies ENV-5.1 and ENV-6.4 of the 2040 General Plan should be in conformance with the guidelines state above.

This comment does not pertain to the Draft EIR or CEQA. However, as described above in Response 3.7, General Plan policies are already similar to the Guidelines and Standards for Land Use Near Streams, including General Plan Policy ENV-5.1. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 3.9**

The commenter provides recommended replacement text for the Groundwater Management section of the 2040 General Plan.

This comment does not pertain to the Draft EIR or CEQA. However, the Draft EIR discusses groundwater and potential groundwater impacts. For example, pages 4.10-1 and 4.10-2 of the Draft EIR contain a description of the groundwater resources in the planning area. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 3.10**

The commenter provides recommended replacement text for the second paragraph of the Groundwater Quality section of the 2040 General Plan.

This comment does not pertain to the Draft EIR or CEQA. However, as discussed in Response 3.9 the Draft EIR does describe and evaluate groundwater and groundwater impacts. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 3.11**

The commenter suggests that the word “groundwater” be added to Policy ENV-16.3 of the 2040 General Plan.

This comment does not pertain to the Draft EIR or CEQA. However, as discussed in Response 3.9 the Draft EIR does describe groundwater resources and evaluates potential impacts to groundwater. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 3.12**

The commenter expresses an opinion that Policy ENV-16.5 include a requirement that development adjacent to a creek include a dedication of the creek land to the Town and granting of a maintenance easement to Valley Water.

This comment does not pertain to the Draft EIR or CEQA. However, as discussed in Response 3.9 the Draft EIR does describe groundwater resources and evaluates potential impacts to groundwater. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 3.13**

The commenter states that the regulation of groundwater is complex and controversial, and that Valley Water has the authority to regulate or limit groundwater pumping.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 3.14**

The commenter recommends that this Policy ENV-17.8 of the 2040 General Plan be explicitly expanded to ensure that existing natural recharge is maintained or expanded by new development and redevelopment.

This comment does not pertain to the Draft EIR or CEQA. However, for informational purposes, Impact HWQ-2 on page 4.10-14 of the Draft EIR, determined that the project would not substantially interfere with groundwater recharge. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 3.15**

The commenter expresses an opinion that tree preservation policies of the 2040 General Plan account for preservation of local riparian native species.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 3.16**

The commenter expresses an opinion that the discussion regarding dam inundation in Section 9.4 of the 2040 General Plan should also note that the Town of Los Gatos is also within the inundation area of Vasona Dam.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 3.17**

The commenter states that role of Valley Water in Haz 5.5 on page 9-14 of the 2040 General Plan is not clear, as Valley Water currently does not have existing or planned stormwater retention facilities within the Town.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 3.18**

The commenter suggests that page 4.4-11 of the Draft EIR should also reference the “Guidelines and Standards for Land Use near Streams”.

In response to this comment, page 4.4-11 of the Draft EIR has been revised as follows:

#### Guidelines and Standards for Land Use near Streams

The “Guidelines and Standards for Land Use near Streams” (Guidelines and Standards) were developed under the Santa Clara Valley Water Resources Protection Collaborative (Collaborative) to address land use activities near streams and to protect surface and groundwater quality and quantity in Santa Clara County. The Guidelines and Standards are intended to be used for the purposes of development review of proposed land use activities for new development, major redevelopment and where appropriate, single-family units. The Guidelines and Standards are intended to complement existing regulations, such as the City/County/SCVWD National Pollutant Discharge Elimination System (NPDES) Permitting Program provisions.

### **Response 3.19**

The commenter requests that page 4.9-21, Goal HAZ-13 of the Draft EIR remove reference to Valley Water in this context, further explaining that the RWQCB is the regulatory agency with the authority to direct site investigation and cleanup.

In response to this comment, the last paragraph on page 4.9-21 is herein revised as follows:

The extent to which groundwater may be affected from a UST, if at all, depends on the type of contaminant, the amount released, the duration of the release, and depth to groundwater. If groundwater contamination is identified, the RWQCB or the Santa Clara Valley Water District would need to characterize the vertical and lateral extent of the contamination and remediation activities prior to the commencement of any construction activities that would disturb the subsurface. If contamination exceeds regulatory action levels, the developer would be required to undertake remediation procedures prior to grading and development under the supervision of the RWQCB, depending upon the nature of any identified contamination. Compliance with existing State and local regulations and implementation of the 2040 General Plan policies identified above would reduce impacts to less than significant.

No additional revisions to the Draft EIR are required in response to this comment and it does not result in changes to impacts identified in the Draft EIR.

## Response 3.20

The commenter provides suggested text to use in place of text currently on pages 4.10-1 and 4.10-2 of the Draft EIR describing regional groundwater resources.

In response to this comment, pages 4.10-1 and 4.10-2 of the Draft EIR are herein revised as follows:

~~The groundwater sub-basin is managed by the Santa Clara Valley Water District (SCVWD), whose primary objective is to recharge the groundwater basin, conserve water, increase water supply, and prevent waste or reduction of the SCVWD's water supply. Historically, over-extraction of the groundwater basin has resulted in occurrences of subsidence within Santa Clara County. Subsidence occurs when underground water levels drop, and clay layers compact, resulting in a loss of aquifer capacity. In order to avoid any further subsidence and loss of aquifer capacity, the SCVWD has attempted to maintain the basin by augmenting natural percolation of rainfall and local stream runoff with imported water. The SCVWD has maintained a recharge program consisting of 18 major recharge systems, including instream and offstream facilities.~~

~~In addition, the SCVWD operates a treated groundwater recharge/surface water re-injection program that promotes the reuse of treated groundwater from the clean-up of contaminated sites and recharge of groundwater from local and imported surface water. In 2017, the groundwater recharge/re-injection program generated approximately 265 acre-feet (AF) per day of recharge. SCVWD also reduced groundwater demands by approximately 192,000 AF in 2017 through treated and recycled water deliveries and water conservation programs. Based on the efforts of the SCVWD, the groundwater elevation in the groundwater basin has been rising steadily for the past 40 years. Groundwater storage at the end of 2017 reached 338,900 AF, with 25,700 AF added in 2017. As stated in the 2017 SCVWD Annual Groundwater Management Report, the groundwater supply has reached a "normal" stage (stage 1) of the District's Water Shortage Contingency Plan and indicates good water supply conditions.~~

The groundwater sub-basin is managed by Santa Clara Valley Water District (SCVWD), whose primary objective is to recharge the groundwater basin, conserve water, increase water supply, and prevent waste or reduction of SCVWD's water supply. Subsidence occurs when underground water levels drop and clay layers compact, resulting in the sinking of the ground surface and a loss of aquifer capacity. To avoid any further subsidence SCVWD works to maintain the sub-basin by augmenting natural percolation of rainfall and local stream runoff via managed aquifer recharge using local and imported surface water. SCVWD's managed recharge program includes 18 major recharge systems with in-stream and off-stream facilities. In addition to directly replenishing groundwater, SCVWD reduces the need for groundwater pumping through treated and untreated surface water deliveries, water conservation, and recycled water programs.

In 2017, approximately 100,000 acre-feet (AF) of local and imported surface water replenished groundwater through SCVWD's managed aquifer recharge program. SCVWD also reduced groundwater demands by approximately 192,000 AF in 2017 through treated and recycled water deliveries and water conservation programs. Based on the efforts of SCVWD, the groundwater elevation in the groundwater basin has recovered from prior overdraft.

Groundwater storage at the end of 2017 reached 338,900 AF, with 25,700 AF added in 2017. As stated in the 2017 Valley Water Annual Groundwater Management Report, the groundwater supply has reached a "normal" stage (stage 1) of SCVWD's Water Shortage Contingency Plan and indicates good water supply conditions. While groundwater levels and storage decline

during droughts, SCVWD's comprehensive groundwater management activities provide for subsequent recovery, and groundwater in the sub-basin is sustainably managed.

No additional revisions to the Draft EIR are required in response to this comment and it does not result in changes to impacts identified in the Draft EIR.

### **Response 3.21**

The commenter expresses an opinion that text describing natural drainage systems on page 4.10-1 of the Draft EIR is unclear.

In response to this comment, page 4.10-1 of the Draft EIR is herein revised as follows:

The Town has several surface water channels within its limits. Los Gatos Creek, San Tomas Aquinas Creek, and Smith Creek flow south to north through the Town, and Ross Creek flows in a northeasterly direction. With the exception of Smith Creek and San Tomas Aquinas Creek, the water channels listed in the prior sentence are ultimately tributaries to the Guadalupe River, which is not within Town limits but nearby. Smith Creek is a tributary to San Tomas Aquinas Creek, which flows to Guadalupe Slough as direct tributary to the San Francisco Bay. A large valley in Los Gatos is also drained northward to the San Francisco Bay by tributaries including the Guadalupe River and Los Gatos Creek. Other unnamed natural water courses are also located within the Town limits.

No additional revisions to the Draft EIR are required in response to this comment and it does not result in changes to impacts identified in the Draft EIR.

### **Response 3.22**

The commenter states that on page 4.10-4, the Flood Hazards section should be labeled as item "e" and that the discussion should include flood hazards due to dam inundation.

In response to this comment, the last paragraph on page 4.10-4 is herein revised as follows:

#### **a.e. Flood Hazards**

Flood hazards occur when the amount of rainfall exceeds the infiltration capacity of the surrounding landscape or the conveyance capacity of the storm water drainage system. The Federal Emergency Management Agency (FEMA) delineates regional flooding hazards as part of the National Flood Insurance Program. FEMA identifies flood hazard risks through its Flood Insurance Rate Map (FIRM) program. Higher flood risk zones are called Special Flood Hazard Areas; these areas have a 1 percent chance or greater of flooding in any given year (also called the 100-year flood). Figure 4.10-1 shows the portions of the planning area that are located within the 100-year and 500-year FEMA designated flood hazard zones.

Additional flood hazards are posed by dam failure, tsunamis and seiches. Portions of Los Gatos are subject to flooding inundation from dam failure, such as failure of the dam at Lexington Reservoir. A tsunami is a wave generated by the sudden displacement of a large amount of water. Tsunamis can be triggered by earthquakes, volcanic eruptions, or similar events that occur under the water or the shore. Impacts of tsunamis can be both immediate and long-term. Seiches are a related hazard that can occur when a sudden displacement event or very strong winds happen in an enclosed or semi-enclosed body of water such as a lake or bay. Los Gatos is not susceptible to seiche.

No additional revisions to the Draft EIR are required in response to this comment and it does not result in changes to impacts identified in the Draft EIR.

### **Response 3.23**

The commenter expresses an opinion that on page 4.10-8, the discussion pertaining to Valley Water's Ordinance needs to be updated and to discuss the Guidelines and Standards for Land-Use Near Streams.

In response to this comment, page 4.10-8 of the Draft EIR is herein revised as shown below:

~~SCVWD Chapter 83-2 of Ordinance 06-01 requires a permit for work where SCVWD has a property interest or has a facility impacted by the proposed work. construction activities near a stream. It is intended to secure the health, safety, and welfare of people by facilitating prudent floodplain management, protecting water quality, securing maintenance of watercourses, and prohibiting injury to SCVWD property and facilities. The ordinance also defines the SCVWD's permitting jurisdiction on streams and describes the requirements and procedure to obtain a permit for construction or encroachment activities on a stream. The Town has not directly adopted Ordinance 06-01 in 2007 and instead uses Guidelines and Standards for Land-Use Near Streams. The Guidelines and Standards were developed cooperatively between SCVWD, Santa Clara County, all 15 cities within Santa Clara County, with citizens, business, and agricultural interests to streamline the permitting process and protect stream and streamside resources. The Guidelines and Standards are designed to address land use activities near streams and to protect surface and groundwater quality and quantity in Santa Clara County. The Guidelines and Standards are intended to be used for the purposes of development review of proposed land use activities for new development, major redevelopment and where appropriate, single-family units.~~

No additional revisions to the Draft EIR are required in response to this comment and it does not result in changes to impacts identified in the Draft EIR.

### **Response 3.24**

The commenter expresses an opinion that page 4.10-8 of the Draft EIR be expanded to discuss the Santa Clara Valley Water District Groundwater Management Plan.

In response to this comment, page 4.10-8 of the Draft EIR is herein revised as follows:

Nearly half of the water used in Santa Clara County is pumped from the Santa Clara and Llagas subbasins, with some communities relying solely on groundwater. Imported water includes the District's State Water Project and Central Valley contract supplies and supplies delivered by the San Francisco Public Utilities Commission (SFPUC) to cities in northern Santa Clara County. Local sources include natural groundwater recharge and surface water supplies. A growing portion of the County's water supply is recycled water. The SCVWD operates and maintains 10 surface water reservoirs, 169,000 acre-feet total reservoir storage capacity, 17 miles of raw surface water canals, 393 acres of groundwater recharge ponds, 91 miles of controlled in-stream recharge, 142 miles of pipelines, three pumping stations, three drinking water treatment plants, and the Silicon Valley Advanced Water Purification Center.

The SCVWD's groundwater management goals, strategies, activities, and metrics are described in the 2016 Groundwater Management Plan for the Santa Clara and Llagas Subbasins. This plan, adopted by the SCVWD Water's Board of Directors, was submitted to the Department of Water

Resources as an Alternative to a Groundwater Sustainability Plan. In 2019, the Groundwater Management Plan was approved by the Department of Water Resources as an Alternative to a Groundwater Sustainability Plan for Sustainable Groundwater Management Act compliance. As required by the Sustainable Groundwater Management Act, the SCVWD will submit updates every five years, with the first update due by January 1, 2022.

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

### **Response 3.25**

The commenter recommends that references to SCVWA on page 4.10-14 of the Draft EIR be revised to SCVWD.

In response to this comment, the following sentence on page 4.10-14 of the Draft EIR is herein revised as shown below:

~~Growth in the Town of Los Gatos that would be facilitated by the 2040 General Plan has been incorporated into the SCVWA 2015 Urban Water Management Plan (UWMP).~~

This sentence has been removed from the Draft EIR and is discussed further in Response 9.44. No additional revisions to the Draft EIR are required in response to this comment.

### **Response 3.26**

The commenter states that the Impact Analysis on Page 4.10-16 appears to be mislabeled as Impact Analysis HWQ-2 and should be revised to HWQ-3.

In response to this comment, the Impact Analysis statement on page 4.10-16 is herein revised as follows:

**IMPACT HWQ-2 HWQ-3** DEVELOPMENT FACILITATED BY THE 2040 GENERAL PLAN COULD BE SUBJECT TO FLOOD HAZARDS AND COULD IMPEDE OR REDIRECT FLOOD FLOWS TO ADJACENT AREAS. COMPLIANCE WITH APPLICABLE PROVISIONS OF THE LOS GATOS MUNICIPAL CODE WOULD REQUIRE NEW DEVELOPMENT TO BE DESIGNED AND CONSTRUCTED SUCH THAT THE RISK AND DAMAGE OF FLOODING IS NOT EXACERBATED BY IMPLEMENTATION OF THE 2040 GENERAL PLAN. IMPACTS RELATED TO FLOODING AND FLOOD HAZARDS WOULD BE LESS THAN SIGNIFICANT.

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

### **Response 3.27**

The commenter states that the Impact Analysis on Page 4.10-18 appears to be mislabeled as Impact Analysis HWQ-3 and should be revised to HWQ-4.

In response to this comment, the Impact Analysis header on page 4.10-16 is herein revised as follows:

**IMPACT HWQ-3 HWQ-4** THE TOWN OF LOS GATOS IS NOT WITHIN AN AREA AT RISK FROM INUNDATION BY SEICHE OR TSUNAMI, AND THEREFORE WOULD NOT BE AT RISK OF RELEASE OF POLLUTANTS DUE TO PROJECT INUNDATION. THERE WOULD BE NO IMPACT.

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

### **Response 3.28**

The commenter expresses an opinion that the Draft EIR should specify what storm events are to be analyzed when ensuring post-development runoff is maintained to pre-development levels.

The Draft EIR analyzes the potential environmental impacts that could result from implementation of the 2040 General Plan. The Draft EIR does not evaluate project-specific impacts related to stormwater runoff or post-project-construction stormwater runoff volumes. Individual projects would be evaluated for consistency with the Town's post-construction stormwater runoff requirements and permit regulations in the future, if and when specific projects are proposed. Accordingly, no revisions to the Draft EIR are required in response to this comment.

### **Response 3.29**

The commenter expresses an opinion that this comment letter contains comments pertaining to the 2040 General Plan and the Draft EIR, and those comments should be applied to both documents as appropriate.

Please see responses 3.1 through 3.29 for a description of how each comment in comment letter 3 has been addressed. As described above in Section 2.1, this document constitutes the Final EIR for the proposed project. Therefore, this document shows revisions that are applicable to the EIR and does not make revisions to the 2040 General Plan. Accordingly, no additional revisions to the Draft EIR are required in response to this comment.

## LETTER 4



Midpeninsula Regional Open Space District

September 10, 2021

Jennifer Armer, AICP, Senior Planner  
Town of Los Gatos  
110 E. Main Street  
Los Gatos, CA 95030

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

Dear Ms. Armer,

Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Los Gatos 2040 General Plan Update (2040 General Plan Update or Project). Midpeninsula Regional Open Space District (District) respectfully submits the following comments on the Project. The District is pleased to see how the Los Gatos 2040 General Plan Update focuses on promoting regional climate resilience and addresses key environmental concerns, including the protection of natural resources and the reduction of greenhouse gas emissions. Thank you for addressing the comments we submitted for the notice of preparation by evaluating the aesthetic effects on scenic vistas and impacts to established native resident and migratory wildlife corridors.

### **Background on the District**

The District owns and manages nearly 65,000 acres of open space land in the Santa Cruz Mountains region. Our mission is:

*To acquire and preserve a regional greenbelt of open space land in perpetuity; protect and restore the natural environment; and provide opportunities for ecologically sensitive public enjoyment and education.*

The District's 26 Open Space Preserves include redwood, oak, and fir forests, chaparral-covered hillside riparian corridors, grasslands, coastal terraces along the Pacific Ocean, and wetlands along the San Francisco Bay. Ranging from 55 to over 18,000 acres, 24 of the 26 preserves are open to the public free of charge, 365 days a year.

### **District's relevance to the Project**

The District owns and manages three preserves adjacent to the Town of Los Gatos: El Sereno, St. Joseph's Hill, and Sierra Azul Open Space Preserves. As shown in DEIR Figure 4.14.-3, Los Gatos Open Space map, St. Joseph's Hill and Sierra Azul Open Space Preserves are particularly significant regional open space and public recreational sites, with extensive trails available for public use. St. Joseph's Hill and portions of Sierra Azul Open Space Preserves are within the town limits and/or in close proximity to the Opportunity Areas identified in the 2040 General Plan Update.



Some of the comments in the following sections relate to a significant regional partnership project: the District's ongoing Highway 17 wildlife and recreational trail crossings and trail connections project (Highway 17 Project). The District engaged with staff from the Town of Los Gatos - Director of Parks and Public Works and Special Projects Manager- in April 2016 at a joint meeting with Bay Area Ridge Trail Council and Santa Clara County Parks and Recreation during the feasibility study phase for the HWY 17 Project. We appreciate the collaboration with the Town on the Highway 17 Project.

#### **Comments on the DEIR**

The DEIR does not adequately address several potential environmental impacts associated with development facilitated by the General Plan Update to adjacent District lands, as described below.

The following comments are focused on impacts associated with wildland fire, noise, special status species and the Highway 17 Project.

##### **1. Wildfire (Section 4.17)**

On May 12, 2021, the District Board of Directors approved the Wildland Fire Resiliency Program and Environmental Impact Report that can be found [online](#). The District's Wildland Fire Resiliency Program (Program) addresses the District Board of Directors' strategic objective to work with wildland fire agencies and surrounding communities within District boundaries to prepare, prevent, and respond to wildland fires. The Board-approved Program is designed to: a) protect natural and cultural resources, b) strengthen landscape-level ecological resilience to changing climate and fire risk conditions, and c) facilitate ecologically sensitive wildfire response and training, while simultaneously enhancing public safety and education. The District is currently a partner in the Los Gatos Creek Watershed Collaborative Forest Health Project. This collaborative landscape-level effort has identified an interconnectable mosaic pattern of treatment areas that, with ecologically sensitive treatments, meet the goals of the Forest Health Program to:

- Establish healthy, resilient fire-adapted ecosystems to protect and conserve natural resources.
- Protect upper watersheds where important regional water supplies originate.
- Promote the long-term storage of carbon and reduce the severity of catastrophic wildfire thereby increasing community and forest ecosystem protection.

The DEIR should address the need for the Town of Los Gatos to coordinate with the District on Fire Protection Policies, due to the high or very high fire hazard areas in the southern and eastern portions of Town Planning Area. The District requests the Town engage with their appropriate Fire Agency to participate in annual fire resiliency meetings to discuss topics such as recommendation for vegetation management and project prioritization. These areas are adjacent to and in close proximity of St. Joseph's Hill and Sierra Azul Open Space Preserves, where the District hopes to coordinate closely on wildland fire measures with the Town.

4.1



## 2. Noise (Section 4.12)

Midpeninsula open space preserves provide a tranquil nature experience for the community. The District is concerned about construction noise from projects related to the general plan update and its impacts to recreational users. Impact N-1 states, "Construction of individual project facilitated by the 2040 general plan would temporarily generate increase noise levels, potentially affecting nearby noise sensitive land uses". The Los Gatos Town Code permits construction noise between the hours of 8:00 a.m. and 6:00 p.m. on weekdays and 9:00 a.m. to 4:00 p.m. on Saturdays with a valid Town permit.

The DEIR does not adequately address noise impacts associated with project construction near El Sereno, St. Joseph's Hill and Sierra Azul Open Space Preserves. The District suggests mitigating construction noise near these Preserves by limiting construction to weekdays between the hours of 8 a.m. to 5 p.m. and limiting weekend construction to minimize noise impacts to recreational users of the Preserves. The Town should notify the District of proposed developments adjacent to open space preserves to provide opportunity to review and comment.

4.2

## 3. Biological Resources (Section 4.4)

The DEIR should revise the following descriptions regarding special status species in Section 4.4 Biological Resources:

Page 4.4-3 states the "endangered San Joaquin kit fox were found in and adjacent to this habitat". However, the San Joaquin kit fox is not found within Los Gatos or nearby areas. The closest documentation of this species is near Pinnacles National Park and San Luis Reservoir. [\(See figure 51 in the Endangered Species Recovery Program\)](#)

4.3

Page 4.4-4

- The *Lolium multiflorum* (Italian wild rye) is identified, however it is no longer a recognized species and is now included under the name *Festuca perennis*.
- Alkali mallow (*Malvella leprosa*) is stated to be a "non native annual weed" but is considered a perennial native plant.
- Peppergrass' scientific name, *Lepidium latifolium*, is misspelled and is considered a perennial forb.

4.4

Page 4.4-12

Under the Impact BIO-1, the DEIR should include pallid bats as a special status species that may be in the area. Pallid bats are known to use bridges and buildings for day, night, or maternity roosts ([Terrestrial Mammal Species of Special Concern in California](#), Bolster, B.C., Ed., 1998).

4.5



#### 4. Transportation (Section 4.15)

As part of the Highway 17 Project, the District is currently working with Caltrans and many local and regional stakeholders on planning and developing wildlife and regional trail crossings across Highway 17 in the Los Gatos Planning Area north of Lexington Reservoir. The goal for the regional trail crossings is to close the gap in the Bay Area Ridge Trail (Ridge Trail) and Juan Bautista de Anza National Historic Trail (Anza Trail) that exists due to the presence of Highway 17 and the challenging topography and mosaic of ownership and jurisdiction in this area. It has long been a high priority for the District, the County of Santa Clara Department of Parks and Recreation (Santa Clara County Parks) and other partners to close the gap in these two trail systems. Both of these regional trails are included in the County of Santa Clara General Plan as part of the *Santa Clara County Countywide Trails Master Plan Update* (1995). Santa Clara County Parks prioritized the Ridge Trail and Anza Trail gap in their Countywide Trails Prioritization and Gaps Analysis Report (2015). Highway 17 Project information can be found [online](#).

4.6

As a future recreational amenity to Town residents, this regional trail crossing provides a future connection to the Los Gatos Creek Trail and the existing trail systems in El Sereno, St. Joseph's Hill, and Sierra Azul Open Space Preserves in and adjacent to the Town's Planning Area. The DEIR should acknowledge the Bay Area Ridge Trail and Anza Trail as regional multi-use trails that promote walking and bicycling that will connect to the Los Gatos Creek Trail and Town's trails and bicycle network and should be added as future planned pedestrian/bicycle facilities in the Town's Bicycle and Pedestrian Master Plan (2020).

Additionally, due to the current need for remote work during the COVID-10 pandemic, the District requests to be kept informed of this project's status via email. Updates can be sent to the two following addresses: [jmark@openspace.org](mailto:jmark@openspace.org) and [mborges@openspace.org](mailto:mborges@openspace.org).

4.7

We appreciate the opportunity to comment on this DEIR and participate in any further planning processes. Should you have any questions about this letter, please contact me at [jmark@openspace.org](mailto:jmark@openspace.org) or at (650) 625-6563.

Sincerely,

A handwritten signature in black ink, appearing to read "Jane Mark".

Jane Mark, AICP  
Planning Manager

CC: Ana Ruiz, AICP, General Manager, Midpeninsula Regional Open Space District  
Susanna Chan, Assistant General Manager, Midpeninsula Regional Open Space District  
Alex Sabo, Bay Area Ridge Trail Council  
Scott Elder, National Park Service Juan Bautista de Anza National Historic Trail  
Jeremy Farr, Santa Clara County Parks

## Letter 4

**COMMENTER:** Jane Mark, Planning Manager, Midpeninsula Regional Open Space District

**DATE:** September 10, 2021

### Response 4.1

The commenter summarizes its Wildland Fire Resiliency Program and Forest Health Program and requests that the Draft EIR address the need for the Town to coordinate with the Midpeninsula Regional Open Space District regarding fire hazard measures, such as recommendation for vegetation management and project prioritization.

The Draft EIR does not preclude the Town from coordinating with the Midpeninsula Regional Open Space District regarding fire hazard measures. However, coordination between the Town and the District does not constitute CEQA mitigation to reduce impacts of the proposed project.

Coordination does not constitute mitigation because coordination alone does not demonstrate a measurable reduction in fire hazards. The outcome of such coordination could constitute mitigation and reduce impacts related to fire hazards, but the outcome of such coordination is unknown and cannot be known until coordination occurs. Accordingly, no additional analysis or further revisions to the Draft EIR are required in response to this comment.

### Response 4.2

The commenter expresses an opinion that the Draft EIR does not adequately address noise impacts associated with project construction near open space preserves and suggests mitigating construction noise by limiting construction hours. The commenter also asks to be notified of projects adjacent to open space preserves.

The commenter's opinion that the Draft EIR inadequately addresses construction noise impacts near open space preserves is inaccurate. As described on page 4.12-9 of the Draft EIR, noise from individual construction projects carried out under the 2040 General Plan would temporarily increase ambient noise levels at 25 feet and at adjacent property lines. This would include open space preserve property adjacent to individual construction projects. As described further on pages 4.12-9, the Town has existing policies that limit construction hours on weekdays and prohibits construction on weekends, unless a permit is obtained for construction during limited hours on Saturday. Therefore, the commenters suggested mitigation to reduce construction noise impacts by limiting construction hours is already accounted for in the analysis due to existing Town regulations contained in Section 16.20.035 of the Los Gatos Town Municipal Code. As stated on page 4.12-11, construction noise impacts would be significant and unavoidable despite the Town's limits on construction hours and days and implementation of mitigation measure N-1, provided on pages 4.12-11 and 4.12-12 of the Draft EIR. Accordingly, inclusion of a mitigation measure in the Draft EIR limiting construction hours is not necessary as it is already required by the Los Gatos Town Municipal Code and does not reduce impacts to less than significant.

This commenter's request to be notified of development proposed adjacent to open space preserves does not pertain to the Draft EIR, which programmatically evaluates the environmental impacts of implementing the 2040 General Plan. Accordingly, no revisions or additional analysis to the Draft EIR are required in response to this comment.

### **Response 4.3**

The commenter states that on page 4.4-3, the San Joaquin kit fox is not found within Los Gatos or nearby areas.

In response to this comment, the following sentence on page 4.4-3 of the Draft EIR is herein revised as shown below:

Grasslands provide foraging and nesting habitat for a wide variety of wildlife species including raptors, seed eating birds, small mammals, amphibians, and reptiles. Wildlife species typically associated with grasslands include black-tailed jackrabbit (*Lepus californicus*), California ground squirrel (*Otospermophilus beecheyi*), Botta's pocket gopher (*Thomomys bottae*), American badger (*Taxidea taxus*), coyote, western skink (*Eumeces kiltonianus*), Pacific gopher snake, common garter snake (*Thamnophis sirtalis*), deer mouse (*Peromyscus spp.*), western harvest mouse (*Reithrodontomys megalotis*), California vole (*Microtus californicus*), mule deer, western meadowlark (*Sturnella neglecta*), and savannah sparrow (*Passerculus sandwichensis*).

Grasslands also provide important foraging habitat for raptors such as the American kestrel (*Falco sparverius*), white-tailed kite (*Elanus leucurus*), northern harrier (*Circus cyaneus*), and red-tailed hawk (*Buteo jamaicensis*). ~~The endangered San Joaquin kit fox (*Vulpes macrotis mutica*) and threatened California tiger salamander (*Ambystoma californiense*) are also found in and adjacent to this habitat.~~

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

### **Response 4.4**

The commenter indicates that page 4.4-4 of the Draft EIR should be updated with the scientific nomenclature of plants species and their status.

In response to this comment, page 4.4-4 of the Draft EIR is herein revised as shown below:

Seasonal wetlands can be populated by plants species such as spike rush (*Eleocharis macrostachya*), water knotweed (*Polygonum lapathifolium*), water evening primrose (*Ludwigia peploides*), pennyroyal (*Mentha pulegium*), rabbits foot grass (*Polypogon monspeliensis*), barnyard grass (*Echinochloa crus-galli*), and eragrostoid sedge (*Cyperus eragrostis*). These species are either lowgrowing, tenacious perennials that tolerate annual channel and ditch activity, or are annuals that tolerate seasonal wetness and mowing, and produce seed for the next season. The edges of wetlands are often dominated by non-native annual weeds and perennial native plants such as annual ryegrass (*Lolium multiflorum*), alkali mallow (*Malvella leprosa*), peppergrass (*Lepidium latifolium* *Lepidium latifolium*), and bristly oxtongue (*Picris echioides*). Vernal pools, seasonal water features found in small depressions with a hardpan soil layer, support calicoflowers (*downingia spp.*), meadow foam (*Limnanthes alba*), and other species.

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

### **Response 4.5**

The commenter suggests that Impact BIO-1 should include pallid bats as a special status species that may be in the area.

Impact BIO-1 beginning on page 4.4-12 of the Draft EIR includes a discussion of impacts from the 2040 General Plan on special-status species and migratory bird nest sites. Impact BIO-1 generally discusses the numerous special-status species with the potential to occur in the planning area, specifically utilizing Table 4.4-2 (page 4.4-5 of the Draft EIR) which includes the Pallid bat.

Therefore, impacts to pallid bats are evaluated within Impact BIO-1, and no revisions to the Draft EIR are necessary in response to this comment.

#### **Response 4.6**

The commenter summarizes a planned trail crossing at Highway 17 that would close an existing gap in regional trails and requests that the Draft EIR acknowledge the regional trails importance and to add the trails and planned crossing to the Town's Bicycle and Pedestrian Master Plan (2020).

In response to this comment, page 4.15-8 of the Draft EIR is herein revised as shown below:

##### Bay Area Ridge Trail

The Bay Area Ridge Trail (Ridge Trail) is a multi-use trail system along the ridgelines encircling the San Francisco Bay Area, open to hikers, mountain bicyclists, and equestrians. At the time of this report, 393 miles of the Ridge Trail are open to the public today. The Ridge Trail is planned to connect to the Los Gatos Creek Trail at the Highway 17 crossing, which will provide a valuable recreational amenity to Town residents as a connection to trails throughout El Sereno, St. Joseph's Hill, and Sierra Azul Open Space Preserves.

In addition, it has been noted that the commenter requests that the Bay Area Ridge Trail be added to the Town's Bicycle and Pedestrian Master Plan (2020). The comment is noted in this record. However, this comment does not pertain to the 2040 General Plan, Draft EIR, or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment and it does not result in change to impacts identified in the Draft EIR.

#### **Response 4.7**

The commenter requests to be informed of the status of the 2040 General Plan project via email.

This comment does not pertain to the Draft EIR, and therefore no revisions to the Draft EIR are required in response to this comment. However, this comment is noted, and the email addresses provided in the comment letter have been added to the project mailing list.

## LETTER 5



13 September 2021

Jennifer Armer, Senior Planner  
Town of Los Gatos  
110 E. Main Street  
Los Gatos, CA 95030

Re: Draft EIR for the 2040 General Plan

Dear Ms. Armer,

Santa Clara Valley Audubon Society (SCVAS) is one of the largest National Audubon Society chapters in California. SCVAS' mission is to promote the enjoyment, understanding, and protection of birds and other wildlife by engaging people of all ages in birding, education, and conservation. As a lifelong resident, I look forward to seeing our town thrive and be compatible with nature. Having reviewed the Draft EIR (DEIR), we appreciate the work in addressing bird safety, riparian habitats protection, and tree preservation. We hope you will take into consideration the following comments related to lighting, bird safety, riparian habitats, and wildlife corridors to help strengthen environmental protections within the DEIR.

### Lighting

Lighting near sensitive habitats affects migration, behavior, mating, and pollination among species and intraspecific relations, ultimately impacting ecosystem viability.

#### Outdoor Lighting:

The evidence that Artificial Light At Night (ALAN) causes pervasive harm to our health, our ecosystems and our planet is overwhelming<sup>1</sup>. Last year, more than 950 people took part in the United Nations interdisciplinary workshop titled 'Dark and Quiet Skies for Science and Society'<sup>2</sup>, The workshop explained the science based need to eliminate excessive night lighting and noise

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<sup>1</sup> <https://www.frontiersin.org/articles/10.3389/fnins.2020.602796/full> and <https://www.popsci.com/story/science/dark-sky-places/>

<sup>2</sup> The online workshop was organised by the United Nations Office for Outer Space Affairs (UNOOSA) and the IAU, together with the meeting hosts at the Instituto de Astrofísica de Canarias (IAC), with support from the National Science Foundation's NOIRLab.

pollution. A report<sup>3</sup>, compiled by over 80 scientific experts, was published earlier this year (2021). The Bio Environment chapter of this report makes recommendations for outdoor lighting in all areas, and particularly in protected dark sky areas. In addition, the International Dark Sky Association adopted a new policy<sup>4</sup> (2021) focused on Principles for Responsible Outdoor Lighting. The following recommendations should apply to any development adjacent to water features and waterways and in the vicinity of parks, open space and other biological habitats. Here is a summary of the recommendations:

- Sensitive environments should be kept dark, and regions surrounding these sites should only make use of lighting that emits no light at wavelengths shorter than 520 nanometers.
- The correlated color temperature of lighting used in most outdoor applications should not exceed 2200K, and where light with a larger fractional emission of short wavelengths is desired, it should be carefully controlled through stringent application of the other Lighting Principles, such as lower intensity, careful targeting, and reduced operation time.
- The use of up-lighting should be avoided.
- Over-lighting relative to task-related needs should be prevented by maintaining illuminances as close as possible to the minimum levels.
- All outdoor lighting should be actively controlled through means such as dimmers and motion-sensing switches so as to reduce illuminances or extinguish lighting altogether when the light is not needed.

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#### Indoor Lighting:

Most birds migrate at night and nocturnally migrating birds are attracted to light<sup>5</sup>. The National Audubon Society's Lights Out program<sup>6</sup> is a national effort to reduce the attraction of these birds to inhospitable locations.

By convincing building owners and managers to turn off excess lighting during the months migrating birds are flying overhead (in the Bay area - March through May, and August through November), Audubon and other organizations provide birds with safe passage between their nesting and wintering grounds.

#### Bird Safety Requirements in the Bay Area

<sup>3</sup> <https://www.iau.org/static/publications/dqskies-book-29-12-20.pdf>

<sup>4</sup> <https://www.darksky.org/values-centered-lighting-resolution/>

<sup>5</sup> <https://www.nytimes.com/2021/04/10/us/bird-migration-lights-out.html>

<sup>6</sup> <https://www.audubon.org/conservation/project/lights-out>

Bird collisions with structures, buildings, and glass are a main driver for avian fatality<sup>7</sup>. Recognizing that buildings and lighting are hazardous to birds, many Bay area cities have established bird safety requirements for new buildings, especially near water bodies, waterways, and open space. Most of these requirements include aspects of both glass treatments and lighting.

- In 2011 **San Francisco** created its *Standards for Bird-Safe Buildings*<sup>8</sup>, acknowledging that buildings pose a “biologically significant” risk for various bird species. The San Francisco ordinance regulates 1) location-related hazards, where buildings/structures pose a risk to birds, specifically near open space and water, and 2) feature-related hazard, in which the features of a building pose risks to birds regardless of their location. This includes, window treatments, lighting design, and lighting operation. **The City of Palo Alto** implemented the same San Francisco Standards.
- In 2018 the **City of Alameda** passed a Bird Safe Building Design and Updated Outdoor Light ordinance<sup>9</sup> to comply with their established dark skies initiatives. The ordinance establishes glazing (glass) requirements as well as outdoor lighting restrictions with the purpose of reducing bird mortality, increasing environmental health, and ensuring human health and safety.
- The **City of San José**, within its 2021 Citywide Design Standards and Guidelines<sup>10</sup>, emphasizes citywide bird-safe building design, especially near bird habitats, such as open spaces and water bodies. Specifically, San José standards state that for façades located within 300 feet from a body of water or 100 feet of “landscaped area, open space, or park larger than one acre in size,” bird safety treatment must be applied to “at least 90 percent of glazed areas within 60 feet of grade.”
- Adopted in 2014, the **City of Sunnyvale**<sup>11</sup> also specifies bird-safe building designs for structures within 300 feet of water or immediately adjacent to a landscaped area, open space, or park. These requirements are more stringent than their bird-safe building design requirements throughout the rest of the city as these structures are directly adjacent to bird habitat.
- In the **City of Mountain View**, the 2017 North Bayshore Precise Plan<sup>12</sup> requires bird safety for all new buildings and retrofits in this area of the city. Ninety percent of the building facade must be protected from collisions. The plan also includes

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<sup>7</sup> Loss et al (2014). Bird-building collisions in the United States: Estimates of annual mortality and species vulnerability, *The Condor*.

<https://bioone.org/journals/the-condor/volume-116/issue-1/CONDOR-13-090.1/Birdbuilding-collisions-in-the-United-States-Estimates-of-annual/10.1650/CONDOR-13-090.1.full>

<sup>8</sup> <https://sfplanning.org/standards-bird-safe-buildings>

<sup>9</sup> <https://perma.cc/7CPE-UWC7>

<sup>10</sup> <https://www.sanjoseca.gov/Home/ShowDocument?id=69148> Section 3.3.6, page 50

<sup>11</sup> <https://sunnyvale.ca.gov/civicax/filebank/blobdload.aspx?BlobID=23799>

<sup>12</sup> <https://www.mountainview.gov/civicax/filebank/blobdload.aspx?BlobID=29702> section 5.2 page 125

lighting restrictions, especially near parks, creeks, and wetlands.

- Most recently (April 2021), the **City of Cupertino** passed a citywide bird-safe design and dark sky ordinance. The ordinance<sup>13</sup> identifies “bird-sensitive areas,” which include “parcels in or within 300 feet of the Wildland Urban Interface; within 300 feet of watercourses; in Residential Hillside areas; and within 300 feet of public and private, open spaces, and parks that are dominated by vegetation, including vegetated landscaping, forest, meadows, grassland, or wetlands.”
- Finally, **Santa Clara County** supervisors indicated an interest in Bird Friendly Design. The County manager has directed the Director of the Planning Department to assign a Planner to provide ‘Bird Safety Rules’, with the expectation that a proposal from the Administration would go to the Board no later than the fourth quarter, 2021<sup>14</sup>.

#### Riparian Habitats and Migration Corridors

Rivers and their riparian corridors are the most natural and geographical features in urban landscapes. Riparian corridors provide critically important habitat for aquatic invertebrates, fish, amphibians, birds, and mammals, especially in landscapes modified by humans, where the rivers, creeks and their riparian ecosystems are often the last remaining habitats that provide resources and sustain wildlife. Numerous species are dependent on riparian corridors (and water within) for survival at least for some part of their life cycle: foraging, breeding, migration, and dispersal. Many breeding birds in Santa Clara Valley are associated with the riparian corridors, as evident from breeding maps of bird species provided in the Breeding Bird Atlas of Santa Clara County, California<sup>15</sup>. Many of these species nest in riparian corridors that are not pristine.

5.1

The conservation value of even small, isolated remnants of habitat have been shown to be much more important for biodiversity conservation than often recognized<sup>16</sup>. This is particularly true in heavily modified, human-dominated landscapes such as cities.

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<sup>13</sup> City of Cupertino Dark Sky and Bird Safe Design Ordinance

<https://cupertino.legistar.com/立法Detail.aspx?ID=4835805&GUID=2F607809-7762-4DD4-8AAF5C6CA1BA0F6B&Options=&Search=>

<sup>14</sup> Email from County Manager Sylvia Gallegos to Shani Kleinhaus, February 10, 2021

<sup>15</sup> Breeding Bird Atlas of Santa Clara County, California. (2007). William G. Bousman. Santa Clara Valley Audubon Society.

<sup>16</sup> <https://www.pnas.org/content/116/3/717>

In their global analysis encompassing 28 countries, Wintle et al.<sup>17</sup> show that many species would be lost if small, isolated patches of remnant habitat were ignored and conservation efforts were focused solely on large, intact, and highly connected areas. The work of Wintle et al. adds to the array of case studies that likewise highlight the importance of small (and often relatively isolated) patches for conservation (for example, Leroux et. al. 2007).<sup>18</sup>

5.1

## DEIR

When reviewing the DEIR, I focused mostly on the Biological Resources section. Please find our comments below relating to the biological impacts.

**DEIR P. 133: “Impact BIO-1 Development facilitated by the 2040 General Plan could result in isolated impacts to habitat for special-status species and impacts to migratory bird nest sites. Impacts would be less than significant.”**

Of the goals and policies listed to reduce impacts to special-status species and their habitats, please consider:

5.2

In order to ensure Policy ENV-4.2 “Maintain and support a network of open space preserves that protects the urban and natural forest and offers all residents access to nature” reduces effects of Impact Bio-1, please specify that some open space preserves should not be accessible to residents. Natural environment and human access are not always compatible and in order to protect habitat for special-status species and impacts to migratory birds, some spaces should not be accessible to humans.

Please consider making Policy ENV-6.3 “Require setbacks and measures as appropriate to protect riparian corridors” more specific. Other cities require any new development or remodel or retrofit within 300-ft of a riparian corridor to have 100% bird-safe design measures, have a 100-ft development setback from riparian corridor, and prohibit lighting near riparian corridors. Please consider implementing a policy to create a townwide riparian setback policy to enforce development standards near riparian corridors.

5.3

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<sup>17</sup> Wintle BA, et al. (2019) Global synthesis of conservation studies reveals the importance of small habitat patches for biodiversity. *Proc Natl Acad Sci USA* 116:909–914. [Abstract](#) [FREE Full Text](#) [Google Scholar](#)

Bennet, et al. (2014) Riparian vegetation has disproportionate benefits for landscape-scale conservation of woodland birds in highly modified environments. *Journal of Applied Ecology*.

Tulloch, et al. (2016) Understanding the importance of small patches of habitat for conservation. *Journal of Applied Ecology*.

Lindenmayer. (2019) Small patches make critical contributions to conservation efforts. *Proc Natl Acad Sci USA*.

<sup>18</sup> Leroux SJ, et al. (2007) Minimum dynamic reserves: A framework for determining reserve size in ecosystems structured by large disturbances. *Biological Conservation*.

While both Policy ENV-7.1 “Ensure that public and private projects shall not significantly deplete, damage, or alter existing wildlife habitat or populations”, Policy ENV-7.3 “Maintain wildlife habitat and movement corridors for native wildlife species, specific to Santa Clara County”, and Policy OSP-2.4. “Adjacent parcels in the hillsides shall provide an uninterrupted band of usable segments for wildlife corridors and recreational use, if applicable” protect wildlife habitat and movement corridors, the town needs to study where these movement corridors occur, especially in the hillsides. We cannot protect these movement corridors from development if we do not know where they are. Please consider adding a policy to create a town wide wildlife corridor study that researches where movement corridors exist and what structures are already infringing upon or helping habitat and movement (e.g. fences, buildings, structures, culverts, roads, and lighting).

5.4

For Policy ENV-7.10 “Require new development to increase bird safety by reducing hazardous building and architectural elements and including bird safe and lighting design” to reduce effects of Impact BIO-1, please specify new development, as well as remodels and retrofits. Additionally, Impact BIO-1 states the plan could result in “isolated” impacts, however, lighting can cause cumulative impacts to birds and sensitive habitats<sup>19</sup>.

5.5

For Policy ENV-7.11, “Require the design of building, street, and parking area lighting to improve safety, energy efficiency, protection of the night skies (dark sky protections), and environmental soundness” to reduce effects of Impact BIO-1, please add regulation of landscaping lighting. Additionally, lighting regulation should not only protect the night sky, but biological resources as well. Finally, please consider conducting a town wide dark sky program to enhance this policy.

5.6

For Goal OSP-5 “Preserve and enhance Los Gatos Creek, Los Gatos Creek Trail, and Ross Creek as open space amenities” to reduce effects of Impact BIO-1, please consider specifying that these open space amenities are critical to protecting biological resources.

5.7

**DEIR P. 137 Impact BIO-2 “The 2040 General Plan would facilitate development that could result in construction within riparian habitat, and direct placement of fill in wetlands. However, compliance with existing regulations and implementation of 2040 General Plan policies would reduce potential impacts to less than significant.”**

Of the goals and policies listed to reduce impacts to special-status species and their habitats, please consider:

5.8

<sup>19</sup> Loss et al (2014). Bird-building collisions in the United States: Estimates of annual mortality and species vulnerability, *The Condor*.

<https://bioone.org/journals/the-condor/volume-116/issue-1/CONDOR-13-090.1/Birdbuilding-collisions-in-the-United-States--Estimates-of-annual/10.1650/CONDOR-13-090.1.full>

For Policy ENV-16.4 “Conserve existing creeks and avoid disturbances to these areas” types of disturbances should be specified to prevent any development or structure that would harm any species or habitat, including: fencing, lighting, structures, hydrological barriers, and roads. Additionally, in order to protect riparian habitat and reduce Impact BIO-2, please consider adding a policy to add a habitat overlay zone or riparian buffer zone to ensure riparian setbacks are enforced and riparian corridors are protected.

5.8

**DEIR Impact BIO-3 p. 139 “Development facilitated by the 2040 General Plan could result in construction within streams and associated riparian zones that serve as wildlife movement corridors. However, implementation of 2040 General Plan policies preserving streams and wildlife movement corridors, as well as open space would reduce impacts to less than significant.”**

5.9

Within Goal LU-6, “Ensure housing in the hillsides will not adversely affect the natural environment or endanger public health and safety”, in order to protect migration corridors, please consider expanding language to include the protection of biological corridors. Adverse effects could be due to: lighting, hydrological barriers, roads, new development, remodels/retrofits, glass, fencing, and other physical barriers.

**DEIR Impact BIO-4 p. 141 “Development facilitated by the 2040 General Plan would result in removal of trees. However, the 2040 General Plan policies encourage tree preservation and replacement. Development would also be subject to tree protection requirements set for in the town code. Impacts would be less than significant.”**

5.10

Related to Goal ENV-2 “Maintain and enhance trees and significant natural features” please consider adding language to acknowledge the habitat value of certain trees over others. When planting new trees, native species and habitat values should be prioritized. Additionally, when using tree planting as mitigation strategies for tree removal, tree age should also be considered (values of trees increase as they age and expand their root systems and canopy cover).

**DEIR Impact BIO-5 P. 142 “There are no habitat conservation plans or natural community conservation plans applicable to the 2040 General Plan. Therefore the 2040 General Plan would have no impacts.”**

The the town is not listed as a part of the partnership for the Santa Clara Valley Habitat Plan (SCVHP), because the town is still part of the same watershed and the Los Gatos Creek flows

5.11

into other rivers (Guadalupe River) that is part of the SCVHP, the town should still consider policies and goals to mitigate any biological impacts that would affect the SCVHP.

5.11

Implementing a specific riparian corridor setback policy and a habitat overlay zone or riparian buffer zone would help rectify this.

In addition to these comments, please also find my letter to the Draft General Plan attached. Thank you for taking the time to consider these comments and if you have any questions please email Giuliana Pendleton at [giuliana@scvas.org](mailto:giuliana@scvas.org).

Thank you,

Giuliana Pendleton  
Environmental Advocacy Assistant  
Santa Clara Valley Audubon Society

## Letter 5

**COMMENTER:** Giuliana Pendleton, Environmental Advocacy Assistant, Santa Clara Valley Audubon Society

**DATE:** September 13, 2021

### **Response 5.1**

The commenter provides a summary of research and studies that have been conducted regarding the effects of lighting on birds, bird safety policies applicable to portions of the Bay Area, and the importance of riparian corridors for bird movement and nesting.

This comment does not specifically raise issues with the Draft EIR or request additions or revisions to the Draft EIR. This comment is noted, and no revisions to the Draft EIR are required in response to this comment.

### **Response 5.2**

The commenter expresses an opinion that Impact BIO-1 could be reduced by revising 2040 General Plan Policy ENV-4.2 to specify that some open space preserves should not be accessible to people.

Open space preserves in or adjacent to Los Gatos include El Sereno, St. Joseph's Hill, and Sierra Azul Open Space Preserves. These preserves are owned and operated by the Midpeninsula Regional Open Space District. The Town has no jurisdiction over access to and within these open space preserves. The Midpeninsula Regional Open Space District controls all access to and within these open space preserves. Accordingly, 2040 General Plan Policy ENV-4.2 cannot be revised to prohibit access to open space preserves. This comment is noted, and no revisions to the Draft EIR are required in response to this comment.

### **Response 5.3**

The commenter expresses an opinion that Impact BIO-1 could be reduced by revising 2040 General Plan Policy ENV-6.3 to specify a Town-wide riparian corridor setback width.

The commenter is correct that the 2040 General Plan does not specify a standard riparian corridor setback width that is applicable to the entire Town. This is because the quality of riparian corridors in the Town, with regard to their benefit for wildlife, varies throughout the Town. For example, some riparian corridor along Los Gatos Creek is immediately adjacent to Highway 17, which is a major freeway that has near continuous traffic noise and potential for wildlife-vehicle collisions. Other riparian corridors in the Town are further from major roadways and development and provide higher quality value to wildlife. Therefore, the Town would evaluate the necessary riparian corridor setback requirements, if any, during review of individual construction projects to ensure proper protection is provided based on the quality of the riparian corridor and type of development proposed.

In addition to the explanation in the previous paragraph, specifying a standard setback width in Policy ENV-6.3 is not necessary to reduce Impact BIO-1. As described on page 4.4-12, Impact BIO-1 would be less than significant, without mitigation. Accordingly, no revisions to the Draft EIR are required in response to this comment.

## Response 5.4

The commenter requests that a policy be added to the 2040 General Plan that would require a Town-wide wildlife corridor study that researches where movement corridors exist and what structures currently infringe upon or help wildlife movement.

This comment pertains to the 2040 General Plan and its policies. This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment. However, for informational purposes, individual projects would undergo applicable environmental review at the time they are proposed. The project-level analysis would evaluate potential impacts to wildlife movement and migration, pursuant to Appendix G of the State CEQA Guidelines.

## Response 5.5

The commenter expresses an opinion that Impact BIO-1 could be reduced by revising 2040 General Plan Policy ENV-7.10 to specify that remodel and retrofit projects should also include bird safe and lighting design measures. The commenter also expresses an opinion that lighting resulting from the project could have cumulative impacts to birds and sensitive habitats.

As described on page 4.4-12, Impact BIO-1 would be less than significant, without mitigation. Therefore, modifying policies or developing mitigation measure in lieu of new or revised 2040 General Plan policies is not necessary to reduce or avoid potential significant impacts related to special-status species, including migratory nesting birds. Additionally, by definition, projects involving remodeling occur at existing structures. Lighting at existing structures is an existing condition and not an impact or result of implementation of the 2040 General Plan. The Draft EIR evaluates the potential impacts that would result from implementation of the 2040 General Plan, and provides mitigation to reduce potentially significant impacts of the 2040 General Plan.

The commenter's statement that lighting could have cumulative impacts on birds and sensitive habitat is accurate. As described on page 4.4-22 of the Draft EIR, the 2040 General Plan could contribute to cumulative impacts to special-status species or their habitat; impacts to riparian, wetland, or other sensitive natural communities; or interference with wildlife movement. However, as described further on page 4.4-22, implementation of 2040 General Plan goals and policies would reduce impacts to a less than significant level. The 2040 General Plan includes Policy ENV-7.10, which requires bird safety and lighting design in new development projects. Therefore, the cumulative impacts analysis on page 4.4-22 of the Draft EIR addresses lighting impacts on birds and special-status species habitat through consideration of Policy ENV-7.10 in the analysis. Accordingly, no additional revisions to the Draft EIR are necessary in response to this comment.

## Response 5.6

The commenter expresses an opinion that Impact BIO-1 could be reduced by revising 2040 General Plan Policy ENV-7.11 to specify that lighting used in landscaping should also protect night skies, and lighting should protect biological resources.

As described on page 4.4-12, Impact BIO-1 would be less than significant, without mitigation. Therefore, modifying policies or developing mitigation measure in lieu of new or revised 2040 General Plan policies is not necessary to reduce or avoid potential significant impacts related to special-status species and biological resources. Additionally, 2040 General Plan Policy ENV-7.11 addresses lighting associated with buildings, streets, and parking areas, which generally includes landscape lighting as it pertains to landscaping around buildings and the parking areas around

buildings. Accordingly, no additional revisions to the Draft EIR are necessary in response to this comment.

### **Response 5.7**

The commenter expresses an opinion that Impact BIO-1 could be reduced by revising 2040 General Plan Policy OSP-5 to specify that creeks and creek-side trails are critical to protecting biological resources.

As described on page 4.4-12, Impact BIO-1 would be less than significant, without mitigation. Therefore, modifying policies or developing mitigation measures in lieu of new or revised 2040 General Plan policies is not necessary to reduce or avoid potential significant impacts related to special-status species and biological resources. Additionally, creeks and the riparian areas are already recognized as important biological resources in the State of California, regardless of the policies contained in any general plan. For example, the State Water Resources Control Board regulates streams and adjacent riparian areas as “waters of the state,” requiring a permit for activity within the streams or riparian areas. Further, the 2040 General Plan includes policies that recognize the importance of creeks and riparian areas for biological resources. For example, 2040 General Plan Policy ENV-16.4 calls for conservation of creeks and avoiding disturbance to creeks.

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

### **Response 5.8**

The commenter expresses an opinion that Impact BIO-2 could be reduced by revising 2040 General Plan Policy ENV-16.4 to specify the types of disturbances that should be avoided within creeks. The commenter also expresses an opinion that a habitat overlay zone or riparian buffer zone would also reduce Impact BIO-2.

As described on page 4.4-16, Impact BIO-2 would be less than significant, without mitigation. Therefore, modifying policies or developing mitigation measure in lieu of new or revised 2040 General Plan policies is not necessary to reduce or avoid potential significant impacts related to special-status species and biological resources. Additionally, creeks and the riparian areas are already recognized as important biological resources in the State of California, regardless of the policies contained in any general plan. For example, the State Water Resources Control Board regulates streams and adjacent riparian areas as “waters of the state,” requiring a permit for activity within the streams or riparian areas and permit mitigation. Further, the 2040 General Plan includes policies that recognize the importance of preserving creeks and riparian areas. For example, 2040 General Plan Policy ENV-6.1 protects riparian areas, wetlands and streams from damage due to development. Policy ENV-6.3 requires setbacks and measures as appropriate to protect riparian corridors. Accordingly, no additional revisions to the Draft EIR are necessary in response to this comment.

### **Response 5.9**

The commenter expresses an opinion that Impact BIO-3 could be reduced by revising 2040 General Plan Goal LU-6 to specify biological corridors as protection areas, such as protection from lighting, development, and fences.

As described on page 4.4-18, Impact BIO-3 would be less than significant, without mitigation. Therefore, modifying policies or developing mitigation measure in lieu of new or revised 2040 General Plan policies is not necessary to reduce or avoid potential significant impacts related to

wildlife movement corridors. Nonetheless, the 2040 General Plan includes policies that recognize the importance of preserving creeks and riparian areas, which are often used as wildlife movement corridors. For example, 2040 General Plan Policy ENV-6.1 protects riparian areas, wetlands, and streams from damage due to development. Policy ENV-6.3 requires setbacks and measures as appropriate to protect riparian corridors. Accordingly, no additional revisions to the Draft EIR are necessary in response to this comment.

### **Response 5.10**

The commenter expresses an opinion that Impact BIO-4 could be reduced by revising 2040 General Plan Goal ENV-2 to acknowledge that certain trees provide more valuable habitat than others, and tree age should be considered when developing tree planting mitigation.

As described on page 4.4-20, Impact BIO-4 would be less than significant, without mitigation. Therefore, modifying policies or developing mitigation measure in lieu of new or revised 2040 General Plan policies is not necessary to reduce or avoid potential significant impacts related to trees and tree protection. Nonetheless, the 2040 General Plan includes policies that recognize the importance of preserving trees. For example, as listed on page 4.4-21 of the Draft EIR, 2040 General Plan Policy ENV-2.1 ensures that tree removal and replacement is consistent with tree conservation standards of the Arbor Day Foundation. As described on page 4.4-20 of the Draft EIR, development under the 2040 General Plan would be required to comply with the Los Gatos Town Code Chapter 29, Division 2 – Tree Protection. Accordingly, no additional revisions to the Draft EIR are necessary in response to this comment.

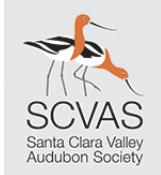
### **Response 5.11**

The commenter states that the Town is not part of the partnership of the Santa Clara Valley Habitat Plan (SCVHP) but should still consider the SCVHP policies to mitigate impacts to biological resources, and that developing a riparian buffer setback or habitat overlay zone would be beneficial.

The commenter's statement that the Town is not subject to the SCVHP is accurate. As described on page 4.4-21 of the Draft EIR, the Town is not subject to the SCVHP. The Town is therefore under no obligation to adopt the goals and policies of the SCVHP as part of the 2040 General Plan. However, adoption of the 2040 General Plan would not preclude the Town from considering and applying policies of the SCVHP in the future for individual development projects.

The second portion of this comment about developing a riparian setback buffer or habitat overlay zone is similar to comment 5.8. Please see Response 5.8, above. No additional revisions to the Draft EIR are necessary in response to this comment.

## LETTER 6



3 September 2021

Jennifer Armer, AICP, Senior Planner

Town of Los Gatos

110 E. Main Street

Los Gatos, CA 95030

Re: Draft 2040 General Plan

Dear Ms. Armer,

Santa Clara Valley Audubon Society (SCVAS) is one of the largest National Audubon Society chapters in California. SCVAS' mission is to promote the enjoyment, understanding, and protection of birds and other wildlife by engaging people of all ages in birding, education, and conservation. Earlier this year we advocated for the inclusion of bird-safe design and dark sky policies in the General Plan 2040. The General Plan Update Advisory Committee (GPAC) supported these recommendations and included both goals and program measures in the draft General Plan Update. We write today in support of these draft policies and with additional comments and recommendations.

Birds make people happy, are key indicators for healthy ecosystems, and are inherently valuable. At SCVAS, our bird conservation advocacy areas have focused on: endangered species, bird-safe buildings and architecture, and land use. Threats to local and migratory birds include: loss of habitat and migration rest areas, collisions with glass that kill an estimated hundreds of millions of birds each year in North America alone, collisions with other human-made structures, Artificial Light At Night (ALAN), climate change, depredation by outdoor cats, and poisoning from rodenticides and insecticides. The Los Gatos General Plan Update is a critical opportunity to address biodiversity and bird safety, and in doing so, protect open space and nature, for the benefit of both the community and natural environment.

One focus of our advocacy has been on reducing ALAN. The impacts of night-time lighting are pervasive and affect biological function and behavior in almost all living things. A recent United Nations report highlights the many biological and ecological impacts of ALAN, and outlines guidelines to help preserve ecosystems, species and our night sky<sup>1</sup>. A scientific review draws together wide-ranging studies over the last decades that catalogue the effects of ALAN upon living species and their environment. Numerous examples are given of how widespread exposure to ALAN is perturbing many aspects of plant and animal behavior and survival: foraging, orientation, migration, seasonal reproduction and more<sup>2</sup>.

<sup>1</sup> <https://www.iau.org/static/publications/dqskies-book-29-12-20.pdf>

<sup>2</sup> <https://www.frontiersin.org/articles/10.3389/fnins.2020.602796/full>

Moreover, pervasive ALAN has been found to have a wide-ranging impact on human health. Cancer, sleep disorders, and a degradation of mental health have all been linked to pervasive ALAN<sup>3</sup>. Addressing ALAN and setting clear limits on lighting within the General Plan Update can have a great positive impact on our community.

Reading through the draft General Plan Update, we appreciate the thoughtfulness and intentionality when including environmental goals and programs. Many standards and guidelines in the town already help to protect the environment, such as the lighting element within the Hillside Development Standards and Guidelines, the inclusion of native plant species, and protection of wildlife movement. We hope these standards can be reinforced. Additionally, we hope you will take into consideration the following comments and recommendations specific to the draft General Plan Update. These comments pertain to the Guiding Principles, lighting, the Crime Prevention Through Environmental Design program, habitat protections, and tree canopy.

#### 1. Guiding Principle (pdf pg. 12)

Draft Language: Protect Natural Resources

“Protect the natural resources and scenic assets that define Los Gatos, including open space preserves, recreational trails, surrounding hillsides, and natural waterways.”

Proposed Language: Protect the Natural Environment

“Protect and enhance the natural environment, scenic assets and biotic communities that define Los Gatos, including but not limited to open space preserves, recreational trails, surrounding hillsides, and waterways.”

6.1

On April 1, 2021 we gave a public comment to the General Plan Advisory Committee (GPAC) asking the committee to consider changing the Guiding Principle for “Protect our Natural Resources” to “Protect the Natural Environment.” The GPAC agreed with the comment, however, since the Guiding Principles have already been approved by the Planning Commission and Town Council, this change must go through the formal approval process.

The principle is meant to protect the environment, but by naming natural resources, it implies that nature is meant to be protected for the benefit of humans. Nevertheless, the environment has inherent value and should be protected regardless of its benefit to humans, which is why we recommend this change to the Guiding Principle.

#### 2. Lighting

CD-2.24 Public Realm Improvements (pdf pg. 77)

Draft Language: “Encourage improvements to the public realm, including tree canopies, street furniture, paving, landscaping, and lighting.”

6.2

<sup>3</sup> <https://acsjournals.onlinelibrary.wiley.com/doi/abs/10.1002/cnrc.33392>; <https://time.com/5033099/light-pollution-health/>

Proposed Language: Encourage improvements to the public realm, including tree canopies, street furniture, paving, and landscaping.

Please consider removing lighting from CD-2.24 Public Realm Improvements. In the past, improvements for lighting has usually meant expanded lighting. Lighting should not be expanded in Los Gatos.

*CD-2.30 Street and Structure Lighting (pdf pg. 79)*

We support CD-2.30 Street and Structure Lighting, preventing glare, light spillage, and light pollution.

6.3

*CD-2.31 Lighting (pdf pg. 79)*

Draft Language: "Encourage lighting for mixed-use and commercial developments such as string lighting, pole mounted lighting, and tree-hanging lighting, to further illuminate the site during nighttime hours for safety and community."

Proposed Language: Provide clear limits for lighting in mixed-use and commercial developments, including the prohibition of uplighting, limiting the Correlated Color Temperature of lighting, and turning off lights after activity hours, in order to find the balance between friendly illumination and preventing unnecessary light at night.

6.4

We ask that you consider making policy CD-2.31 Lighting more explicit and restrictive. Decorative lighting should only be allowed in commercial areas, and only during activity hours. All lighting should be directed down since uplighting causes light pollution.

*The Town of Los Gatos Hillside Development Standards and Guidelines (85 of Draft General Plan, Page 6 of Chapter 6 of Standards)*

Chapter 6 Site Elements provides strong and sound requirements for outdoor lighting in the Hillside<sup>4</sup>. We highly recommend the General Plan Community Design Element 4.4 Hillside Development consider retaining and/or strengthening the lighting language found in its complementing Chapter 6 Site Elements. One way to complement this language would be to include a guideline for Correlated Color Temperature (CCT), such as, "Lighting within the Hillside should use the lowest CCT available."

6.5

*CD-6.5 Lighting Design in Hillside Areas (pdf pg. 86)*

Draft Language: "Outdoor lighting shall be limited and shielded so as not to be viewable from non-hillside areas and shall be of low intensity."

6.6

<sup>4</sup> <https://www.losgatosca.gov/DocumentCenter/View/172/Hillside-Standards-60-Site-Elements?bidId=>

1. Outdoor lighting shall comply with the Town of Los Gatos Zoning Ordinance.
2. Lighting shall be the minimum needed for pedestrian safety, and shall be low level, directed downward, and shielded so that no bulb is visible, and no light or glare encroaches onto neighboring properties.
3. Unshaded or non-recessed spotlights are prohibited.
4. Lighting for purely decorative purposes is prohibited. Up-lighting of trees, lighting of facades and architectural features is prohibited.
5. Lighting for night use of outdoor game courts (e.g., tennis, paddle tennis, basketball, etc.) is prohibited.

Proposed Language: Outdoor lighting shall be limited and shielded so as not to be viewable from non-hillside areas and shall be of low intensity and of the lowest Correlated Color Temperature (CCT) available, no more than 3000K.

We support CD-6.5 Lighting Design in Hillside Areas to limit outdoor lighting and to be of low intensity. Mentioning CCT would emphasize the need for warmer light, especially in sensitive ecological areas such as the Hillside.

6.7

*Mobility Element program I Streetlighting Policy and Guidelines (pdf pg. 135)*

We support the Mobility Element program I Streetlighting Policy and Guidelines to update the town street lighting guidelines and for acknowledging the need for both adequate nighttime lighting and reducing light pollution.

6.8

*Public Facilities, Services, and Infrastructure Element program I Outdoor Lighting Standards (pdf pg. 174)*

Draft Language: "Establish outdoor lighting standards in the Town Code to address energy efficiency."

6.9

Proposed Language: Establish outdoor lighting standards in the Town Code to address energy efficiency, dark sky conservation, and healthy ecosystems.

3. Crime Prevention Through Environmental Design (CPTED)

*CD-2.21 Adequate Pedestrian Lighting (pdf pg. 77)*

Draft Language: "Pedestrian-oriented lighting shall be provided in active pedestrian areas and common areas for safety and security."

Proposed Language: In high-density planning zones, the minimal amount of pedestrian-oriented lighting necessary should be provided in active pedestrian areas and common areas for safety and security purposes.

6.10

More lighting does not necessarily mean more safety. A recent study in Tucson, Arizona found that dimming their city lights to 30% of capacity had no effect on rates of crime, accidents, or other safety measures. In fact, virtually no one noticed that the street lights had been dimmed<sup>5</sup>.

We are concerned that allowing the expansion of lighting under safety programs will unnecessarily expand light into sensitive areas. All lighting facilities should have dimmers, motion sensors, and/or timers. If included, goal CD-2.21 needs to be more explicit in the amount and type of light used.

*PFS-18.1 CPTED Site Planning for Crime Prevention (pdf pg. 159)*

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<sup>5</sup> <https://www.darksky.org/nights-over-tucson/>

Draft Language: "Emphasize the use CPTED principles in physical site planning as an effective means of preventing crime. Open spaces, landscaping, parking lots, parks, play areas, and other public spaces shall be designed with maximum possible visual and aural exposure to community residents."

Proposed Language: Consider the use of CPTED principles in physical site planning as a potential means of reducing crime.

We request clarification on PFS-18.1 CPTED Site Planning for Crime Prevention. Open spaces, parks, landscaping, play areas, and even some parking lots are ecologically sensitive areas and light should be *severely limited*<sup>6</sup>. They should *not* be designed with maximum possible visual and aural exposure, rather with the *minimum possible* visual and aural exposure.

6.11

There have been instances of other cities in the Bay Area expanding lighting into parks under the label of "public safety." Expanded lighting in parks is not necessary because they are closed at night time, increases in lighting do not correlate with reductions in crime, and parks are ecologically sensitive areas in which more lighting will actually be causing more harm than good.

#### 4. Habitat Protections

*CD-6.6 Hillside Fencing Design (pdf pg. 86)*

We support Goal CD-6, especially CD-6.6 Hillside Fencing Design to be of open design. Habitat connectivity for wildlife in ecological areas is crucial for species and biodiversity.

6.12

*OSPR-2.4 Uninterrupted Wildlife (pdf pg. 184)*

We support OSPR-2.4 to provide an "uninterrupted band of usable segments for wildlife corridors." We ask you to consider adding a program for creating a wildlife corridor study to reinforce this goal. Without a relevant study to identify where primary and critical wildlife corridors are, enforcing development standards and making hillside development decisions can be challenging.

6.13

*ENV-7.7 Herbicides and Pesticides Adjacent to Aquatic Habitats (pdf pg. 199)*

Draft Language: "Require that herbicides and pesticides used in areas adjacent to creeks and other water bodies are approved for use in aquatic habitats."

6.14

Proposed Language: Require that herbicides and pesticides used in areas adjacent to creeks and other water bodies are approved for use in aquatic habitats, ensuring minimized potential damage to public health, native plants, birds, and other wildlife.

The [Los Gatos IPM plan](#) should be updated to consider new information and guidelines regarding herbicides and pesticides. We recommend considering adding a program for ENV-7.7 to update the Los Gatos IPM plan.

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<sup>6</sup> <https://www.darksky.org/values-centered-lighting-resolution/?eType=EmailBlastContent&eId=e18a9f9f-e20c-469d-9cea-fc43510d1c14>

Herbicides and pesticide runoff is extremely detrimental to aquatic ecosystems<sup>7</sup>. For instance, the EPA identified Glyphosate, a common herbicide, as a potential risk to terrestrial and aquatic plants and birds, and as low toxicity to honeybees<sup>8</sup>.

*ENV-6 and OSPR-5 (pdf pgs. 199, 185)*

We support Goal ENV-6, Protect wetlands and riparian corridors, including intermittent and ephemeral streams. Additionally, we support OSPR-5 Preserve and enhance Los Gatos Creek, and Ross Creek as open space amenities. Specifically, we support restoring both creeks to a more natural state and reducing encroachment by structures and disturbances due to incompatible development and human activity.

6.15

In 2007 Los Gatos signed a resolution to join the Water Resources Protection Collaborative through Valley Water<sup>9</sup>. Los Gatos should implement and improve upon these guidelines, including require minimum riparian setbacks and seek opportunities to expand and widen stream corridors.

*ENV-7.10 and ENV-7.11 (pdf pg. 200, 220)*

We support ENV-7.10 and ENV-7.11, Bird Safe Design and Dark Skies, along with the complementary programs to implement these policies. Creating ordinances for bird safe design and dark skies will help Los Gatos achieve its goal of protecting sensitive habitats and its environment.

6.16

In April of this year, Cupertino passed a bird safety and dark sky ordinance, which controls lighting on all private properties in Cupertino. Additionally, the ordinance mandates bird safe design treatments to all glass surfaces in “bird-sensitive areas”. These include hillside areas as well as within 300 feet of water features and vegetated open space.

*Environment and Sustainability Element Program K Riparian Corridor Lighting (219)*

Draft Language: “Require careful lighting design in and near natural riparian corridors to direct light away and to maximize the distance between nighttime lighting and the corridor.”

6.17

Proposed Language: Establish a lighting setback policy for riparian corridors to protect these sensitive ecological areas and to maximize the distance between nighttime lighting and the corridor. No light should be placed in or directed towards the riparian corridor.

## 5. Tree Canopy

*Racial, Social, and Environmental Justice element program N Tree Canopy Study (pdf pg. 31)*

Draft Language: “Develop a study to measure tree canopy distribution throughout the Town and encourage the use of native plants when increasing green space.”

6.18

<sup>7</sup> <https://www.sciencedirect.com/science/article/abs/pii/S0048969703001414>

<https://www.raptorsarethesolution.org/>

<sup>8</sup> <https://www.epa.gov/ingredients-used-pesticide-products/glyphosate>

<sup>9</sup> <https://www.valleywater.org/contractors/doing-businesses-with-the-district/permits-working-district-land-or-easement/water-resources-protection-collaborative>

<https://www.valleywater.org/sites/default/files/WRPC%20Los%20Gatos.pdf>

Proposed Language: Develop a study to measure tree canopy distribution throughout the Town and encourage the use of native plants. Consider habitat value in tree selection for the town's forest, and disallow the planting of invasive species.

A healthy, robust tree canopy is crucial for human health and well-being, social justice issues, and enhancing our urban ecosystem. Nonetheless, when considering trees for a tree canopy, we must consider benefits to overall ecosystem health. We are in the midst of a global insect apocalypse, and many native trees, such as oaks<sup>10</sup> are critical to maintaining these habitats. Therefore, the tree canopy study should also measure the types of trees and their biodiversity and habitat value, so that we can have a better understanding of not just how many trees are distributed throughout the town, but how these trees sustain the lives of birds, insects, amphibians, and others.

#### **6. Midpeninsula Regional Open Space District Comment Letter**

In addition to our comments, we support the following comments from the Midpeninsula Regional Open Space District comment letter submitted on July 27, 2021 to Senior Planner Jennifer Armer:

##### *Section LU-3.2 Reducing Project Impacts*

Projects shall be evaluated and the Town shall apply appropriate mitigation measures and/or conditions of approval to reduce impacts on urban services and wildfire risk, including utilities, police, and fire.

Consider including a statement reducing project impacts on the environment.

##### *Section CD-2.12 Street Trees in New Development*

If feasible, require street trees to be installed for all new developments, to enhance neighborhood character and identity and to maximize shade coverage when mature.

Consider including a requirement for native, non-invasive or non-fire-prone street tree species.

##### *Section CD-2.30 Street and Structure Lighting*

Require street and structure lighting to minimize its visual, health, and ecological impacts by preventing glare, limiting the amount of light that falls on neighboring properties, and avoiding light pollution of the night sky.

Consider including the dark-sky and/or the Illuminating Engineering Society of North America Model Lighting Ordinance or reference section ENC-7.11. The following link provides additional information on the Illuminating Engineering Society of North America Model Lighting Ordinance.

<https://www.darksky.org/our-work/lighting/public-policy/mlo/>

6.19

##### *Section CD-2.40 Landscaped Gateways*

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<sup>10</sup> "Native oaks support over 300 species of vertebrate animals and provide food for more species of moths and butterflies than any other plant. Insects that live on oaks provide high-protein food for birds to feed their nestlings" [http://ucanr.org/sites/oak\\_range](http://ucanr.org/sites/oak_range) by Rebecca Miller-Cripps, UC Cooperation 2. Download report by San Francisco Estuary Institute here: <https://www.sfei.org/projects/integrated-planning-nature-building-resilience-across-urban-and-rural-landscapes-silicon>

Ensure that public improvements and private development provide landscaped Town gateways that create visual connections between the natural hillsides and open space areas and the community of Los Gatos.

Consider including a requirement for native, non-invasive or non-fire-prone plant species.

*Section CD-5 Preserve the natural beauty and ecological integrity of the Santa Cruz Mountains and surrounding hillsides.*

Under section CD-5 Preserve the natural beauty and ecological integrity of the Santa Cruz Mountains and surrounding hillsides, consider adding: CD-5.6 Preserve Sensitive Natural Communities. Sensitive natural communities are communities that are of limited distribution statewide or within a county or region and are often vulnerable to environmental effects of projects. These communities may or may not contain special status plants or their habitat.

*Section CD-6.5 Lighting Design in Hillside Areas*

Outdoor lighting shall be limited and shielded so as not to be viewable from non-hillside areas and shall be of low intensity.

Consider including the dark-sky and/or the Illuminating Engineering Society of North America Model Lighting Ordinance or reference ENC-7.11 The following link provides additional information on the Illuminating Engineering Society of North America Model Lighting Ordinance.

<https://www.darksky.org/our-work/lighting/public-policy/mlo/>

*Section CD-9.9 Landscaping*

To soften the appearance of hardscape, incorporate landscaped medians using drought tolerant plants, landscape buffers, and street trees.

Consider including a requirement for native, non-invasive or non-fire-prone plant species.

Thank you for your consideration of these submitted comments. If you have any questions please contact Giuliana Pendleton at [giuliana@scvas.org](mailto:giuliana@scvas.org).

Sincerely,

Giuliana Pendleton  
Environmental Advocacy Assistant  
Santa Clara Valley Audubon Society

## Letter 6

**COMMENTER:** Giuliana Pendleton, Environmental Advocacy Assistant, Santa Clara Valley Audubon Society

**DATE:** September 3, 2021

### **Response 6.1**

The commenter provides recommended replacement text for the Guiding Principles section of the 2040 General Plan.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment.

### **Response 6.2**

The commenter provides recommended replacement text for Policy CD-2.24 that removes the word "lighting" in the 2040 General Plan.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment.

### **Response 6.3**

The commenter states support for Policy CD-2.30 in the 2040 General Plan.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment.

### **Response 6.4**

The commenter provides recommended replacement text for Policy CD-2.31 in the 2040 General Plan that is more explicit and restrictive.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment.

### **Response 6.5**

The commenter recommends strengthening the lighting language Community Design Element 4.4 Hillside Development section of the 2040 General Plan.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment.

### **Response 6.6**

The commenter provides recommended replacement text for Policy CD-6.5 in the 2040 General Plan that is more explicit and restrictive.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment.

## **Response 6.7**

The commenter states support for Policy CD-6.5 in the 2040 General Plan.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment.

## **Response 6.8**

The commenter states support for the Mobility Element program I Streetlighting Policy and Guidelines Plan in the 2040 General Plan.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment.

## **Response 6.9**

The commenter provides recommended replacement text for the Public Facilities, Services, and Infrastructure Element program L - Outdoor Lighting Standards in the 2040 General Plan.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment.

## **Response 6.10**

The commenter provides recommended replacement text Policy CD-2.21 in the 2040 General Plan and expresses concerns over expansion of light into sensitive areas.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment.

## **Response 6.11**

The commenter provides recommended replacement text Policy PFS-18.1 in the 2040 General Plan. The commenter expresses concern that open spaces, parks, landscaping, play areas, and parking lots can all serve as ecologically sensitive areas at risk of light exposure.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment.

## **Response 6.12**

The commenter states support for Goal CD-6, especially Policy CD-6.6, in the 2040 General Plan.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment.

## **Response 6.13**

The commenter states support for Policy OSPR-2.4 in the 2040 General Plan. The commenter additionally suggests adding a program to create a wildlife corridor study.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment.

### **Response 6.14**

The commenter provides recommended replacement text Policy ENV-7.7 in the 2040 General Plan. The commenter suggests that the Los Gatos IPM Plan should be updated to consider effects to herbicide and pesticide run-off.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment.

### **Response 6.15**

The commenter states support for Goal ENV-6, especially Policy OSPr-5, in the 2040 General Plan.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment.

### **Response 6.16**

The commenter states support for Policies ENV-7.10 and ENV-7.11 in the 2040 General Plan.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment.

### **Response 6.17**

The commenter provides recommended replacement text for the Environment and Sustainability Element Program K Riparian Corridor Lighting section of the 2040 General Plan.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment.

### **Response 6.18**

The commenter provides recommended replacement text for the Racial, Social, and Environmental Justice Element Program Tree Canopy Study within the 2040 General Plan citing the importance of a healthy tree canopy.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment.

### **Response 6.19**

The commenter states support for the Midpeninsula Regional Open Space District comment letter, which is included as Letter 4 in this document.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment.



## LETTER 7

September 13, 2021

Jennifer Armer, AICP, Senior Planner  
Town of Los Gatos  
110 E. Main Street  
Los Gatos, CA 95030

Re: Draft EIR for the Town of Los Gatos 2040 General Plan Update

Dear Ms. Armer,

Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Los Gatos 2040 General Plan Update (General Plan). The Bay Area Ridge Trail Council (Council) respectfully submits the following comments on the Project. The Council is pleased to see how the Los Gatos 2040 General Plan Update includes key goals and initiatives regarding trail connectivity and access to open space, as well as regional climate resilience including the protection of natural resources.

### Background on the Ridge Trail

The Bay Area Ridge Trail (Ridge Trail) is a multi-use trail system along the ridgelines encircling the San Francisco Bay Area, open to hikers, mountain bicyclists, and equestrians. 393 miles are open to the public today, and we expect to reach 400 miles of designated Ridge Trail by the end of this year. When complete, the full 550-mile trail will connect over 75 parks and open spaces and allow users to travel around the nine counties of the Bay Area in a connected trail network.

### Comments on the DEIR and General Plan

The Council is pleased that the General Plan includes the goals of supporting a regional bicycle network (MOB-2.3); supporting safe, continuous, and interconnected trails (MOB-3.2) and open space connections (OSPR-3.2). However, the General Plan and DEIR do not currently adequately address key regional trail connections and should both specifically call out the Ridge Trail and the Highway 17 Wildlife and Trail Crossings Project (Highway 17 Project), which falls within the Los Gatos Planning Area north of Lexington Reservoir and is being led by Midpeninsula Regional Open Space District (Midpen). A map of this project and the Ridge Trail connections in the area is attached.

The goal for the Highway 17 Project is to establish safe passage across Highway 17 for both wildlife and outdoor enthusiasts, and to close this gap in the Ridge Trail and Juan Bautista de Anza National Historic Trail (Anza Trail). The Ridge Trail expects to dedicate a segment of trail through El Sereno Open Space Preserve this year, bringing us closer to closing the gap across Highway 17 and connecting the Ridge Trail through the Southern Bay Area region. The Ridge Trail is planned to connect to the Los Gatos Creek Trail at the Highway 17 crossing, which will provide a valuable recreational amenity to Town residents as a connection to trails throughout El Sereno, St. Joseph's Hill, and Sierra Azul Open Space Preserves, as well as the wider Ridge Trail network that will one day be fully connected around the entire Bay Area.

7.1

Completing the Ridge Trail has been prioritized and included in numerous plans by State, regional and local agencies and jurisdictions. Closing these regional trail gaps has long been a high priority for Midpen, the County of Santa Clara Department of Parks and Recreation (Santa Clara County Parks) and other nearby partners. The Ridge Trail is included in the County of Santa Clara General Plan as part of the Santa Clara County Countywide Trails Master Plan Update (1995), and Santa Clara County Parks also prioritized this Ridge Trail gap in their Countywide Trails Prioritization and Gaps Analysis Report (2015).

The Bay Area Ridge Trail and Highway 17 Project should be acknowledged in the Los Gatos General Plan and the accompanying DEIR as a regional multi-use trail that will connect to the Town's trail and bicycle networks, providing numerous benefits to Town residents including physical/mental health and recreation opportunities, as well as improved regional connectivity. The Ridge Trail should also be added as future planned pedestrian/bicycle facilities in the Town's Bicycle and Pedestrian Master Plan.

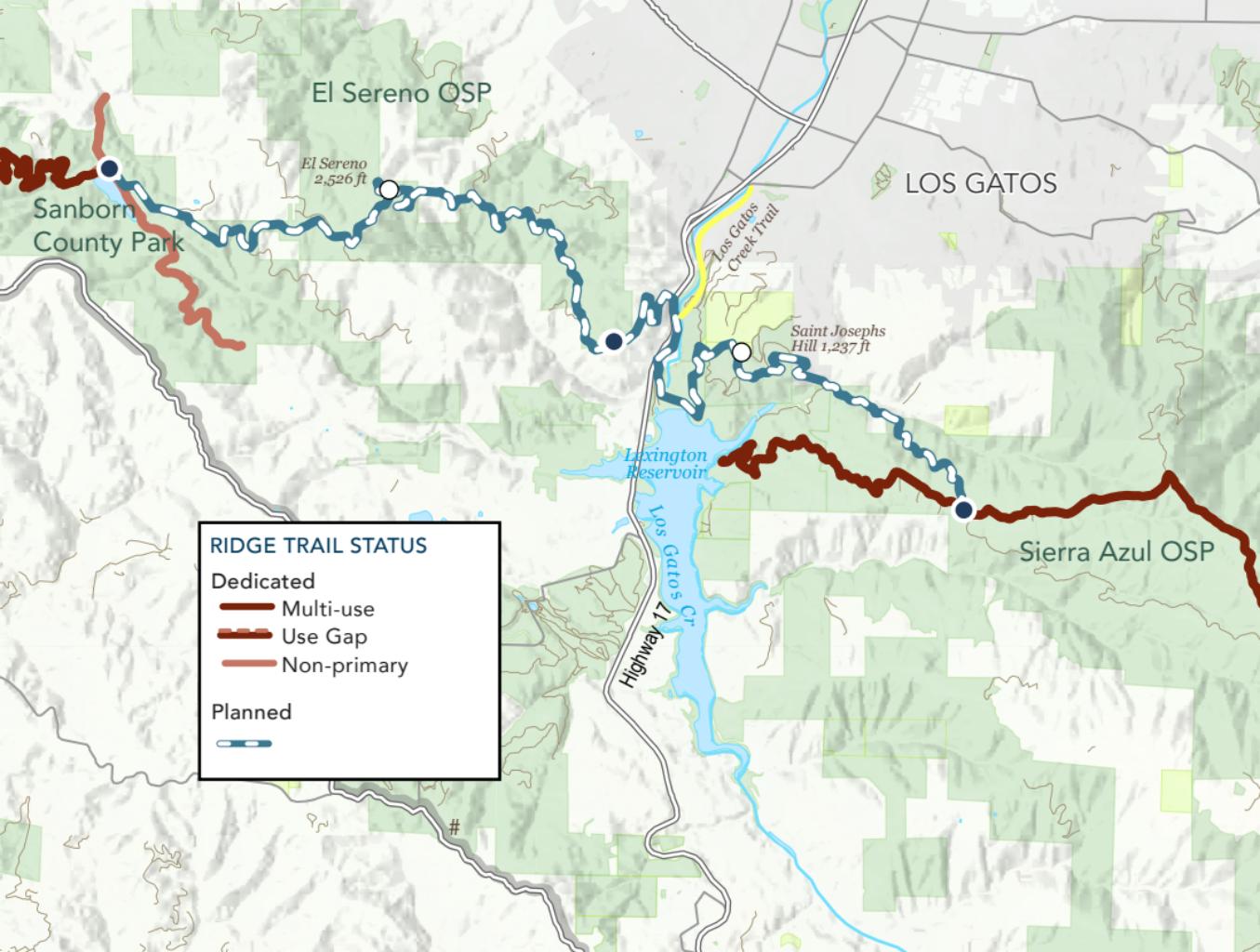
7.2

We appreciate the opportunity to comment on the General Plan and DEIR and to participate in any further planning processes. Please don't hesitate to contact me with any questions.

Sincerely,



Janet McBride  
Executive Director  
Bay Area Ridge Trail Council



## Letter 7

**COMMENTER:** Janet McBride, Executive Director, Bay Area Ridge Trail Council

**DATE:** September 13, 2021

### Response 7.1

The commenter expresses an opinion that the General Plan and Draft EIR do not adequately address key regional trail connections and should identify the Ridge Trail and the Highway 17 Wildlife and Trail Crossings Project.

In response to this comment and in accordance with comment 4.6 provided by Jane Mark at Midpeninsula Regional Open Space District, page 4.15-8 of the Draft EIR has been revised to include the following:

#### Bay Area Ridge Trail

The Bay Area Ridge Trail (Ridge Trail) is a multi-use trail system along the ridgelines encircling the San Francisco Bay Area, open to hikers, mountain bicyclists, and equestrians. At the time of this report, 393 miles of the Ridge Trail are open to the public today. The Ridge Trail is planned to connect to the Los Gatos Creek Trail at the Highway 17 crossing, which will provide a valuable recreational amenity to Town residents as a connection to trails throughout El Sereno, St. Joseph's Hill, and Sierra Azul Open Space Preserves.

No additional revisions to the Draft EIR are necessary in response to this comment and it does not result in changes to impacts identified in the Draft EIR.

### Response 7.2

The commenter requests that the Ridge Trail should also be added as future planned pedestrian/bicycle facilities in the Town's Bicycle and Pedestrian Master Plan. This comment pertains to the Town's Bicycle and Pedestrian Master Plan and is noted. Since it does not pertain to the Draft EIR, no additional revisions to the Draft EIR are necessary in response to this comment.

## LETTER 8



September 13, 2021

Jennifer Armer, AICP  
Interim Planning Manager  
Community Development Department  
Town of Los Gatos  
110 E. Main St.  
Los Gatos, CA 95030

Via Email: [jarmer@losgatosca.gov](mailto:jarmer@losgatosca.gov)

**SUBJECT: Comments on General Plan Update Draft Environmental Impact Report**

Dear Ms. Armer:

We are writing on behalf of Harmonie Park Development, the Los Gatos-based developer responsible for the retail portion of the first phase within the North 40 Specific Plan (North 40). In addition to our work on Phase I, we represent Grosvenor Americas in its endeavor to re-imagine what will be built on a large portion of the remainder of the North 40, commonly referred to as Phase II.

With this background in mind, we are submitting the following comments on the Town of Los Gatos' (Town) General Plan Update's Draft Environmental Impact Report (DEIR).

**Global Comments Specifically Related to the North 40**

The North 40 is only mentioned throughout the DEIR with respect to its land use/zoning designation for residential, commercial, open space amenities, and a hotel use. As described below, the DEIR does not distinguish what residential units studied in the DEIR (existing or projected) belong to either the North 40's Phase I under construction or the future Phase II. The DEIR should acknowledge and disclose how the future uses for Phase II of the North 40 ultimately will be consistent with the GPU.

**1. Residential Buildout Potential (p. ES-4 and p. 2-15 )**

As we noted in our comments on the General Plan Update (GPU) in May 2021 (attached), we believe that the GPU and the DEIR should reflect the opportunity for additional new residential development in Phase II of the North 40. With density of up to 40 dwelling units per acre in the GPU and between 15 and 20 acres remaining on the North 40, there is opportunity for significant new residential development. The DEIR states that the GPU will accommodate the potential for 3,738 dwelling. 475 of those units have had "initial approval" by the Town, but there is no mention of which approved projects are providing this 475-unit total. The DEIR should make it clear how these units break down per project and, if the North 40 is included in this number, then it should be disclosed. The Residential Buildout Potential also should expressly identify whether residential units in Phase II of the North 40 are included in the numbers for potential development on vacant land (804) and, if this potential is not included in the DEIR analysis, then we believe it should be.

8.1

8.2

## 2. Projected Dwelling Units (Table 2-2, p. 2-15)

Table 2-2 shows the projected dwelling units by zoning district, as well as by projected ADUs and Existing Projects. This latter category of existing projects again does not break down the 475 units currently in the Town's pipeline per approved project. The DEIR should show how these units are allocated between existing projects.

8.3

## 3. North 40 Specific Plan (p. 4.11-6, 4.11-18)

In the Land Use chapter on Page 4.11-6, the DEIR discusses the North 40 and states that it was approved for a "maximum allowable development capacity" of 270 units and 501,000 square feet for non-residential uses. It further states that Phase I of the North Forty was approved for 237 of the 270 units (plus 83 units under State Density Bonus Law) and 66,800 square feet of commercial space. The DEIR does not reference or acknowledge the potential for the Phase II development of the remaining North 40 area, which has been widely discussed in the public domain for over a year while the GPU has been advanced by the Town.<sup>1</sup> At a minimum, the DEIR should disclose this potential and address the ultimate consistency with the GPU, especially considering that Impact LU-3 requires that implementation of the GPU would not conflict with existing Specific Plans.

8.4

On Page 4.11-18, the DEIR states that "the General Plan incorporates two specific plans; the Albright Specific Plan and the North 40 Specific Plan. These plans address existing and future development within the Town to ensure that that [sic] any development would maintain the existing residential setting, be in harmony with surrounding natural features, and preserve the small-town character of Los Gatos, while continuing to meet the needs of its residents. Within the General Plan, Goal LU-13 supports the use of Specific Plans for strategic new growth areas with complex land use programs. This goal ensures that the Town can accommodate growth in a measured and thoughtful fashion while ensuring consistency with existing Specific Plans. Policy LU-13.1 requires that specific plans are prepared, implemented, amended, and updated consistent with the General Plan."

8.5

Other than this statement, it is unclear how these specific plans actually are incorporated into the GPU or DEIR. As noted above, each respective plans' development capacities are not specifically identified in the DEIR's buildout projections. Thus, acknowledgment of the Phase II development in the North 40 in the DEIR will ensure that any future plans for the North 40 will be consistent with the long-range projections of the GPU.

On Page 4.11-20, the DEIR discusses Community Place Districts, which are identified as having capacity to accommodate new mixed-use development that would combine residential development with new and existing commercial uses. The DEIR further states that the GPU's principle of accommodating anticipated growth by streamlining development into built areas aligns with the Albright and North 40 Specific Plan; therefore, the GPU is consistent with applicable land use policies. We believe that the public would benefit from elucidation on this point.

8.6

<sup>1</sup> As we stated in our May 2021 correspondence on the draft GPU, the North 40 was amended on September 4, 2018, after nearly 2 years of deliberation (starting on September 27, 2016 with a Special Meeting of the Town Council). The amendment was to Section 6.4.1 of the North 40 and now provides that proposed developments "may request to enter into a Development Agreement reviewed pursuant to the established Architecture and Site Review approval process or the Planned Development Overlay process." This amendment and new plans for Phase II show the reasonably foreseeability of the continuation of the North Forty plan that should be contemplated in the GPU and its EIR.

4. **General Comment regarding VMT and LOS.** There appears to be opportunity for conflict in reaching goals with both Vehicle Miles Traveled (VMT) and Level of Service (LOS) metrics being used at the same time. As of July 2020, the California Environmental Quality Act (CEQA) utilizes VMT for transportation analysis, while the Los Gatos General Plan continues to require LOS analysis. These two measurements may have conflicting goals: VMT focuses on a reduction of miles to decrease emissions, whereas LOS focuses on maintaining or reducing vehicular trips/delay at identified intersections. While reducing trips and idling at intersections is one strategy to reduce emissions, intersection improvements that are completed to mitigate delay generally also increase intersection capacity or overall ease of flow, thereby unintentionally also encouraging vehicular use. While some Transportation Demand Management (TDM) strategies also help to reduce trips, LOS intersection mitigations may also make it easier/more convenient to drive, which then may have the unintended consequence of encouraging Single Occupancy Vehicle (SOV) trips. As an example, mixed use development may reduce VMT but increase trips which would decrease LOS in some cases. Continuing to utilize LOS reduction techniques concurrently with VMT may directly challenge the goals of CEQA that encourage TDM strategies, which are the primary mitigations used to reduce VMT. Land use planning and site design also provide significant opportunities to reduce VMT, particularly in locations that do not have the opportunity to be served by public transportation.

8.7

Thank you for your consideration.

Sincerely,



Don Capobres

Attachment

cc: Steve Buster, Grosvenor Americas  
Whitney Christopolous, Grosvenor Americas



May 5, 2021

Town of Los Gatos General Plan  
Update Advisory Committee  
c/o Mr. Joel Paulson  
Director, Community Development Department  
110 E. Main St.  
Los Gatos, CA 95030

Via Email: GP2040@losgatosca.gov

**SUBJECT: Public Comment Item #4, GPUAC Meeting of May 6, 2021**

Dear Chairperson Hanssen and Members of General Plan Update Advisory Committee:

Congratulations on reaching this important milestone. After over two years, you have completed the Draft 2040 General Plan Update. The Town of Los Gatos (Town) should be very thankful to have such a dedicated group of volunteer citizens who spent countless hours preparing for and attending meetings over this period. We watched as you weaved multiple challenging topics together to create a blueprint for the Town for the next two decades. These topics included racial and social justice, environmental concerns including the reduction of vehicle miles traveled to reduce our carbon footprint, and the ever-present housing crisis. This was done largely during a pandemic. Amazing. We thank you for your vision and your leadership in crafting this document.

Harmonie Park Development is based in Los Gatos and is developing the retail portion of the first phase of development within the North 40 Specific Plan (North 40). In addition to our work on Phase I, we represent Grosvenor Americas in its endeavor to re-imagine what will be built on a large portion of the remainder of the North 40, commonly referred to as Phase II. We have recently embarked on a community discussion about options for the Phase II. It is important to stress that we will not put any development plans together until we complete this collaborative process. Our current time frame for completing this is the Fall of this year. Based on our observation of your Committee's work over the past two years and with instruction to stay within the vision for Los Gatos in the next couple of decades that you have provided, we have asked our design team to explore optionality that can help better inform this conversation about Phase II. We are sharing this thinking with Town stakeholders to help us formulate an eventual application.

With this background and with much respect for the work that you have done, we submit the following comments on the Draft 2040 General Plan Update (GPU).

Comments Specifically Related to the North 40

1. **3.6 Special Planning Areas.** North 40 Specific Plan Area. It should be noted in the GPU that the North 40 Specific Plan was amended on September 4, 2018 after nearly 2 years of deliberation (starting on September 27, 2016 with a special meeting of Town Council). The Amendment was to Section 6.4.1 of the Specific Plan and it now allows that proposed developments within the Specific Plan "may request to enter into a Development Agreement reviewed pursuant to the established Architecture and Site Review approval process or the Planned Development Overlay process".

8.8

With this amendment and based on a new view of Phase II, which is informed by over a decade's worth of conversations in Town and this Committee's work over the past two-and-one-half years, it is reasonably foreseeable that the vision for the North 40 may look different than it does today. This fact should be reflected in the GPU, as any future plans for the North 40 should be consistent with the long-range projections of the GPU. 8.8

2. **3.1 General Plan Residential Buildout. Table 3-1.** Related to the first comment above, this table should reflect an opportunity for additional new residential development on the North 40, if so desired by the Town. With density of up to 40 dwelling units per acre in the GPU and between 15 and 20 acres remaining on the North 40, there is opportunity for significant new residential development. Again, if so desired by the Town. We also believe that a footnote should be added to the "existing projects" line item that identifies which projects are providing units that reflect that 475-unit total. 8.9

3. **Figure 3-10, Figure 4-11 and text on page 60.** On figure 4-11, the entire North 40 is included in the Los Gatos Boulevard Community Place District (CPD) and it is not included on Figure 3-10 and text on page 60. Overlapping the North 40 area with a CPD could lead to confusion about which standards or rules apply between the CPD and the North 40. To avoid this, we recommend that the North 40 area be removed entirely from the Los Gatos Boulevard CPD, as the North 40's objective development standards will govern development in that area. If the North 40 is to remain in the Los Gatos Boulevard CPD, it would be helpful to us to understand the rationale and the GPU should provide clarity as to the hierarchy of competing rules (which should be the North 40 as stated in that plan). 8.10

a. **CD 9.6.** If North 40 is to remain in the Los Gatos Boulevard CPD, what incentives can be provided to encourage structured or subterranean parking?  
b. **CD 9.11** If North 40 is to remain in the Los Gatos Boulevard CPD, forcing additional architectural elements on corner fronting entrances on Los Gatos Boulevard could result in architecture that feels forced. Rather, we would like to submit a comprehensive vision for the North 40 portion of Los Gatos Boulevard that fits the entire street frontage through the PD or Architecture and Site Plan process as allowed by the North 40. 8.10

4. **4.6 Implementation Programs.** Again, related to North 40 being included in a CPD. There is potential for overlap of these Design Standards and those objective standards found in the North 40. It should be made clear what governs—the North 40 or the GPU standards. 8.11

5. **MOB 10.1.** The definition for Traffic Impact Policy should be included in the Glossary. 8.12

6. **General comment regarding VMT and LOS.** There appears to be opportunity for conflict in reaching goals with both Vehicle Miles Traveled (VMT) and Level of Service (LOS) metrics being used at the same time. As an example, mixed use development will reduce VMT but increase trips which would decrease LOS in some cases. 8.13

7. **MOB 10.4.** How will nexus be derived for fair share costs of future traffic signals or future traffic signal modifications. 8.14

8. **MOB 13.1.** Provide specifics on standards for shared parking that will be allowed in Town. Shared parking will be critical in achieving goals/policies such as CD 9.6—structured or subterranean parking. 8.15

9. **MOB 13.7.** Need definition of Traffic Impact Policy and this policy should strive to coordinate various goals contained in the General Plan with prioritization given to goals that have sometimes conflicting components, such as VMT reduction vs. LOS standards. 8.16

10. **5.9 Implementation Programs.** All programs such as Traffic Impact Policy, TDM programs, Traffic Impact Fees, etc. should provide clear direction to the development community as to what to expect and they should all be coordinated to strive to achieve a common goal. Duplicative programs or programs that are not effective should be avoided as this is a major cost to development and can significantly impact the implementation of many of the land use policies and desires contained in the GPU. 8.17

11. **OSP 4.6. and 7.3 (C) Implementation Programs.** Provide objective criteria such as State Quimby Act guidelines or equivalent. Private open space requirements should be prescribed in accordance with State Law. 8.18

12. **ENV 8.3.** There are other ways that noise and air quality can be mitigated in addition to TDM programs, so the requirement to decrease VMT needs to consider these other forms of mitigation. This is purely a California Environmental Quality Act (CEQA) item, and the GPU should not limit the potential for other typical mitigations under CEQA. 8.19

13. **ENV 8.7.** There are other ways in addition to site planning to reduce exposure to mitigate air quality from air pollutants from adjacent roadways. This is purely a California Environmental Quality Act (CEQA) item, and the General Plan may not be the proper place for this. 8.20

14. **ENV 9.14.** Consider the impact that this may have on the feasibility of constructing new affordable housing. 8.21

15. **ENV 18.5.** Need more clarity on this. It seems to run counter to the encouragement of mixed use neighborhoods. Why are the Noise Ordinance threshold not sufficient? A 10% further reduction could be difficult and unnecessary. 8.22

16. **Environmental and Sustainability Element Program Y.** Where will these standards be documented? 8.23

17. **Environmental and Sustainability Element Program MM.** What kind of incentives will be provided? 8.24

Comments Not Directly Related to North 40

Du/acre - gives us townhomes, etc. FAR = smaller units, more people.

1. **Page 3-8 Standards.** Maximum FAR for both residential and non-residential is not common practice. It is more common to have FAR for only non-residential portion of mixed-use projects. 8.25
2. **Table 3-2.** Why aren't mixed use development allowed in the HDR designation? The height limitation of 45 feet throughout the GPU will not allow the Town to implement building types and density envisioned or described by GPUAC during its deliberations. The 4 over 1 product type (four stories of residential over one floor or retail or parking structure) envisioned on Los Gatos Boulevard, as an example, will require at least 55 feet. The most feasible and popular building type for multifamily housing is 5-over-1 or 2 and would require 65 feet in height. If there is desire to place development density in strategic locations in Town, optionality should be provided that would encourage these types of development to occur. 8.26
3. **CD 2.2.** Requiring multi-story buildings to incorporate step backs on upper floors seems to overly prescribe architectural style. Some of the Town's most iconic and loved buildings do not have step backs on upper floors. **At these heights, you lose the sense of intimacy** 8.27

These comments are offered with the intent of trying to help the Town achieve the vision that this Committee has so carefully laid out in the Draft 2040 General Plan Update. We will be attending the meeting on May 6 and subsequent hearings and we are available to answer any questions that you may have. Congratulations again.

Sincerely,



Don Capobres

cc: Steve Buster, Grosvenor  
Whitney Sylvester, Grosvenor

## Letter 8

**COMMENTER:** Don Capobres, Harmonie Park Development/Grosvenor Americas

**DATE:** September 13, 2021

### **Response 8.1**

The commenter expresses an opinion that the Draft EIR should disclose how Phase II of the North 40 would be consistent with the 2040 General Plan.

As stated in Section 15002(a)(1) of the CEQA *Guidelines*, one of the primary purposes of CEQA is to inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities. The Draft EIR identifies potentially significant environmental impacts of the proposed project. As the 2040 General Plan includes buildout assumptions about the Phase II North 40 project, which do not change from the 2020 General Plan, it effectively analyses this project as part of the General Plan's long-term buildout. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

### **Response 8.2**

The commenter expresses an opinion that the Draft EIR should clarify what portion of the 2040 General Plan buildout numbers applies to either phase of the North 40 project.

The 2040 General Plan Buildout includes housing units through new construction or redevelopment, new housing units in the Accessory Dwelling Unit (ADU) typology, and housing units based on pending and approved Town projects. The total number of anticipated housing units equal 475, which includes up to 365 units as part of the approved North 40 Specific Plan. The remaining 110 pending and approved housing units consists of an 80-unit senior housing project and miscellaneous infill projects adding between 3-8 housing units. The 804 units on vacant land does not include Phase II of the North 40 Specific Plan since the Town has not yet received the formal Phase II submittal for consideration and approval. In this case the existing units allowed under the Specific Plan were incorporated for this effort into the pending and approved Town projects.

The Draft EIR is prepared pursuant to CEQA to identify potentially significant environmental impacts of the proposed project. The commenter does not provide enough detail to know which environmental impacts may be further analyzed or addressed. In other words, the commenter does not link or connect their comment to a particular environmental impact. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

### **Response 8.3**

The commenter expresses an opinion that Table 2-2 in the Draft EIR should clarify what portion of the 2040 General Plan buildout numbers are comprised of already approved development.

The Draft EIR evaluates the potential impacts from reasonable buildout accommodated or facilitated by the 2040 General Plan. Differentiating what portion of that buildout, as discussed above in Response 8.2, is currently approved or planned prior to adoption of the 2040 General Plan has no effect on the program-level environmental impact analysis or mitigation. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

## Response 8.4

The commenter expresses an opinion that Impact LU-3 requires an analysis of project consistency with existing specific plans, but the Draft EIR analysis does not clearly address Phase II North 40 Specific Plan.

The 2040 General Plan sets forth land use policy for the planning horizon period. As described on page 4.11-18 of the Draft EIR, the 2040 General Plan incorporates and makes no change to two existing specific plans, including the North 40 Specific Plan. The Draft EIR evaluates implementation of the 2040 General Plan, which incorporates the North 40 Specific Plan, but evaluation of potential future changes to the North 40 Specific Plan would be speculative at this time, as no revisions have been submitted, reviewed, or approved. Additionally, Impact LU-3 addresses consistency with existing plans that were adopted with the purpose of avoiding or mitigating an environmental effect, as described on page 4.11-13 of the Draft EIR. Since the North 40 Specific Plan is incorporated into the 2040 General Plan, and since the 2040 General Plan is by default consistent with itself, no revisions to the Draft EIR are necessary in response to this comment.

## Response 8.5

The commenter states that the North 40 Specific Plan is incorporated into the 2040 General Plan and expresses an opinion that the Draft EIR does not specify what portion of the 2040 General Plan buildout numbers are comprised of already approved development.

This comment is similar to comments 8.2, 8.3, and 8.4. Please see Response 8.2, Response 8.3, and Response 8.4, above. As described therein, no revisions to the Draft EIR are necessary in response to this comment.

## Response 8.6

The commenter summarizes a portion of the Draft EIR and expresses an opinion that additional clarification would be beneficial.

The commenter summarizes statements of the Draft EIR accurately, but the commenter does not clearly identify or explain what clarification is necessary. Therefore, it is not possible to respond further to this comment. No revisions to the Draft EIR are necessary in response to this comment.

## Response 8.7

The commenter summarizes their understanding of the goals of VMT and level of service (LOS) with regards to transportation and circulation and expresses an opinion that relying on both for transportation planning may create conflicts.

In December 2019, California's Third District Court of Appeal confirmed that under SB 743, automobile delay may no longer be treated as a significant impact in CEQA analysis (*Citizens for Positive Growth & Preservation v. City of Sacramento*). Section 15064.3(a) of the CEQA Guidelines states that except for certain roadway expansion projects, a project's effect on automobile delay shall not constitute a significant environmental impact.

As stated in Section 15002(a)(1) of the CEQA Guidelines, one of the basic purposes of CEQA is to inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities. Because SB 743 establishes that automobile delay may no longer be treated as a significant impact in CEQA and the Draft EIR is prepared pursuant to CEQA to identify potentially significant environmental impacts of the 2040 General Plan, traffic delay or automobile

delay is not analyzed as a CEQA impact in the Draft EIR. LOS is a measure of traffic delay and not used as an impact analysis threshold in the Draft EIR. Pursuant to CEQA *Guidelines* Section 15064.3, automobile delay resulting from the proposed project does not constitute a significant environmental impact. Therefore, as traffic congestion and delay are not significant environmental impacts of the project and no additional revisions to the Draft EIR are necessary in response to this comment.

Although traffic congestion and automobile delay are not significant environment effects pursuant to CEQA Guidelines Section 15064.3(a) and therefore require no additional analysis or mitigation in the Draft EIR, the Town can continue to evaluate resulting LOS from development projects, outside of the parameters of CEQA significance thresholds. Continuing to require an LOS analysis outside of the CEQA process would enable the Town to ensure individual development projects contribute to intersection and roadway improvements as needed to maintain adequate vehicle circulation.

### **Response 8.8**

The commenter expresses an opinion that the 2040 General Plan should acknowledge that the North 40 Specific Plan may change over time.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

### **Response 8.9**

The commenter expresses an opinion that Table 3-1 in the 2040 General Plan should reflect an opportunity for additional residential development and that existing development should be clarified.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

### **Response 8.10**

The commenter expresses an opinion showing the North 40 Specific Plan as overlapping a Community Place District in the 2040 General Plan could lead to confusion of which policy and guidelines are applicable to the North 40 Specific Plan development. The commenter recommends that the North 40 be removed entirely from the Los Gatos Boulevard's Community Place District as it will be governed by its own development standards. The commenter provides a recommendation that the North 40 area be entirely removed from the Los Gatos Community Place District.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

### **Response 8.11**

The commenter expresses an opinion showing the North 40 Specific Plan as overlapping a Community Place District in the 2040 General Plan could lead to confusion of which policy and guidelines are applicable to the North 40 Specific Plan development.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

## **Response 8.12**

The commenter expresses an opinion that the 2040 General Plan should define the term “Traffic Impact Policy.”

This comment does not pertain to the Draft EIR or CEQA. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

## **Response 8.13**

The commenter expresses an opinion showing the 2040 General Plan contains both VMT and LOS metrics, which could conflict toward achieving goals of the General Plan.

Please see Response 8.7 above. This comment does not pertain to the Draft EIR or CEQA. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

## **Response 8.14**

The commenter asks how 2040 General Plan Policy MOB 10.4 will be used to derive the fair share costs of future traffic improvements.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

## **Response 8.15**

The commenter expresses an opinion 2040 General Plan Policy MOB 13.1 should provide details on shared parking standards.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

## **Response 8.16**

The commenter expresses an opinion that 2040 General Plan Policy MOB 13.7 should define “Traffic Impact Policy” and should coordinate General Plan goals with conflicting metrics, such as VMT and LOS.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

## **Response 8.17**

The commenter expresses an opinion that 2040 General Plan 5.9 Implementation Program should provide direction to achieve a coordinated goal and avoid duplicative or ineffective programs.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

## **Response 8.18**

The commenter expresses an opinion that 2040 General Plan OSP 4.6 and 7.3(c) Implementation Programs should use objective criteria and State law.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

### **Response 8.19**

The commenter expresses an opinion that 2040 General Plan Policy ENV 8.3 should provide additional methods to avoid noise and air pollution emissions.

This comment does not pertain to the Draft EIR or CEQA. However, for informational purposes, Noise and Air Quality are discussed in Sections 4.12 and 4.3 of the Draft EIR. Therein, it was determined impacts would be less than significant or less than significant with mitigation. The commenter does not dispute the impacts described in these sections of the Draft EIR. Therefore, no revisions to the Draft EIR are necessary in response to this comment and it does not result in changes to impacts identified in the Draft EIR.

### **Response 8.20**

The commenter expresses an opinion that 2040 General Plan Policy ENV 8.7 should provide additional methods to avoid exposure to air pollutant emissions near roadways.

This comment does not pertain to the Draft EIR or CEQA. However, for informational purposes, impacts to air pollutant emissions are discussed in Impact AQ-2 on page 4.3-15 of the Draft EIR. Therein, it was determined impacts would be less than significant with mitigation. The commenter does not dispute this impact determination. Therefore, no revisions to the Draft EIR are necessary in response to this comment and it does not result in changes to impacts identified in the Draft EIR.

### **Response 8.21**

The commenter expresses an opinion that 2040 General Plan Policy ENV 9.14 may influence the feasibility of constructing affordable housing.

This comment does not pertain to the Draft EIR or CEQA. However, for informational purposes, page 4.6-17 and 4.6-18 of the Draft EIR discuss the consistency of Policy ENV 9.14 with the Los Gatos Sustainability Plan (LGSP). Therein, it is determined that the proposed policy would ensure that the 2040 General Plan would meet the goals of the LGSP. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

### **Response 8.22**

The commenter expresses an opinion that 2040 General Plan Policy ENV 18.5 should provide more clarity on noise reduction requirements.

This comment does not pertain to the Draft EIR or CEQA. However, for informational purposes, impacts to noise are discussed within Section 4.12, *Noise*, of the Draft EIR. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

### **Response 8.23**

The commenter asks where 2040 General Plan Environmental and Sustainability Element Program Y standards will be documented.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

### **Response 8.24**

The commenter asks what incentives will be provided for 2040 General Plan Environmental and Sustainability Element Program MM.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

### **Response 8.25**

The commenter expresses an opinion that the 2040 General Plan Policy contains maximum floor-area-ratio standards that are atypical.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

### **Response 8.26**

The commenter asks why mixed-use development is not allowed in HDR designation and expresses an opinion that 2040 General Plan height limitations may restrict building design.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

### **Response 8.27**

The commenter expresses an opinion that 2040 General Plan Policy CD 2.2 provides architectural requirements that are overly prescriptive.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

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”).<sup>1</sup> LGCA has significant concerns with the adequacy of the DEIR.

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

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

9.1

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

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

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

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

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

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

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

9.2

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

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

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

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

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

9.2

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.

9.3

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

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

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

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

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

9.4

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.

9.5

## **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.

9.6

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

9.7

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

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

9.7

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

9.8

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

9.9

9.10

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

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

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

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

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

9.11

**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 buildup 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.

9.12

The DEIR does not discuss the key policies pertaining to scenic resources, scenic easements, undergrounning 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.

9.13

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.

9.14

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

9.15

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

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

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

9.16

## 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.)

9.17

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.”].)

9.18

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

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

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

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

9.19

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.)

9.20

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

### 3. Biological Resources

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

9.21

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

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

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

9.22

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.”

9.23

#### 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.

9.24

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.

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

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

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

9.25

## 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.

9.26

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.)

9.27

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.”

9.28

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

9.29

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."

9.30

## 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."

9.31

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.

9.32

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*.)

9.33

## 7. Greenhouse Gas Emissions

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

9.34

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

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

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

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

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

9.35

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.

9.36

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.”].)

9.37

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.”

9.38

## 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.

9.39

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

9.40

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.)

9.41

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.”

9.42

## 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.

9.43

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

9.44

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

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

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

9.45

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.

9.46

## 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.)

9.47

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

9.48

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

9.49

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

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

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

9.50

## 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.

9.51

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 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.)

9.52

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

9.53

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

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

9.54

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.”].)

9.55

## **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 buildup. (See also Exhibit A.) Even assuming that there were only to be 3,738 new housing units built, this would still exceed ABAG’s population forecasts by nearly 30 percent. (DEIR, pp. 4.13-6, 5-1.)<sup>23</sup>

9.56

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

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

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

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

9.57

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.

9.58

### **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.

9.59

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.)

9.60

### **14. Transportation**

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

9.61

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

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

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

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

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

9.63

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.

9.64

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.

9.65

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

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

9.66

## 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.

9.67

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.

9.68

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

9.69

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:

9.70

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.

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

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

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

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

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

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

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

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

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

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

9.71

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

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

9.72

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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.)

9.73

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.

9.74

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.

9.75

### **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.)

9.76

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

9.77

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.)

9.78

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

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

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

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

9.79

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

9.80

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.)

9.81

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.)

9.82

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,

9.83

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

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

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

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

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

9.84

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).)

9.85

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

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

9.86

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).)

9.87

## 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.

9.88

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

Very truly yours,

RUTAN & TUCKER, LLP



Matthew D. Francois

cc (via e-mail):

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

# **Exhibit A**

### **Maximum Buildout Potential Under 2040 General Plan**

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

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

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

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

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

## Letter 9

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

**DATE:** September 13, 2021

### Response 9.1

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

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

### Response 9.2

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

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

While a general plan must address a broad range of issues, the plan should focus on those issues that are relevant to the planning area (Gov. Code§ 65301(c)). The plan must address the jurisdiction’s physical development, such as general locations, appropriate mix, timing, and extent of land uses and supporting infrastructure. The broad scope of physical development issues may range from appropriate areas for building factories to open space for preserving endangered species. This may include regional issues in addition to the more localized issues described in the planning statutes. (*Id. at page 21*).

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

A general plan is a “charter for future development” within a town, city, or county (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540.). It embodies fundamental policy decisions to guide future growth and development. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 571 (*Goleta Valley II*)). As stated by the California Department of Housing and Community Development (HCD), “General plans serve as the local government’s “blueprint” for how the city and/or county will grow and develop and include seven elements: land use, transportation, conservation, noise, open space, safety, and housing.” (<https://www.hcd.ca.gov/community-development/housing-element/index.shtml#comments>). Thus, it states what type and how much development might occur in any area but does not mandate that it must occur and be approved.

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

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

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

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

The percent variation among the alternatives was a way to produce units within this range. The prescribed goal of the General Plan Update Advisory Committee (GPAC), along with the Town staff, the Planning Commission, and Town Council was to aim for the higher range, which would align with the upcoming 6th Cycle Housing Element RHNA. As part of this alignment, the Town sought to include a buffer of anticipated units, as recommended by HCD. Therefore, the empirical basis is the projection of demand based on age demographics (as described in the Alternatives Report) and the fact that if the Town can only grow through redevelopment, then these are the redevelopment

rates one could reasonably see to satisfy demand. In other words, the percent redevelopment figures are not driving the growth, the growth is driving the percentages.

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

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

### **Response 9.3**

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

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

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

### **Response 9.4**

The commenter again states that the Draft EIR should have looked at the maximum potential buildout of the proposed 2040 General Plan land use densities, rather than the actual growth potential analyzed in the document. In supporting this statement, the commenter cites pages 4.13-

2 and 2-15 of the Draft EIR which states: "In accordance with CEQA, a program-level EIR is obligated to analyze the maximum potential buildup allowed under the subject plan or program."

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

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

In accordance with CEQA, a program-level EIR for a general plan must look at the plan's impacts on the physical environment ~~is obligated to analyze the maximum potential buildup allowed~~ under the subject plan or program. It has been calculated that the Los Gatos 2040 General Plan accommodates a potential for 3,738 dwelling units by the year 2040, and the EIR has used this figure to calculate and project environmental impacts.

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

## Response 9.5

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

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

The Draft EIR, itself, does not propose a development or redevelopment scenario for Los Gatos. Rather, the Draft EIR evaluates impacts that would or could be reasonably expected to result from implementation of the 2040 General Plan. As described in Response 9.2, above, the Draft EIR assumes the General Plan is a planning and guidance document and uses the potential growth the Town is likely to achieve by the year 2040 for the analysis of the potential project impacts. As previously stated, this takes into account both the potential for new development on available acreage and the potential for redevelopment of existing developed areas. The projected 3,738 dwelling units evaluated in the Draft EIR is not a hypothetical number but takes into consideration multiple factors, focusing on the total buildup for the Town and not just a 20-year horizon. These factors include, first, existing vacant land for development and the redevelopment of sites within the Town. This first segment totals 2,763 dwelling units as noted on page 3-4 in the Land Use Element of the Draft 2040 General Plan. The second factor includes a projected 500 dwellings that reflect ADU production. This project was calculated based on the historical average ADU production

in the Town of 25 ADUs per year, projected through the next 20 years, totaling 500. The third and final factor taken into consideration is the 475 dwelling units already approved but not yet constructed for existing projects. It is important to note that the 475 dwelling units are already pre-approved and are in the pipeline for construction but most, if not all, will not count toward the Town's 6th Cycle RHNA and Housing Element based on cut-off dates for the application and entitlement process for these projects. For this reason they are included in the reasonably foreseeable potential growth number.

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

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

### **Response 9.6**

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

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

### **Response 9.7**

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

The project analyzed by the Draft EIR is the Draft 2040 General Plan, which was recommended by the GPAC based on the implementation of the Land Use Alternative Framework approved by Town Council. The Town Council cannot consider or make a determination on the Draft 2040 General Plan until the environmental review is complete and available for their consideration. The information provided in the EIR is intended to assist the public, Planning Commission, and Town Council in their consideration of the Draft 2040 General Plan.

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

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

### **Response 9.8**

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

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

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

### **Response 9.9**

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

### **Response 9.10**

In this comment, the commenter refers to a letter sent by the CDFW in response to NOP for the Draft EIR to allege the project description is flawed. In addition, the commenter asks how to reconcile the identification of "Community Place Districts" as opportunities for growth with the increased density throughout the General Plan land use designations.

With regard to the CDFW, this letter is specific to the project description in the NOP and does not refer to the Draft EIR project description and thus does not support any flaw in the Draft EIR project description. With regard to the Community Place Districts, nothing in either the General Plan nor the Draft EIR state that the only development shall occur within these areas. Rather, the 2040 General Plan states on page 4-19 that "Within the Town, eight Community Place Districts are identified for having the most potential for future multi-family and/or mixed-use development, because of the residential densities specified in the Land Use Element." The Draft EIR does identify the increase in density for land use designations in the General Plan as well.

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

### **Response 9.11**

The commenter states that the Draft EIR does not describe the necessary infrastructure improvements associated with the project and therefore the project description is defective, citing *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 General Plan EIR need not be as detailed as an EIR for the specific projects that will follow (CEQA Guidelines § 15146). Its level of detail should reflect the level contained in the plan or plan element being considered (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351). In this case, the 2040 General Plan is a planning document and does not contain specific project information for unknown future projects. Nor does the commenter identify any specific project that should be analyzed in more detail within the Draft EIR. The Draft EIR does, however, provide a general level of analysis appropriate to a project level EIR prepared for a General Plan, including an analysis of utilities (Section 4.16, *Utilities*), traffic and roadway infrastructure (Section 4.15, *Transportation*), and public services (Section 4.14, *Public Services and Recreation*) that would be required as the Town grows under the 2040 General Plan.

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

### **Response 9.12**

The commenter states that because there is no visual simulation of future buildout conditions there is no substantial evidence to support the DIER's conclusion that the Project's impacts to aesthetics will be less than significant.

As stated in the Draft EIR at page 4.11-2, the Town is substantially developed, with a land vacancy rate of only 5.92 percent. Another 36.11 percent of the available acreage is parks or designated open space, and 15 percent is public or quasi public right-of-way. Visual simulations of future development would be unlikely to provide an accurate assessment of future development impacts given the large percentage of the Town that is already developed or open space. Development that does occur would likely be redevelopment of existing uses and would be subject to strict development guidelines found within the 2040 General Plan Section 4, Community Design Elements, which include both building and community design features, but also limitations on hillside development, open spaces, the creation of ecological or visual impacts, protection for historic features, and neighborhood specific requirements. It is upon the expectation and requirement that future proposed development be consistent with these policies that the less-than-significant determination is based.

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

### **Response 9.13**

The commenter states that the Draft EIR fails to specifically discuss Policies ENV 1.2 and 1.4 from page 8-4 of the General Plan.

The two policies in question are:

- ENV-1.2 Scenic Easements. Maintain scenic easements in specifically designated areas, particularly in hillside development and in the Town core.

- ENV-1.4 View Corridor Protection. Encourage the protection of key view corridors as described in the Hillside Development Standards and Guidelines to preserve the natural landscape and view so the surrounding hillsides.

Although the Draft EIR does not specifically reference ENV-1.2 or 1.4, it does discuss scenic assets and hillside development, the primary focus of these policies (See, for example, Draft EIR pages ES-3, 4.1-11, 4.1-12, 4.1-13-14, 4.1-15-16). The commenter does not provide any indication that failure to specifically discuss the two policies was related to any environmental significant impact. Additionally, future development proposals would be reviewed for consistency with these policies.

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

### **Response 9.14**

The commenter states that the Draft EIR does not analyze state scenic highways despite the fact that a portion of Highway 9 is eligible for designation as a state scenic highway and another portion of Highway 9 outside of Town is officially designated as such.

As the commenter notes, there are no designated scenic highways within the Town. Per the 2040 General Plan, a State Scenic Highway is “a highway officially designated by the State Scenic Highway Advisory Committee as scenic after application from a local jurisdiction, and only when the highway is identified on State Scenic Highway Master Plans.” (Draft EIR pages 12-14). In this case, the Town has not identified any segment of Highway 9 as a segment for which it will be seeking State Scenic Highway Designation. The entirety of Highway 9 as it traverses through Town is fully developed on either side with established residential neighborhoods and some commercial near State Route (SR) 17. Further, ENV-1.1 requires design review to prevent development that, due to their site location and massing, block views from roadways and public spaces in the surrounding hillsides (Draft 2040 General Plan page 8.4).

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

### **Response 9.15**

The commenter argues that there is the potential for increased density along State Scenic Highways.

See Response 9.14. As noted in response to comment 9.14, there are no designated State Scenic Highways in Town. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

### **Response 9.16**

The commenter states that the Draft EIR improperly defers mitigation on DEIR page 4.1-18.

Based on the commenter’s statement, Draft EIR page 4.1-18 is revised as follows:

The General Plan would ensure new development does not substantially degrade the visual character or quality of the Town. Furthermore, adherence to existing development of formal design guidelines for commercial, residential and hillside development, as well as all forms of developing, including suggested finishes, landscaping, and other aesthetic attributes, would mitigate potential impacts. A adherence to the 2040 General Plan policies and to formally adopted community design guidelines would guide development and ensure the overall visual quality of the Town is considered. Applicable 2040 General Plan goals and their corresponding policies are listed below.

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

### **Response 9.17**

The commenter suggests that the Draft EIR should evaluate the significance of air quality impacts using metrics provided by BAAQMD based on population and VMT growth. The commenter also suggests that the Draft EIR evaluates only a portion of the 85 control strategies provided in the BAAQMD 2017 Clean Air Plan.

According to page 2-7 of the BAAQMD 2017 CEQA Guidelines, when determining the air quality impacts of plan-level projects, the threshold of significance should be consistency with the 2017 Clean Air Plan, and the projected VMT or vehicle trip increase should be equal to or less than the projected population increase. As described on page 2-14 of the Draft EIR, in 2018, the Town's estimated population was 30,250 people, and buildout of the 2040 General Plan would increase population by approximately 8,971 residents. The addition of approximately 8,971 residents would result in a projected population increase of approximately 29.6 percent.<sup>1</sup> As described on page 4.3-14 of the Draft EIR, the projected VMT increase resulting from the General Plan would be approximately 25 percent. Therefore, the projected VMT increase would not exceed projected population increase because 25 percent is less than 29.6 percent.

Consistency of the 2040 General Plan with the control measures of the 2017 Clean Air Plan is evaluated and presented in tabular format in Table 4.3-3, which begins on page 4.3-10 of the Draft EIR. As shown in Table 4.3-3, the 2040 General Plan would be consistent with applicable control measures of the 2017 Clean Air Plan. The commenter is correct that the Draft EIR includes only a portion (six) of the 85 control measures provided in the 2017 Clean Air Plan. However, as described on page 4.3-10, only the control measures applicable to the proposed project are included in Table 4.3-3 and analyzed for consistency. The control measures provided in the 2017 Clean Air Plan that are not included in the Draft EIR were omitted because they clearly are not applicable to the proposed project (a Town-wide General Plan). For example, the 2017 Clean Air Plan includes control measures that pertain to oil refineries and sulfuric acid plants, neither of which occur in Los Gatos. Accordingly, these measures were not included in Table 4.3-3 and analyzed for consistency in the Draft EIR because they clearly are not applicable. No revisions to the Draft EIR are necessary in response to this comment.

### **Response 9.18**

The commenter suggests that the Draft EIR compares percent increase of VMT and population and should instead compare absolute increase of VMT and population in order to be consistent with the thresholds established in the BAAQMD CEQA Guidelines.

The commenter is correct that air quality impacts in the Draft EIR are evaluated by comparing the percent increase of VMT and percent increase of population. As described on page 4.3-14 of the Draft EIR, the projected VMT increase resulting from the General Plan would be approximately 25 percent, and population would increase by approximately 29.6 percent. The BAAQMD 2017 CEQA Guidelines do not prohibit the use of percent increase when comparing VMT and population increases to determine the significance of air quality impacts. Therefore, no revisions to the Draft EIR are required in response to this comment.

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<sup>1</sup> 8,971 people divided by 30,250 people multiplied by 100 percent = 29.6 percent

## Response 9.19

The commenter expresses an opinion that the Draft EIR fails to analyze the full range of air pollutant emissions from project construction activities.

As described on page 4.3-15 of the Draft EIR, the BAAQMD's 2017 *CEQA Air Quality Guidelines* have no plan-level significance thresholds for construction air pollutant emissions that would apply to the General Plan. However, the guidelines include project-level thresholds for construction emissions. If a project's construction emissions fall below the project-level thresholds, the project's impacts on regional air quality would be individually and cumulatively less than significant. Individual construction projects are not proposed, but rather adoption of a Town-wide General Plan is proposed. It is not appropriate to analyze a plan using project-level thresholds, plus there is insufficient detail at the plan-level to use project-level thresholds. Therefore, the Draft EIR does not analyze all possible emissions from construction because there are no thresholds to determine significance for some thresholds.

According to the 2017 BAAQMD *CEQA Air Quality Guidelines*, and as described on page 4.3-15 of the Draft EIR, PM<sub>10</sub> is the greatest pollutant of concern during construction activities. For this reason, the BAAQMD has identified feasible fugitive dust control measures for construction activities that are recommended for all projects to reduce impacts. Future development projects would include adherence to the BAAQMD's feasible fugitive dust control measures, which the BAAQMD also refers to as best management practices. If implementation of the BAAQMD best management practices is unable to reduce project-level construction emissions to below BAAQMD significance thresholds, the project would be subject to a more comprehensive analysis and consideration of additional feasible mitigation to address the significant impact, as required by CEQA. Additionally, the BAAQMD best management practices have been incorporated into the Draft EIR as mitigation measure AQ-1 on page 4.3-16 of the Draft EIR. Mitigation measure AQ-1 also requires new discretionary projects to reduce construction emissions of pollutants, including reactive organic gas pollution and other pollutants with a project-level threshold but no plan-level threshold. Accordingly, as described on page 4.3-16 of the Draft EIR, with implementation of mitigation measure AQ-1, construction activities would result in less than significant impacts. No revisions to the Draft EIR are required in response to this comment.

## Response 9.20

The commenter expresses an opinion that the Draft EIR fails to consider the health effects of air pollutant emissions of the project. The commenter also suggests that the Draft EIR uses 327 commercial units to determine air emissions but does not explain how 327 was derived and that 327 units could underrepresent development allowed under the 2040 General Plan. The commenter suggests that the impacts of toxic air contaminants should be significant because the 2040 General Plan does not include overlay mapping showing toxic air contaminants.

The commenters assertion that the Draft EIR fails to discuss or consider the health-related effects of air pollutants is incorrect. The health-related effects of primary pollutants are described on pages 4.3-2 and 4.3-3 of the Draft EIR. For example, page 4.3-2 of the Draft EIR describes the adverse health effects of ozone as respiratory and eye irritation and possible changes in lung functions. The adverse health effects of nitrogen oxide are described as an increase in bronchitis in young children, among other effects. Because the Draft EIR does disclose health-related effects of air pollutant emissions, no revisions to the Draft EIR are required in response to the first part of this comment.

The commenter is correct that the Draft EIR refers to 327 commercial units in context with the analysis of toxic air contaminants. As described on page 4.3-17 of the Draft EIR, “development projected by the 2040 General Plan includes a net increase of approximately 327 units of commercial development...” The 327 units described on page 4.3-17 are the sum of the new units proposed within the Neighborhood Commercial, Community Commercial, and Service Commercial land uses, as shown in Table 2-2 on page 2-15 of the Draft EIR.<sup>2</sup> The commenter’s assertion that 327 could underrepresent development envisioned by the General Plan is not accurate (see Response 9.2 for additional details regarding potential growth assumed in the Draft EIR). The Draft EIR evaluates the impacts of the 2040 General Plan and the General Plan envisions these 327 units in addition to the other unit types shown in Table 2-2. Further, the analysis of toxic air contaminants in the Draft EIR is not based on 327 units or a specific quantity of measurement of growth. Rather it focuses on a qualitative discussion of new development that could result in toxic air contaminant impacts, such as new gasoline stations. The analysis also focuses on proximity to roads because emissions are a toxic air contaminant.

The commenter’s opinion that toxic air contaminant impacts should be significant because the General Plan does not include mapping of overlay mapping showing toxic air contaminants is not correct. First, this portion of the comment pertains to omission of mapping in the 2040 General Plan that is not necessary for a sufficient analysis of impacts in the Draft EIR. The Draft EIR text describes the primary or main sources of toxic air contaminants without the need to refer to a map or figure in the General Plan. Specifically, as described on page 4.3-17 of the Draft EIR, there are several high-volume roadways and freeways in and around Los Gatos, including SR 85, Highway 17, Los Gatos Boulevard, and Winchester Boulevard, all of which are potential sources of toxic air contaminants due to vehicle emissions. Through Policy ENV 8.7, as described on Draft EIR page 4.3-18, the 2040 General Plan would require site planning to remove sensitive receptors away from these high-volume roadways, reducing the exposure to toxic air contaminants. As described on page 4.3-18 of the Draft EIR, toxic air contaminants would result in less than significant impacts. No revisions to the Draft EIR are required in response to this comment.

## **Response 9.21**

The commenter summarizes Draft EIR statements about the percentage of developed or urban land in Los Gatos, indicates that State and local agencies have commented on the presence of special-status species in the planning area, and that residents have seen such species close to downtown. The commenter also expresses an opinion that the Draft EIR does not evaluate impacts to special-status species.

The commenters remark about the Draft EIR stating that approximately 42 percent of the Town is developed, or urban land is correct. As described on page 4.4-12 of the Draft EIR, 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. Page 4.4-12 continues, explaining that areas that may provide habitat for special-status species are primarily located in the open space and undeveloped hillside areas of the planning area and the waterways and wetlands adjacent to the waterways in the planning area, such as Los Gatos Creek and Ross Creek. Therefore, the Draft EIR does state and evaluate the presence of special-status species in the planning area because the planning area contains open space and undeveloped hillside areas, as well as wetlands and waterways, such as Los Gatos Creek.

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<sup>2</sup> 117 Units of Neighborhood Commercial + 156 Units of Community Commercial + 54 Units of Service Commercial = 327 Units Total

Generally urban land does not provide habitat for special-status species because native vegetation is often missing and instead replaced with structures and asphalt concrete pavement, for example. Additionally, urban and developed land is often in proximity to frequent human activity and commotion, such as areas that people frequent and where wildlife patterns are disturbed or disrupted. For example, developed residential areas of Los Gatos are characterized by lawn maintenance, which involves trimming vegetation and operating equipment, which generally precludes the occurrence of suitable habitat for special-status species. However, special-status species do occur in proximity to downtown. As described on page 4.4-12 of the Draft EIR, habitat for special-status species is located along waterways, including Los Gatos Creek. In some locations Los Gatos Creek is less than 200 feet from commercial buildings in the downtown area of Los Gatos. Therefore, the Draft EIR supports the suggestion that special-status species could occur and be observed in the downtown area of Los Gatos, especially as it relates to Los Gatos Creek.

The commenters opinion that the Draft EIR does not evaluate impacts to special-status species is not factually accurate. Impact BIO-1 beginning on page 4.4-12 of the Draft EIR provides an analysis of potential impacts of the 2040 General Plan on special-status species. Accordingly, no revisions to the Draft EIR are required in response to this comment.

### **Response 9.22**

The commenter expresses an opinion that the 2040 General Plan would increase density in all areas of Los Gatos, but that the Draft EIR fails to provide mitigation measures to reduce associated impacts, and conclusions that impacts would be less than significant are not substantiated.

The commenter's opinion that pages 4.4-13 and 4.4-16 of the Draft EIR identify significant impacts to special-status species is not factually accurate. Pages 4.4-13 and 4.4-16 of the Draft EIR describe potential impacts to special-status species that would result from implementation of the 2040 General Plan. However, these impacts are not identified as potentially significant. For example, page 4.4-13 of the Draft EIR states that the "construction of these upgraded facilities could require work within riparian vegetation along creeks and waterways in the planning area, resulting in potential temporary riparian and aquatic habitat impacts." Because impacts describe for Impact BIO-1 are determined to be less than significant, mitigation measures to reduce potentially significant impacts are not required.

The commenter's opinion that the less than significant determination for Impact BIO-1 is unsubstantiated is not accurate. The analysis for Impact BIO-1 explains or describes multiples reasons why impacts would be less than significant. For example, page 4.4-12 of the Draft EIR states that that 2040 General Plan designates much of the hillsides and mountainous areas in the southern part of the planning area as Open Space, which would prevent substantial development of the habitat that the forests, chaparral, and scrubland that is typical of the mountainous areas. Page 4.4-13 of the Draft EIR states that because the 2040 General Plan would allow for only low-density development within areas designated as Hillside Residential, with no increase in the maximum density over the 2020 General Plan, vegetation cover in this land use designation would be generally preserved, resulting in less impacts to wildlife habitat. Additionally, pages 4.4-13 through 4.4-15 of the Draft EIR list policies of the 2040 General Plan that would reduce impacts to less than significant. Accordingly, no revisions to the Draft EIR are required in response to this comment.

### **Response 9.23**

The commenter expresses an opinion that Impact BIO-1 in the Draft EIR does not address applicable CEQA checklist question number 2 and describes typographical errors on pages 4.4-16 and 4.4-22.

The commenters opinion that Impact BIO-1 does not address CEQA checklist question number 2 is not accurate. Impact BIO-1 does analyze impacts related to checklist question number 2, which pertains to impacts to riparian habitat or other sensitive natural communities. For example, page 4.4-13 of the Draft EIR states that the “2040 General Plan does not include changes to existing Open Space land use designations, including along creeks and waterways in the planning area. Therefore, the 2040 General Plan would not facilitate permanent development in riparian vegetation along these creeks and adjoining riparian areas.” Page 4.4-13 also states that the construction of upgraded facilities could require work within riparian vegetation along creeks and waterways in the planning area, resulting in potential temporary riparian and aquatic habitat impacts. As further described on page 4.4-13 of the Draft EIR, the development facilitated under the 2040 General Plan would be subject to the provisions of the various Federal and State natural resources regulations and their respective permitting processes. Additionally, the 2040 General Plan contains goals and policies that call for the preservation and protection of natural resources and the managed production of natural resources. As described, on page 4.4-16 of Draft EIR, these regulatory requirements and the General Plan policies would reduce impacts to less than significant. Accordingly, Impact BIO-1 evaluates potential impacts related to CEQA checklist question number 2, and no further revisions are required in response to this portion of the comment.

The commenter accurately describes typographical errors on page 4.4-16 and 4.4-22 of the Draft EIR. These typographical errors do not raise a significant environmental issue. In response to this comment, page 4.4-16 of the Draft EIR is revised as follows:

Detailed wetland delineations would be needed to determine the extent of any jurisdictional wetlands and other waters at specific locations and the USACE is responsible for making a final determination on the extent of jurisdictional waters for a particular site. The extent of jurisdictional waters, as well as project specific details and plans would be necessary to determine the acres of wetlands and stream channels that could be impacts impacted from development facilitated by the 2040 General Plan.

In response to this comment, page 4.4-22 of the Draft EIR is revised as follows:

Policy ENV-7.5 ~~conservers~~ conserves nesting bird sites unless appropriate mitigation is provided. Therefore, impacts to special status species and their habitat; sensitive habitats; and wildlife movement would be less than significant.

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

## **Response 9.24**

The commenter states that the increased density permitted in historic districts by the 2040 General Plan should be analyzed in the Draft EIR as it is likely to lead to additional development in historic districts. The commenter further states that mitigation measure CR-1 requiring additional studies for individual projects is deferred mitigation. Finally, the commenter states that tribal cultural resources are not required to be identified prior to groundbreaking activities and thus is inadequate to mitigate such occurrences, and further that the guidance in the Native American Heritage Commission letter of July 13, 2020, should be included in the Draft EIR.

The 2040 General Plan section 4.3 specifically addresses historic preservation in the Town and provides clear policy guidelines on the protection, renovation and rehabilitation of historic structures in the Town. Furthermore, the Community Place Districts offer further protections for the development of historic districts and buildings, requiring the reuse of existing historic buildings

whenever possible (Policy CD-8.2) and ensuring that there are no abrupt changes in mass and scale between historic and new development (Policy CD-8.3)(2040 General Plan page 4-23).

Nor does CR-1 represent deferred mitigation. As stated previously, the General Plan EIR need not be as detailed as an EIR for the specific projects that will follow (CEQA Guidelines § 15146). Its level of detail should reflect the level contained in the plan or plan element being considered (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351). In this matter, the General Plan document is a planning document and does not contemplate any specific project or development. Once specific projects or developments are identified, CR-1 requires that project to conduct specific cultural resource studies to determine whether the proposed activities might have a significant impact and thereafter meet certain standards if cultural resources are found.

*“[W]hen, for practical reasons, mitigation measures cannot be fully formulated at the time of project approval, the lead agency may commit itself to devising them at a later time, provided the measures are required to ‘satisfy specific performance criteria articulated at the time of project approval.’* (*Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1028-1029; *Ctr. for Biological Diversity v. Dep’t of Fish & Wildlife* (2015) 234 Cal.App.4th 214, 241).

Finally, the commenter expresses an opinion that 2040 General Plan policies cannot be used to reduce impacts to tribal cultural resources to less than significant because policies do not require identification of such resources prior to commencement of project ground disturbance.

As described on page 4.5-14 of the Draft EIR, 2040 General Plan Policy ENV-14.1 requires that for future projects envisioned in the General Plan, local Native American tribes be involved early and often on potential disturbance, recovery, and preservation of tribal cultural resources, including development of strong consultation protocols with appropriate Native American tribe(s), as required by California Senate Bill (SB) 18 and Assembly Bill (AB) 52. AB 52 requires a CEQA lead agency to consult with Native American tribes for which a Notice of Preparation, Notice of Mitigated Negative Declaration or Notice of Negative Declaration is filed on or after July 1, 2015. Native American tribes which must be consulted include the tribes who have requested such consultation. Consulting with applicable Native American tribes during the CEQA process helps to identify tribal cultural resources during project planning, and therefore, if present and impacted, helps to establish mitigation measures to reduce impacts to tribal cultural resources prior to completion of CEQA and commencement of construction and ground disturbance. Accordingly, 2040 General Plan Policy ENV-14.1 would ensure that tribal cultural resources are identified prior to commencement of ground disturbance, as described on page 4.5-15 of the Draft EIR.

In addition to 2040 General Plan policies, there are existing regulations that prevent impacts to Native American burial remains. As described on page 4.5-13 of the Draft EIR, human burials have specific provisions for treatment in Section 5097 of the California Public Resources Code. The California Health and Safety Code (Sections 7050.5, 7051, and 7054) has specific provisions for the protection of human burial remains. Existing regulations address the illegality of interfering with human burial remains, and protects them from disturbance, vandalism, or destruction, and established procedures to be implemented if Native American skeletal remains are discovered. Public Resources Code §5097.98 also addresses the disposition of Native American burials, protects such remains, and established the NAHC to resolve any related disputes.

Therefore, General Plan Policy ENV-14.1 and mandatory compliance with existing regulations would ensure that impacts to tribal cultural resources are avoided or minimized, including impacts resulting from project construction and ground disturbance. No additional revisions to the Draft EIR or further analysis are required in response to this comment.

The commenter expresses an opinion that the Draft EIR ignores guidance from the Native American Heritage Commission included in Appendix A of the Draft EIR. Appendix A of the Draft EIR is the NOP of the Draft EIR and the comments that were received in response to the NOP. As stated by the commenter, one of the comment letters included in Appendix A is from the Native American Heritage Commission. The Native American Heritage Commission letter describes basic regulatory requirements of CEQA, as well as the Native American tribal consultation that is required pursuant to AB 52 and SB 18. The letter also contains the Native American Heritage Commission's recommendations for conducting cultural resources assessments. The recommendations provided in the letter describe consultation processes, completeness of consultation, how to describe impacts to tribal cultural resources in CEQA documents, examples of possible mitigation measures to reduce impacts to tribal cultural resources, and prerequisites to certifying an EIR with a potentially significant impact tribal cultural resources, among other things.

The commenter's opinion that the Native American Heritage Commission's guidance was ignored in preparation of the Draft EIR is inaccurate. Native American tribal consultation was conducted pursuant to AB 52 and SB 18 consistent with the guidance in the letter provided by the Native American Heritage Commission. As described on page 4.5-6 of the Draft EIR, in accordance with AB 52 and SB 18, the Town notified seven California Native American tribes of the proposed 2040 General Plan and invited them to participate in consultation. However, no tribes responded to the invitation for consultation. Nonetheless, AB 52 and SB 18 consultation was conducted pursuant to regulatory requirements and consistent with the guidance provided in the letter received from the Native American Heritage Commission. Other parts of the Native American Heritage Commission's letter are just recommendations or examples, such as the examples of possible mitigation measures to reduce impacts to tribal cultural resources. Therefore, the Town is under no obligation to follow the Native American Heritage Commission's letter, as the letter is only recommendations. Accordingly, no additional revisions to the Draft EIR or further analysis are required in response to this comment.

## **Response 9.25**

The commenter identifies typographical errors on pages 4.5-6, 4.5-13, and 4.5-15 of the Draft EIR.

The commenter accurately describes typographical errors on pages 4.5-6, 4.5-13, and 4.5-15 of the Draft EIR. These typographical errors do not raise a significant environmental issue. In response to this comment, page 4.5-6 of the Draft EIR is revised as follows:

In accordance with Assembly Bill 52 (AB 52) and Senate Bill (SB 18) (see Regulatory Setting, below), the Town notified the following California Native American tribes of the proposed ~~2045~~ 2040 General Plan and invited them to participate in consultation:

In response to this comment, page 4.5-13 of the Draft EIR is revised as follows:

**IMPACT CUL-2 DEVELOPMENT ENVISIONED IN THE 2040 GENERAL PLAN WOULD REQUIRE GROUND DISTURBANCE THAT COULD ENCOUNTER HUMAN REMAINS. IMPLEMENTATION OF 2040 GENERAL PLAN POLICIES AND COMPLIANCE ~~WOULD~~ WITH EXISTING REGULATIONS WOULD REDUCE POTENTIAL IMPACTS TO HUMAN REMAINS TO LESS THAN SIGNIFICANT.**

The above edit to page 4.5-13 is also reflected in Table ES-1 in the Executive Summary of the Draft EIR.

In response to this comment, page 4.5-15 of the Draft EIR is revised as follows:

Policies ENV-14.1 and ENV-14.2 would ensure that tribal cultural resources are identified prior to commencement of ground disturbance. Compliance with existing regulations pertaining to human remains, discussed in Impact CUL-2, above would reduce impacts to potential Native American burial sites. Accordingly, impacts to potential tribal cultural resources would be less than significant.

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

### **Response 9.26**

The commenter expresses an opinion that while the Draft EIR states that the effects of energy generation are considered, the Draft EIR fails to evaluate the physical impacts of energy generation other than GHG emissions.

The Draft EIR discusses the impacts of the 2040 General Plan on energy demand and generation within Section 4.6, *Energy*. Within that section, it was determined that the development and population growth facilitated by the 2040 General Plan would result in an increase of overall consumption of energy compared to existing conditions. As described on page 4.6-1 of the Draft EIR, the energy impacts analysis follows the guidance for evaluation of energy impacts contained in Appendix F and Appendix G of the CEQA Guidelines. As described on Draft EIR page 4.6-10, Appendix F of the CEQA Guidelines requires inclusion in an EIR of relevant information that addresses “potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary consumption of energy” (Public Resources Code Section 21100[b][3]).

Additionally, the Draft EIR evaluates the potential physical environmental impacts of the proposed project, which is the 2040 General Plan. The 2040 General Plan does not envision the construction of a new electric power plant in the Planning Area. Therefore, because a new power plant is not proposed, the Draft EIR does not evaluate the potential impacts of electrical generation because electricity would be provided by existing facilities and providers. In other words, while the 2040 General Plan would increase energy demand, the demand would be met from existing facilities. Existing facilities would not require new construction resulting in physical impacts. Increased generation at the existing facilities would result in increased air quality and GHG emissions at the existing generation facilities. However, these emissions are considered in the Draft EIR. As discussed on page 4.6-1 of the Draft EIR, the physical environmental impacts associated with the generation of electricity and burning of fuels have been accounted for in Section 4.3, *Air Quality*, and Section 4.8, *Greenhouse Gas Emissions*, of the Draft EIR. No revisions to the Draft EIR are required in response to this comment.

### **Response 9.27**

The commenter expresses an opinion that the Draft EIR fails to disclose a significant impact related to fuel consumption of increased VMT resulting from the 2040 General Plan, and instead relies on unsubstantiated claims that the General Plan would place residents closer to employment, businesses, and public transit.

As described on page 4.6-1 of the Draft EIR, the energy impacts analysis follows the guidance for evaluation of energy impacts contained in Appendix F and Appendix G of the CEQA Guidelines. As described on Draft EIR page 4.6-10, Appendix F of the CEQA Guidelines requires inclusion in an EIR of relevant information that addresses “potential energy impacts of proposed projects, with

particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary consumption of energy" (Public Resources Code Section 21100[b][3]).

The potential impacts resulting from wasteful consumption of transportation fuel are evaluated on pages 4.6-11 and 4.6-12 of the Draft EIR. As described therein, fuel consumption is closely associated with VMT, and the VMT per capita in 2040 in the Town of Los Gatos would increase above existing VMT per capita with the potential adoption and implementation of the 2040 General Plan. As described on page 4.6-11 of the Draft EIR, based on the Traffic Analysis prepared by Fehr & Peers for the 2040 General Plan, the VMT generated by the 2040 General Plan would not increase boundary VMT per capita in Santa Clara. As stated in the Transportation section at page 4.15-17, boundary VMT provides a more complete evaluation of the potential effects of the proposed 2040 General Plan because it looks at not only local trips, but also pass-through trips and shifts in existing traffic to alternative travel routes or modes. This shows that the effects from VMT would be localized and not have regional impacts. Because the 2040 General Plan would not increase boundary VMT per capita, it suggests that fuel consumption resulting from General Plan would be consistent with regional trends and would not be wasteful or inefficient. Accordingly, impacts would be less than significant, and no revisions to the Draft EIR are required in response to this comment.

### **Response 9.28**

The commenter makes an assertion that the Draft EIR contains inconsistent information related to regulations concerning renewable resource targets, providing what they feel is an example of inconsistent target years of 2026 and 2030 described in the Draft EIR. The commenter also describes typographical errors on Draft EIR pages 4.6-13 and 4.6-14.

The commenter's assertion about inconsistent information related to regulations is incorrect. As described on page 4.6-13 of the Draft EIR, established in 2002 under SB 1078, and accelerated by SB 107 and SB 2, California's Renewable Portfolio Standard (RPS) obligates investor-owned utilities, energy service providers, and community choice aggregators to procure 33 percent of their electricity from renewable energy sources by 2020. The State legislature recently updated this requirement to 50 percent renewables by the year 2030. The requirement of 50 percent renewables by 2030 is a regulatory requirement of or derived from SB 107 and SB 2. With the adoption of SB 100, the 100 Percent Clean Energy Act of 2018, the RPS goals increased to 50 percent renewable resources target by December 31, 2026, and to achieve a 60 percent target by December 31, 2030. The various SBs discussed on page 4.6-13 do not conflict, but rather are updates. The most recent SB 100 sets the newest target of 60 percent by the end of 2030.

In response to the commenter's description of typographic errors, page 4.6-13 of the Draft EIR is revised as follows:

Renewable energy sources generally result in reduced long-term environmental impacts compared with to non-renewables because renewable sources do not require combustion of coal or natural gas to generate electricity, which avoids environmental impacts associated with air pollution and GHG emissions.

In response to the commenter's description of typographic errors, page 4.6-14 of the Draft EIR is revised as follows:

The 2040 General Plan contains a land-use strategy that actively promotes infill mixed-use and transit-oriented development, which would result in greater energy efficiency overall for Town residents, businesses, and Town operations.

These typographical errors do not change the analysis of potential impacts. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 9.29**

The commenter makes an assertion that the Draft EIR must reflect evolving scientific knowledge and state regulatory schemes especially with respect to GHG emissions, and that the analysis of Impact E-2 evaluates consistency with an outdated 2012 Sustainability Plan and fails to assess consistency with the State's 2017 Scoping Plan.

The commenter is correct that Impact E-2 of the Draft EIR evaluates consistency with the Los Gatos Sustainability Plan, which was adopted in 2012, as described on page 4.6-15 of the Draft EIR.

However, the commenters assertion that the analysis is outdated is not accurate. As shown on page 4.6-15 of the Draft EIR, Impact E-2 corresponds to a CEQA Guidelines Appendix G checklist question about conflicts with local or State plans pertaining to renewable energy or energy efficiency. The CEQA Guidelines checklist question is not qualified by a cutoff date at which plans are outdated and do not need to be considered in the analysis. The 2012 Los Gatos Sustainability Plan is an adopted document that contains energy conservation measures, and so potential conflicts between the 2012 plan and the 2040 General Plan are evaluated accordingly under Impact E-2.

Consistency with the State 2017 Scoping Plan is addressed in Section 4.8, *Greenhouse Gas Emissions*, of the Draft EIR. The regulatory background and setting of the 2017 Scoping Plan is discussed on page 4.8-14 of the Draft EIR. Page 4.8-24 of the Draft EIR describes in detail how GHG emissions thresholds were determined in context with the 2017 Scoping Plan. Finally, as discussed under Impact GHG-2, which begins on page 4.8-31 of the Draft EIR, the 2040 General Plan would conflict with the 2017 Scoping Plan, and impacts would be significant and unavoidable. Accordingly, because consistency with the 2017 Scoping Plan is evaluated in the Draft EIR, no revisions to the Draft EIR are required in response to this comment.

### **Response 9.30**

The commenter states that there is a reference to "RPU" in the Draft EIR and expresses an opinion that no explanation of "RPU" is provided. The commenter also describes a typographic error on Draft EIR page 4.6-15.

The reference to RPU on page 4.6-15 of the Draft EIR is an inadvertent typographical error and should say "RPS." As described on page 4.8-21, RPS is an acronym for renewable portfolio standard. Due to the inadvertent typographic error referring to the RPS as RPU and the other typographical error described by the commenter, page 4.6-15 of the Draft EIR is revised as follows:

CALGreen Code (CBC Title 24, Part 11) requires implementation of energy efficient light fixtures and building materials into the design of new construction projects project, and the State Building Energy Efficiency Standards (CBC Title 24, Part 6) require newly constructed buildings to meet energy performance standards set by the CEC.

SB 100 mandates 100 percent clean electricity for California by 2045. The proposed 2040 General Plan would further reduce its use of nonrenewable energy resources as the electricity generated by renewable resources provided by the renewable portfolio standard (RPS) RPU

continues to increase to comply with State requirements through Senate Bill 100, which requires electricity providers to increase procurement from eligible renewable energy resources to 60 percent by 2030 and 100 percent by 2045. Because the proposed 2040 General Plan would be powered by the existing State electricity grid, it would eventually be powered by renewable energy mandated by SB 100.

These typographical errors are inconsequential to the analysis of potential impacts. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 9.31**

The commenter makes an assertion that while the Draft EIR states that impact thresholds are on Appendix G to the CEQA Guidelines, the thresholds listed in the Geology and Soils section of the Draft EIR vary from Appendix G of the CEQA Guidelines.

As described on Draft EIR page 4.7-18, the thresholds used in Section 4.7, *Geology and Soils*, are based on Appendix G of the CEQA Guidelines. The thresholds are listed on page 4.7-18. However, the listed thresholds do not match the thresholds provided in Appendix G to the CEQA Guidelines for evaluating impacts related to geology and soils. Accordingly, in response to this comment, page 4.7-18 of the Draft EIR is revised as follows:

The following thresholds of significance are based on Appendix G of the *CEQA Guidelines*. For the purposes of this EIR, implementation of the 2040 General Plan may have a significant adverse impact if it would do any of the following:

1. Directly or indirectly cause ~~Expose~~ people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:
  - a. Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault;
  - b. Strong seismic ground shaking;
  - c. Seismic-related ground failure, including liquefaction; or
  - d. Landslides.
2. Result in substantial soil erosion or the loss of topsoil;
3. Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on or off-site landslide, lateral spreading, subsidence, liquefaction or collapse;
4. Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property; ~~or~~
5. Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water; ~~or~~
6. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.

The revisions to page 4.7-18 of the Draft EIR listed directly above do not require additional revisions to the Draft EIR. While some thresholds, such as threshold 6 pertaining to paleontological resources was omitted from the list of thresholds on page 4.7-18, impacts related to the full list of thresholds are evaluated in Section 4.7, *Geology and Soils*. For example, Impact GEO-4 beginning on page 4.7-

24 of the Draft EIR evaluates potential impacts of the 2040 General Plan on paleontological resources. Accordingly, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 9.32**

The commenter asserts that the Draft EIR incorrectly describes the location of the San Andreas Fault relative to the location of Los Gatos. The commenter also describes a typographic error on page 4.7-21 of the Draft EIR and mentions that the list of significance thresholds on 4.7-18 is missing a threshold pertaining to paleontological resources.

As shown on Figure 4.7-3 on page 4.7-7 of the Draft EIR, the San Andreas Fault is located west-southwest of the Town of Los Gatos. Accordingly, in response to this comment, page 4.7-19 of the Draft EIR is revised as follows:

New structures built under the 2040 General Plan could also experience substantial damage during seismic groundshaking events. Fault rupture is unlikely to affect new or existing structures in the Town because the only Alquist -Priolo Earthquake Fault Zone is located west east of the Town's western limits.

The typographical error described in this comment appears on page 4.7-21 of the Draft EIR. Therefore, in response to this comment, page 4.7-21 of the Draft EIR is revised as follows:

Compliance with the permit requires that each project that disturbs ~~disturb~~ greater than 1 acre of soil, unless eligible for an erosivity waiver, file a Notice of Intent with the SWRCB. Permit conditions require development of a SWPPP, which must describe the site, the facility, and Best Management Practices (BMPs) to manage storm water runoff and to reduce soil erosion.

These typographical errors listed above are inconsequential to the analysis of potential impacts. As described in Response 9.31, page 4-7-18 of the Draft EIR is revised to list the CEQA threshold that pertains to paleontological resources. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 9.33**

The commenter expresses an opinion that the mitigation measure GEO-1 in the Draft EIR is deferred mitigation, suggesting that mitigation is postponed or not implemented until specific projects are implemented.

The commenter is incorrect. Mitigation Measure GEO-1 does not represent deferred mitigation. As stated previously, such as in Response 9.24 above, as a program EIR the 2040 General Plan EIR need not be as detailed as an EIR for the specific projects that will follow (CEQA Guidelines § 15146). Its level of detail should reflect the level contained in the plan or plan element being considered (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351). In this matter, the 2040 General Plan document is a planning document and does not contemplate any specific project or development. Once specific projects or developments are identified, Mitigation Measure GEO-1 requires that project to conduct specific paleontological resource studies to determine whether the proposed activities might have a significant impact and thereafter meet certain resource protection measures if paleontological resources are found. Accordingly, Mitigation Measure GEO-1 would reduce impacts to less than significant, as described on page 4.7-25 of the Draft EIR. No revisions to the Draft EIR are required in response to this comment.

### Response 9.34

The commenter expresses an opinion that the Draft EIR fails to provide data that demonstrates or supports the effectiveness of Mitigation Measure GHG-1 for reducing GHG impacts, and that mitigated GHG emissions presented in Draft EIR Table 4.8-5 are inconsistent with emissions described on page 4.8-32.

As the commenter describes, Table 4.8-5 on page 4.8-31 of the Draft EIR, presents the GHG emissions of the proposed project after implementation of Mitigation Measure GHG-1. However, the commenter is incorrect in claiming that the Draft EIR does not substantiate the data presented in Table 4.8-5. Table 4.8-5 includes a footnote that describes the source of the information in the table as Draft EIR Appendix B. As described on Draft EIR page viii, Appendix B to the Draft EIR is the Los Gatos Greenhouse Gas Forecast Report.

The commenter is correct that the mitigated GHG emissions presented in Table 4.8-5 and described on page 4.8-32 of the Draft EIR are inconsistent due to a typographical error. Accordingly, in response to this comment, page 4.8-32 of the Draft EIR is revised as follows:

See *Significance After Mitigation* discussion under Impact GHG-1. With implementation of Mitigation Measure MM GHG-1 requiring community GHG reduction measures, the proposed 2040 General Plan would result in the following mitigated emissions:

- Emissions under the proposed 2040 General Plan would be reduced to 244,145 ~~231,122~~ MTCO<sub>2</sub>e per year (or 4.32 ~~4.09~~ per capita MTCO<sub>2</sub>e per service person per year) beginning in 2030; and
- Emissions under the proposed 2040 General Plan would be reduced to 154,917 ~~135,847~~ MTCO<sub>2</sub>e per year (or 2.53 ~~2.10~~ per capita MTCO<sub>2</sub>e per service person per year) beginning in 2040.

The revisions shown above to page 4.8-32 only clarify what is already presented in Table 4.8-5 on page 4.8-31 of the Draft EIR and does not change the analysis or impacts presented in the Draft EIR. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### Response 9.35

The commenter expresses an opinion that the Draft EIR is legally inadequate because it does not provide feasible mitigation to reduce impacts related to GHG emissions to a level that is less than significant. The commenter asserts that feasible mitigation must be provided to reduce GHG impacts to less than significant in order for the Draft EIR to be legally adequate.

The commenters opinion is incorrect. Pursuant to CEQA Guidelines Section 15126.4(f), lead agencies shall consider feasible means, supported by substantial evidence and subject to monitoring or reporting, of mitigating the significant effects of GHG emissions. As lead agency of the Draft EIR, the Town of Los Gatos has considered feasible mitigation to reducing GHG impacts of the 2040 General Plan to extent possible in mitigation measure GHG-1, which begins on page 4.8-27 of the Draft EIR. As described on page 4.8-31 of the Draft EIR, even with implementation of Mitigation Measure GHG-1, impacts would remain significant and unavoidable. There are no other known feasible mitigation measures to further reduce the potential GHG emissions of the project. The commenter provides no recommended feasible mitigation measures. Accordingly, revisions to the Draft EIR are not required in response to this comment.

### Response 9.36

The commenter describes a discrepancy between VMT reported in the Los Gatos Greenhouse Gas Report and the VMT reported in the transportation section of the Draft EIR. The commenter asks that the discrepancy be explained, and the analysis revised, if needed.

The Draft EIR did not utilize the VMT reported in the Los Gatos Greenhouse Gas Report and instead used the VMT calculated specifically in the Transportation Analysis for the project as it was determined to be more reasonable and specific to the General Plan, which is included as Appendix C to the Draft EIR. Table 4.15-3 on page 4.15-23 of the Draft EIR shows the baseline VMT for 2018-2019 and the estimated VMT in 2040 with implementation of the 2040 General Plan. As shown in Table 4.15-3, baseline VMT is approximately 2,044,940 and estimated 2040 VMT is 2,552,780. The source of the VMT presented in Table 4.15-3 is identified as Fehr & Peers 2021 (Appendix C) in a footnote to the table. The Transportation Analysis provides a detailed discussion of the methodology that was used to calculate baseline VMT and the estimated VMT in 2040. Page 4.15-16 of the Draft EIR provides a summary of the methodology used in the Transportation Analysis. As described on page 4.15-16, the VTA Model was used to develop daily VMT for the proposed 2040 General Plan and the planning area. The California statewide travel demand model (CSTD) was used to estimate and forecast trip lengths that occur outside the VTA Model boundary. These trip lengths were appended to the external stations and are reflected in the VMT estimates and forecasts contained in the Transportation Analysis.

The discrepancy between the VMT shown in the Los Gatos Greenhouse Gas Report and the VMT reported in the Transportation Analysis is because the Los Gatos Greenhouse Gas Report provides annual VMT in year 2008. The Transportation Analysis, included as Appendix C to the Draft EIR, shows daily VMT in the baseline year, which is for the years 2018-2019. Nonetheless, the Draft EIR does not require revisions because the Draft EIR (in both Section 4.8, *Greenhouse Gas Emissions*, and Section 4.15, *Transportation*) utilizes VMT from the Transportation Analysis, which was prepared by licensed transportation engineers specifically for the General Plan project and environmental analysis. The analysis of GHG impacts in the Draft EIR utilizes the VMT reported in the Transportation Analysis because the Transportation Analysis is specific to the proposed 2040 General Plan.

### Response 9.37

The commenter expresses an opinion that the Draft EIR fails to reflect a good faith effort to analyze and disclose impacts because the GHG analysis disregards an Executive Order pertaining to carbon neutrality by 2045.

The commenter's opinion is incorrect. As described on page 4.8-15 of the Draft EIR, Governor Brown issued Executive Order B-55-18 in 2018, which established a new Statewide goal of achieving carbon neutrality by 2045 and maintaining net negative GHG emissions thereafter. Consistency with Executive Order B-55-18 is evaluated in the GHG section of the Draft EIR. Specifically, as discussed on page 4.8-27 of the Draft EIR, the 2040 General Plan would conflict with the State's 2045 targets Executive Order B-55-8, and the GHG emission impacts of the 2040 General Plan would be potentially significant, and Mitigation Measure GHG-1 would be required. As described on page 4.8-31 of the Draft EIR, even with implementation of Mitigation Measure GHG-1, impacts would remain significant and unavoidable. Accordingly, revisions to the Draft EIR are not required in response to this comment.

### **Response 9.38**

The commenter describes a typographical error on pages 4.8-1 and 4.8-12 of the Draft EIR.

In response to this comment, page 4.8-1 of the Draft EIR is revised as follows:

This section analyzes the potential for implementation of the 2040 Los Gatos General Plan to ~~generate generated~~ greenhouse gas (GHG) emissions in a manner that significantly contributes to climate change or to conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing GHG emissions. The analysis in this section is based upon GHG emissions forecast methodology and modeling outputs that are included in Appendix B, GHG Emissions Supporting Information, of this Environmental Impact Report (EIR).

In response to this comment, page 4.8-12 of the Draft EIR is also revised as follows:

An increase in temperature and extreme weather events. Climate change is expected to lead to increases in the frequency, intensity, and duration of extreme heat events and heat waves in California. More heat waves can exacerbate chronic disease or heat-related illness.

The typographical errors listed above are inconsequential to the analysis of potential impacts. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 9.39**

The commenter requests clarification on the meaning of the acronym “RMP” as it is used in Section 4.9, *Hazards and Hazardous Materials*, of the Draft EIR.

The acronym RMP used in Section 4.9, *Hazards and Hazardous Materials*, of the Draft EIR is for “Risk Management Plan.” In response to this comment, page 4.9-18 of the Draft EIR is revised as follows:

The HMBP must also consider external events such as seismic activity. Mandatory implementation of risk management plans (RMPs) ~~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. Similarly, the HMBP would prevent or significantly reduce risks to residential and other uses located close to commercial or industrial development facilitated by the 2040 General Plan.

The revision to page 4.9-18 shown above is inconsequential to the analysis of potential impacts and merely defines an acronym used in the Draft EIR. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 9.40**

The commenter makes an assertion that the Draft EIR relies on Goal HAZ-13 of the General Plan to reduce hazardous materials impact, but when cross referenced, the 2040 General Plan does not contain Goal HAZ-13. The commenter also provides a footnote to this comment that asserts other inconsistencies between the goals and policies presented in the Draft EIR and how they appear in the 2040 General Plan.

The commenter is correct. Impact HAZ-3, which begins on Draft EIR page 4.9-21, refers to and relies on Goal HAZ-13 of the 2040 General Plan to determine impacts would be less than significant. As shown on page 4.9-21 of the Draft EIR, Goal HAZ-13 states:

**“Goal HAZ-13.** The potential for injuries, damage to property, economic and social displacement, and loss of life resulting from hazardous materials is eliminated.”

During or after preparation of the Draft EIR, the 2040 General Plan was revised and reorganized, which resulted in consolidation of some goals and policies in the General Plan. As some goals and policies were consolidated or removed from the General Plan, the remaining goals and policies were renumbered, and in some cases reworded. This is the case for Goal HAZ-13, which later became Goal HAZ-7 in the 2040 General Plan. Accordingly, in response to this comment, page 4.9-21 of the Draft EIR is revised as follows:

Development in Los Gatos at the sites listed in Table 4.9-3 would be subject to investigation, remediation, and cleanup under the supervision of the RWQCB, the Santa Clara Valley Water District, or DTSC, likely before construction activities could begin. The 2040 General Plan Safety Element contains Goal HAZ-7 Goal HAZ-13 and corresponding policies, which relate to reducing the potential risk from contaminated sites.

**Goal HAZ-7 Goal HAZ-13.** Replace the ~~The~~ potential for injuries, damage to property, economic and social displacement, and loss of life resulting from hazardous materials is ~~eliminated~~.

Goal HAZ-7 Goal HAZ-13 and its related policies would reduce the potential for release of hazardous substances through inter-organization cooperation, site assessments, and hazardous materials storage monitoring. Additionally, it would minimize the use of toxic and hazardous materials in Los Gatos, promoting sustainable materials and practices where possible and promoting household hazardous waste disposal programs.

As shown in the edits to page 4.9-21, above, minor discrepancies between the General Plan goals and policies in the Draft EIR and 2040 General Plan do not change the analysis or impact determinations in the Draft EIR. This is because the underlying intent and purpose of the General Plan goals and policies reduce environmental impacts, regardless of the number they are assigned in either the 2040 General Plan or Draft EIR. Edits to the Draft EIR text to make minor clarifications in General Plan goals and policies for consistency with the 2040 General Plan are presented in Section 5, *Errata*, of this document. Section 5, *Errata*, includes additional edits to General Plan goal and policies numbers included in the Draft EIR and cited in the commenter’s footnote. No additional revisions to the Draft EIR are required in response to this comment.

## Response 9.41

The commenter asserts that the Draft EIR incorrectly refers to the Town’s Fire Department, because the Town has no Fire Department. The commenter suggests that fire protection services are provided by the Santa Clara County Fire Department.

The commenter is correct. The Town of Los Gatos does not have its own specific Town fire department. Accordingly, in response to this comment, page 4.9-23 of the Draft EIR is revised as follows:

In addition to 2040 General Plan policies, the ~~Los Gatos Fire Department~~ and Santa Clara County Fire Department provides ~~provide~~ fire and emergency response services.

The revision to page 4.9-23 shown above is inconsequential to the analysis of potential impacts and merely clarifies existing fire protection services in Los Gatos. Therefore, no additional revisions to the Draft EIR are required in response to this comment.

## Response 9.42

The commenter describes typographical errors on pages 4.9-18 and 4.9-20 of the Draft EIR.

In response to this comment, page 4.9-18 of the Draft EIR is revised as follows:

In addition to mandatory adherence to laws and regulations, and compliance with programs, the Safety Element of the 2040 General Plan includes goals and associated policies, listed below, that would reduce the potential for accidental exposure and hazards associated with the use and disposal of hazardous materials, as follows.

**Goal HAZ-7 Goal HAZ-13.** ~~Reduce the~~ The potential for injuries, damage to property, economic and social displacement, and loss of life resulting from hazardous materials is ~~eliminated~~.

**Policy HAZ-7.2. Phase I Site Assessment Policy HAZ-13.2. Site Assessment Requirement.**

Require Phase I site assessments for ~~all properties where toxins are suspected~~ new development proposed on land that may be contaminated with hazardous materials or waste.

**Policy HAZ-13.4. Alternative Practices.** ~~Minimize the use of toxic and hazardous materials in Los Gatos, promoting sustainable materials and practices where possible.~~

**Policy HAZ-13.5. Household Hazardous Waste.** ~~Expand and promote household hazardous waste programs to safely dispose of items such as paint, gasoline, engine oil, batteries, and cleaners.~~

**Policy HAZ-7.5. Household Hazardous Waste.** ~~The Town shall develop and distribute educational materials and conduct educational outreach to inform the public about household hazardous waste, proper disposal methods, and proper use and storage of these materials.~~

In response to this comment, page 4.9-20 of the Draft EIR is revised as follows:

Commercial and industrial development facilitated by the 2040 General Plan could, however, include uses that generate and emit hazardous materials, substances, or contaminated water, such as gas stations, dry cleaners, and light industrial uses. Accidental release or combustion of hazardous materials at new commercial and industrial developments could endanger residents or students in the surrounding community. This future commercial and industrial development could occur within a 0.25-mile radius of existing public and private schools in Los Gatos.

The revisions to pages 4.9-18 and 4.9-20 shown above is inconsequential to the analysis of potential impacts and merely corrects typographic errors and clarifies General Plan policy wording and numbering (see Response 9.40). Therefore, no additional revisions to the Draft EIR are required in response to this comment.

## Response 9.43

The commenter provides a brief summary of Impact HWQ-2 in Section 4.10, *Hydrology and Water Quality*.

The full text of Impact HWQ-2 begins on page 4.10-14 of the Draft EIR. The commenter's provided summary of Impact HWQ-2 is generally accurate in the context of a brief description. No revisions to the Draft EIR are required in response to this comment.

### Response 9.44

The commenter asserts that Impact HWQ-2 in the Draft EIR incorrectly describes water supply, existing drought conditions, and utilizes outdated information.

The commenter's assertion pertains to the third paragraph under Impact HWQ-2, which is on page 4.10-14 of the Draft EIR. The third paragraph of Impact HWQ-2 pertains to water supply and availability. However, Impact HWQ-2 pertains to CEQA thresholds that address groundwater recharge and conflicts with groundwater management plans. Accordingly, in response to this comment, page 4.10-14 of the Draft EIR is revised to remove discussion of water supply and demand, specifically as follows:

Development facilitated by the 2040 General Plan could potentially interfere with groundwater recharge through the creation of new impervious surfaces. For new developments and redevelopment projects, the amount of new impervious surfaces would be reduced through Low Impact Development (LID) goals and policies in the 2040 General Plan and would not substantially interfere with groundwater recharge or redirect runoff such that it results in on- or off site flooding. This impact would be less than significant.

Implementation of the proposed project could potentially increase the demand for water resources. However, as described in Section 4.16, Utilities and Service Systems, the majority of water used in Los Gatos is from surface water. Impacts pertaining to water supply and demand are evaluated As described in Section 4.16, Utilities and Service Systems, of the Draft EIR and are found to be less than significant. the Town's potable water supply has been provided primarily from mountain surface water treated at a SJWC treatment facility. Additional sources of water supply include regional groundwater and imported surface water purchased from SCVWD. Growth in the Town of Los Gatos that would be facilitated by the 2040 General Plan has been incorporated into the SCVWA 2015 Urban Water Management Plan (UWMP). Future water demand in Los Gatos is projected to be met by SCVWD's current water supply (SCVWD 2016). The SJWC has rights to pump water from the aquifers in the service area when it is in compliance with Valley Water permitting requirements. Therefore, projected growth under the 2040 General Plan would not result in a depletion of groundwater supplies in the Santa Clara Valley Subbasin.

The revisions to page 4.10-14 of the Draft EIR, above, do not constitute a new or more severe significant impact than disclosed in the Draft EIR. Rather, the revisions above clarify that water supply is a utility issue or consideration and therefore is analyzed in Section 4.17, *Utilities and Service Systems*, of the Draft EIR. Accordingly, no additional revisions to the Draft EIR are required in response to this comment.

### Response 9.45

The commenter states the Impact HWQ-2 in the Draft EIR correlates to two CEQA thresholds, but the analysis presented for Impact HWQ-2 appears to only address the threshold listed for flooding issues and ignores that threshold pertaining to drainage and runoff. The commenter further states that the Draft EIR does not evaluate impacts from the release of pollutants during inundation from flooding. The commenter states that this is carried into the cumulative impacts analysis for hydrology and water quality, and that the cumulative impacts discussion refers to Impact HWQ-4, which doesn't exist.

Impact HWQ-1 on pages 4.10-10 through 4.10-13 of the Draft EIR provides an analysis of potential impacts related to water quality, including impacts related to erosion and contaminated stormwater runoff. The CEQA thresholds listed on page 4.10-10 for Impact HWQ-1 are not comprehensive of the full range of analysis provided in Impact HWQ-1. Accordingly, in response to this comment and to provide additional clarification, page 4.10-10 of the Draft EIR is revised as follow:

**Threshold 1:** Would the project violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?

**Threshold 3:** Would the project substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or through the addition of impervious pavements, in a manner which would:

- a. Result in substantial erosion or siltation on- or off-site;
- c. Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?

**Threshold 5:** Would the project conflict with or obstruct implementation of a water quality control plan?

The Impact the commenter refers to as Impact HWQ-2 should be Impact HWQ-3. However, due to a typographical error, Impact HWQ-3 was mislabeled as Impact HWQ-2. This typographical error occurs on page 4.10-16 of the Draft EIR. Accordingly, page 4.10-16 of the Draft EIR is revised as follows:

**Threshold 3:** Would the project substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or through the addition of impervious pavements, in a manner which would:

- a. Result in substantial erosion or siltation on- or off-site;
- b. Substantially increase the rate or amount of surface runoff in a manner in which would result in flooding on- or off-site;
- c. Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or
- d. Impede or redirect flows.

**Threshold 4:** Would the project risk release of pollutants due to project inundation in a flood hazard zone?

**Impact HWQ-3 Impact HWQ-2 DEVELOPMENT FACILITATED BY THE 2040 GENERAL PLAN COULD BE SUBJECT TO FLOOD HAZARDS AND COULD IMPEDE OR REDIRECT FLOOD FLOWS TO ADJACENT AREAS. COMPLIANCE WITH APPLICABLE PROVISIONS OF THE LOS GATOS MUNICIPAL CODE WOULD REQUIRE NEW DEVELOPMENT TO BE DESIGNED AND CONSTRUCTED SUCH THAT THE RISK AND DAMAGE OF FLOODING IS NOT EXACERBATED BY IMPLEMENTATION OF THE 2040 GENERAL PLAN. IMPACTS RELATED TO FLOODING AND FLOOD HAZARDS WOULD BE LESS THAN SIGNIFICANT**

Because Impact HWQ-3 is mislabeled as HWQ-2 on page 4.10-16 of the Draft EIR, the impact identified as Impact HWQ-3 on page 4.10-18 is mislabeled, as well. Accordingly, page 4.10-18 of the Draft EIR is revised as follows:

**Impact HWQ-4 Impact HWQ-3 THE TOWN OF LOS GATOS IS NOT WITHIN AN AREA AT RISK FROM INUNDATION BY SEICHE OR TSUNAMI, AND THEREFORE WOULD NOT BE AT RISK OF RELEASE OF POLLUTANTS DUE TO PROJECT INUNDATION. THERE WOULD BE NO IMPACT.**

The commenters assertion that the Draft EIR does not evaluate impacts from the release of pollutants during inundation from flooding is incorrect. Impacts related to release of pollutants from inundation due to tsunami or seiche is addressed on page 4.10-18 of the Draft EIR. As described therein, the Town of Los Gatos is not located in a tsunami or seiche zone. In order to provide more clarification and detail, page 4.10-18 of the Draft EIR is further revised as follows:

As stated in Section 4.10.1, *Setting*, the Town of Los Gatos is not located in a tsunami or seiche zone. Therefore, development facilitated by the project would not risk release of pollutants due to tsunami or seiche inundation of the planning area. The 2040 General Plan does not propose uses in flood zones that would involve the use or storage of large quantities of hazardous materials that could be released if inundated during a flood, such as new wastewater treatment plants or chemical manufacturing facilities. There would be no impacts related to flood flows or project inundation.

With the revisions to the Draft EIR outlined earlier for this response, Response 9.45, the portion of this comment pertaining to cumulative impacts is no longer applicable. The revisions shown above provide clarification or revise the Draft EIR to remove typographic errors. The revisions do not result in new or more severe significant impacts beyond those presented in the Draft EIR.

Accordingly, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 9.46**

The commenter describes typographical and grammatical errors on page 4.10-11 of the Draft EIR, and requests clarification of a phrase shown on page 4.10-16 of the Draft EIR.

In response to this comment, page 4.10-11 of the Draft EIR is revised as follows:

Projects that result in the creation, addition, or replacement of two thousand five hundred square feet of impervious surface are required to comply with the Town's stormwater control section of engineering standards.

The Town uses the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) and developed a stormwater management guidance document, the C.3 Stormwater Handbook. The C.3 Stormwater Handbook that outlines the procedure for the Town's fulfillment of the NPDES Construction General Permit Order 2009-0009-DWQ. As part of the Permit the Town is required to incorporate construction site storm water runoff control elements into the Stormwater Management Program.

Page 4.10-16 of the Draft EIR contains the phrase "the location of the regulatory information," which the commenter asks for clarification to the meaning of the phrase. This phrase contains a typographic error, and in response to this comment, page 4.10-16 of the Draft EIR is revised as follows:

Los Gatos Municipal Code Section 29.90.070 requires that a development permit be obtained before construction or development begins in a Special Flood Hazard Area as designated by Los Gatos Municipal Code Section 29.90.040. The development permit must show plans that outline the flood characteristics and flood hazard reduction on the site, including elevation of the area

in question, existing structures on site, utilities, grading, proposed fill, and location of the regulatory floodway information. The application for a development permit is reviewed by the designated Floodplain Administrator, who determines whether the “site is reasonably safe from flooding” and whether development would adversely affect the carrying capacity of areas where base flood elevations have been determined.

The revisions shown above provide clarification or revise the Draft EIR to remove typographic errors. The revisions do not result in new or more severe significant impacts beyond those presented in the Draft EIR.

Accordingly, no additional revisions to the Draft EIR are required in response to this comment.

### **Response 9.47**

The commenter expresses an opinion that Impact LU-1 in the Draft EIR focuses on the current General Plan rather than the proposed 2040 General Plan, and the commenter suggests that Impact LU-1 contradicts other references in the Draft EIR describing low rates of redevelopment.

The commenters opinion that LU-1 focuses on the current or existing General Plan is incorrect. Impact LU-1, which is on pages 4.11-11 through 4.11-14 of the Draft EIR, does not mention the existing General Plan. The commenter describes Table 4.11-3 on page 4.11-12 of the Draft EIR as an example of the Draft EIR Impact LU-1 addressing the existing General Plan rather than the proposed 2040 General Plan. However, Table 4.11-3 on page 4.11-12 of the Draft EIR is used to present development capacity based on the Town’s Zoning Code, as described prior to Table 4.11-3 on page 4.11-11 of the Draft EIR. Following Table 4.11-3, the analysis describes how the 2040 General Plan would accommodate this growth in a way that prevents established communities from becoming divided. Impact LU-1 pertains to the CEQA threshold regarding division of established communities.

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

### **Response 9.48**

The commenter expresses an opinion that Impact LU-2 conflicts with Impact GHG-2 in the Draft EIR because Impact LU-2 determines the project would be generally consistent with Plan Bay Area 2040, while Impact GHG-2 identifies a significant and unavoidable impact due to GHG emissions. The commenter also provides a footnote to this comment stating that the 2040 General Plan fails to meet the goal of Plan Bay Area to increase jobs by 20 percent.

The commenter is correct that Impact LU-2 describes the 2040 General Plan as generally consistent with Plan Bay Area 2040. However, the commenter’s assertions that consistency with Plan Bay Area is only a claim in the Draft EIR is incorrect. Consistency of the 2040 General Plan with the applicable goals of Plan Bay Area is evaluated in detail in Table 4.11-4, which begins on page 4.11-15 of the Draft EIR. As shown in Table 4-11-4, the proposed 2040 General Plan would be consistent with applicable policies of Plan Bay Area 2040, and as discussed on page 4.11-18, impacts would be less than significant without mitigation.

Impact GHG-2 of the Draft EIR analyzes the potential GHG emissions compared to targets adopted specifically for the purposes of reducing GHG emissions, as described on page 4.8-11. Generally, these targets are contained in the CARB 2017 SCOPING PLAN, SB 32, AND EO B-55-18. Plan Bay Area 2040 was not adopted specifically for the purposes of reducing GHG emissions. Rather Plan Bay Area was adopted for a multitude of purposes, such as improving mobility in the San Francisco Bay Area. It is possible for a project to exceed GHG thresholds established in the 2017 Scoping Plan

while also being consistent with the intent of the goals and policies of Plan Bay Area. Accordingly, there is no reasonable conflict between Impact LU-2 and GHG-2 in the Draft EIR.

The commenter's footnote about job growth resulting from the 2040 General Plan failing to meet the job growth goal in Plan Bay Area is not relative to the analysis in the Draft EIR, which specifically looks at the physical environmental impacts of a project as required by CEQA. As described on page 4.11-14, Impact LU-2 addresses potential impacts related to conflicts with plans, policies, and regulations adopted for the purpose of avoiding or mitigating an environmental effect. The Plan Bay Area goal to increase jobs is not a policy or goal to minimize environmental effects. Accordingly, consistency with the goal is not relevant to the analysis for Impact LU-2.

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

### **Response 9.49**

The commenter expresses an opinion that the 2040 General Plan would facilitate tens of thousands of housing units, which conflicts with Plan Bay Area forecasts and is not evaluated in the Draft EIR.

The first portion of this comment is similar to comments 9.2 through 9.5. Please refer to Response 9.3 through Response 9.5, above. As described therein, an EIR must evaluate a proposed General Plan's revision effects on the existing physical environment. (*Environmental Planning and Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 354; *see also* CEQA Guidelines § 15125(e)). The General Plan EIR need not be as detailed as an EIR for the specific projects that will follow (CEQA Guidelines § 15146). Its level of detail should reflect the level contained in the plan or plan element being considered (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351). Here, the Draft EIR looks at the effects of the proposed 2040 General Plan on housing and land use based upon actual conditions and reasonable growth rates within the Town.

As stated at page 4.11-11, the Town has limited land available for development. As shown in Table 4.11-1, only 5.92 percent of land in Los Gatos currently remains vacant (Draft EIR page 4.11-2). Out of the total development capacity of non-residential square footage of 951,886 square feet, approximately 70 percent, or 679,797 square feet, is from pending and approved projects (Draft EIR page 4.11-11). As shown in Table 4.11-3, of the total 926 acres available for residential development, 422 acres are subject to pending or approved project. As explained in Response 9.2, anticipated rate of redevelopment is based upon the existing and anticipated growth rate and the vacant land available for development. Therefore, the commenter's assertion that the 2040 General Plan would accommodate tens of thousands of residential units is not accurate and not evaluated in the Draft EIR.

The commenter's opinion that the Draft EIR does not evaluate 2040 General Plan growth against growth forecasts of Plan Bay Area is incorrect. This analysis is presented in Impact PH-1, which begins on page 4.13-6 of the Draft EIR. As described there in, impacts would be less than significant. Additionally, the 2040 General Plan would reflect new housing requirements and the next update to ABAG Plan Bay Area would be brought into consistency with this update; therefore, the planned growth under the 2040 General Plan would not conflict with the adopted General Plan or the ABAG RTP/SCS.

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

### **Response 9.50**

The commenter states that a “guiding principle” of the 2040 General Plan is “to accommodate growth by streamlining development into built areas” but that this could include Historic Districts containing historic resources to be preserved which could cause a conflict between the 2040 General Plan and the existing Historic Districts.

The commenter is correct in stating that a guiding principle of the 2040 General Plan is to accommodate growth in existing built areas. However, the 2040 General Plan does consider the preservation of historic districts through its Landmark and Historic Preservation (LHP) Overlay Zone. The use of these zones ensures that development facilitated by the General Plan is consistent with development goals of the Town and existing communities and resources are protected. As discussed on page 4.11-9, the LHP Zone tightly regulates the transformation of existing structures and ensures all new construction strictly adheres to a series of guidelines to preserve existing styles. Growth under the 2040 General Plan is not envisioned in Historic Districts but any potential modifications or construction within them are under strict zoning protections as discussed within the 2040 General Plan and Draft EIR.

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

### **Response 9.51**

The commenter states that Impact N-1 focuses only on the Community Place Districts and ignores potential Townwide growth allowed under the 2040 General Plan. Further stating that even as to the limited areas studied, the Draft EIR 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. (Draft EIR, page 4.12-12.) The commenter asserts that this conclusion conflicts with, and is not supported by, substantial evidence in the record.

The commenter is incorrect in stating that Impact N-1 focuses solely on Community Place Districts. As stated on page 4.12-9, since there are no specific plans or time scales for individual development projects that would be carried out under the 2040 General Plan, it is not possible to determine exact noise levels, locations, or time periods for construction of such projects, or construction noise at adjacent properties. However, it can be assumed that sensitive noise receptors in areas where more future development/redevelopment is anticipated to occur would be exposed to the highest levels of construction noise for the longest duration. These areas include but are not limited to Community Place Districts.

Implementation of 2040 General Plan policies, Los Gatos Town Code requirements, and Mitigation Measure N-1, would not necessarily reduce equipment noise to 85 dBA at 25 feet or at properties adjoining a project site. However, Mitigation Measure N-1 would reduce construction noise such that temporary increases in noise would not be substantial. Combined with Los Gatos Town Code requirements, which requires most construction to occur during daytime, when most people are awake or away from residences at work, impacts would be reduced to less than significant.

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

### **Response 9.52**

The commenter states that the Draft EIR must prove quantitatively that construction noise is not substantial.

The commenter is incorrect in this statement as the Draft EIR quantitatively discusses construction noise at several points within the document. Table 4.12-5 illustrates typical noise levels associated with construction equipment at a distance of 25 feet. At a distance of 25 feet from the construction site, noise levels similar to those shown in Table 4.12-5 would be expected to occur with individual development projects. On page 4.12-10 of the Draft EIR, it discusses that for construction equipment, excluding pile drivers, noise levels from construction activity could approach 94 dBA Leq at 25 feet from construction equipment. This would exceed the threshold of 85 dBA established in the Los Gatos Town Code Section 16.20.035. However, as described on page 4.12-5 of the Draft EIR, the Los Gatos Town Code only permits construction noise during daytime and only if construction meets at least one of two noise limitations as follows: 1) no individual piece of equipment exceeds 85 dBA at 25 feet, or 2) the noise level at a point outside the property shall not exceed 85 dBA. Therefore, because the Los Gatos Town Code is regulatory and construction must be permitted to proceed, construction noise would occur only during the day and only at levels below 85 dBA at existing receptors. Mitigation Measure N-1, on pages 4.12-11 and 4.12-12 of the Draft EIR, provides strategies for project applicants to implement to help achieve compliance with Los Gatos Town Code Section 16.20.035, and compliance is mandatory in order for construction of the project to be permitted.

For purposes of the Draft EIR, substantial noise is considered noise that occurs during night when most people are at home or sleeping and more susceptible to noise disturbances, or noise that exceed standards set forth in Los Gatos Town Code Section 16.20.035 (i.e., 85 dBA at 25 feet from equipment or at property boundary of project site). Because noise exceeding 85 dBA during the daytime is not permitted pursuant to Town Code, nor is nighttime construction, substantial noise increases would not occur. In order to provide additional clarification in the Draft EIR to make more clear the discussion provided in the prior two paragraphs, above, page 4.12-12 of the Draft EIR is revised as follows:

### **Significance After Mitigation**

~~Implementation of 2040 General Plan policies, Los Gatos Town Code requirements, and Mitigation Measure N-1, would reduce potential impacts but not to a less than significant level. Mitigation Measure N-1, and policies, would not necessarily reduce equipment noise to 85 dBA at 25 feet or at properties adjoining a project site. However, Mitigation Measure N-1 would reduce construction noise such that temporary increases in noise would not be substantial. Combined with Los Gatos Town Code requirements, which requires most construction noise to be below 85 dBA and occur during daytime, when most people are awake or away from residences at work, impacts would be reduced to less than significant.~~

The revisions to page 4.12-12 of the Draft EIR, above, provide clarification and do not change the severity of impacts identified in the Draft EIR or mitigation measures. Therefore, no other revisions to the Draft EIR are necessary in response to this comment.

### **Response 9.53**

The commenter states that the impacts or use of pile drivers under Mitigation Measure N-2 would result in significant impacts. Further stating that pile drivers appear to have been used in connection with recent construction projects.

In response to this comment, page 4.12-17 of the Draft EIR is revised as follows:

## N-2 Construction Vibration Reduction

The Town shall include the following measures as standard conditions of approval for applicable projects involving construction to minimize exposure to construction vibration:

1. Avoid the use of pile drivers and vibratory rollers (i.e., compactors) within 50 feet of buildings that are susceptible to damage from vibration.
2. Schedule construction activities with the highest potential to produce vibration to hours with the least potential to affect nearby institutional, educational, and office uses that the Federal Transit Administration identifies as sensitive to daytime vibration (FTA 2006).
3. Notify neighbors of scheduled construction activities that would generate vibration.

No additional revisions to the Draft EIR are required in response to this comment and does not result in changes to impacts identified in the Draft EIR.

## Response 9.54

The commenter states that the Draft EIR cites a vehicle trip increase that does not appear in the Transportation Analysis and that reliance on the projected increase in the number of trips to determine noise increases is misplaced, citing CEQA Guidelines section 15130 and *Kings County Farm Bureau*. The commenter states that the Draft EIR relies on a ratio theory to justify its less than significant impact conclusions in violation of CEQA. The commenter does not explain what it means by "ratio theory." In a footnote, the commenter states that the Draft EIR refers to the Transportation Analysis as Appendix TRA, but the Transportation Analysis is actually provided as Appendix C.

Page 4.12-14 of the Draft EIR states that "buildout of the 2040 General Plan would result in over 27,000 new daily vehicle trips on area roadways studied for the Transportation Analysis (Appendix C..." The commenter is correct that "27,000" does not specifically appear in the Transportation Analysis. The Transportation Analysis does not provide a total trip increase that would result from buildout of the proposed 2040 General Plan. Instead, the Transportation Analysis provides existing vehicle trips on specific roadway segments in Los Gatos and the vehicle trips that would occur on these same segments in 2040 with buildout of the 2040 General Plan. The trips expected on individual roadway segments is presented in Table 7-1 on page 66 of the final Transportation Analysis (Draft EIR Appendix C). The "over 27,000 trips" cited on page 4.12-14 of the Draft EIR is based on the sum of vehicle trips that would occur on these roadway segments in 2040 and is an approximate estimate. In other words, in order to quantify an approximate number of trips in total for the Draft EIR, the new trips on each roadway segment in Table 7-1 of the Transportation Analysis were added together, and the resultant sum is slightly more than 27,000 total trips.

From the citations and statement, it appears the commenter is attempting to argue that the Draft EIR does not take into consideration all potential noise impacts or analyze noise impacts based upon the increased number of anticipated traffic. In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 723 (*Kings County Farm Bureau*), the court held that, in considering whether an EIR must include related projects. (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 869). Here, the Draft EIR does take into consideration all proposed and approved projects, as well as potential growth of the Town and region (as reflected in the VTA traffic model) in order to determine potential noise levels. See comment 9.55 regarding cumulative impacts. Neither Guidelines section 15130 nor *Kings County Farm Bureau* refute this.

Instead, the Draft EIR specifically looks at the potential traffic increase in light of the General Plan policies, stating:

Buildout of the 2040 General Plan would result in over 27,000 new daily vehicle trips on area roadways studied for the Transportation Analysis (Appendix C), as well as increased VMT (refer to Section 4.15, *Transportation*). The total existing daily trips occurring on area roadways are 279,700 trips. Therefore, implementation of the 2040 General Plan would result in less than an approximately 10 percent increase in vehicle trips on area roadways as a whole. A 40 percent increase in trips equates to a noise increase of less than 1.2 decibels. As discussed in Section 4.12.1, a 3-dBA increase is considered noticeable. Therefore, 1.2-dBA increase in noise would not be perceptible. Although the increase could be more than 10 percent on some streets, depending on the specific uses and locations of development that would be allowed under the 2040 General Plan, a doubling of traffic volumes would be required to reach the threshold of noticeability (a 3-dba increase in noise levels). A doubling of traffic volumes (i.e., a 100 percent increase) is not anticipated under the 2040 General Plan. Additionally, the market share of electric vehicles, which are quieter than traditional gasoline vehicles, is anticipated to increase over time, especially in response to Executive Order B-48-18, which promotes the use of zero-emission vehicles, electric vehicle charging stations, and hydrogen refueling infrastructure. The increased use of electric vehicles would decrease traffic noise compared to anticipated levels assuming only gasoline-powered vehicles. However, electric vehicles do generate some roadway noise because of tire friction on the road surface (Draft EIR page 4.12-14).

The commenter's assertion that minor increases in vehicle trips could result in significant impacts if the existing noise levels on the roadway or roadways is already excessive is incorrect. As described on page 4.12-14 of the Draft EIR, although the General Plan could increase vehicle trips by more than 10 percent on some streets, depending on the specific uses and locations of development that would be allowed under the 2040 General Plan, a doubling of traffic volumes would be required to reach the threshold of noticeability (a 3-dba increase in noise levels). A doubling of traffic volumes (i.e., a 100 percent increase) is not anticipated under the 2040 General Plan. Therefore, even on the busiest and therefore noisiest roadways in or through Los Gatos, the General Plan would not result in a noticeable increase in noise level.

The commenter is correct that page 4.12-9 mistakenly refers to the Transportation Analysis as Appendix TRA to the Draft EIR. The Transportation Analysis is provided as Appendix C to the Draft EIR. Accordingly, page 4.12-9 of the Draft EIR is revised as follows:

Projected traffic volumes in the year 2040, provided by Fehr & Peers, were used to qualitatively describe future noise levels resulting from project traffic. The traffic impact analysis prepared by Fehr & Peers is provided as Appendix C-Appendix TRA.

The nomenclature used to identify the appendices to the Draft EIR are inconsequential to the EIR analysis because nomenclature does not affect the contents or availability of the appendices. Additionally, the Draft EIR makes clear that the Transportation Analysis is provided as Appendix C. For example, the Table of Contents to the Draft EIR identifies each appendix to the document, including identifying the Transportation Analysis as Appendix C (see Draft EIR page viii) and all appendices were made available for public review along with the Draft EIR.

Because the 2040 General Plan would not result in a noticeable increase in noise level on even the busiest streets in Los Gatos, no other revisions to the Draft EIR are necessary in response to this comment.

### **Response 9.55**

The commenter states that the noise analysis is inadequate because it does not discuss operational noise, where new development may be located in areas where noise levels are appropriate for the proposed use, or cumulative noise levels.

The commenter is incorrect in its statements. Table 4.12-1 of the Draft EIR identifies the land use categories found in the General Plan and the compatible noise levels for each type of use. Table 4.12-2 provides the Town Code outdoor noise limits that are permissible for the various types of uses identified in the 2040 General Plan. In addition, Figure 8-5 of the 2040 General Plan shows a future noise contour map for the Town. The 2040 General Plan, itself, is a planning document that identifies where specific types of uses would be appropriate and permissible in the Town, thus ensuring that new development of various types are constructed in appropriate and approved locations.

Finally, cumulative noise impacts are considered in the Draft EIR by its very nature as a program EIR for a general plan. Page 3-2 of the Draft EIR provides the scope of cumulative impacts in the Draft EIR, stating:

Because the proposed project is comprised of a General Plan, cumulative impacts are treated somewhat differently than would be the case for a project-specific development. CEQA Guidelines Section 15130 provides the following direction relative to cumulative impact analysis:

Impacts should be based on a summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or areawide conditions contributing to the cumulative impact.

By its nature, a general plan considers cumulative impacts insofar as it considers cumulative development that could occur within the General Plan Area. Therefore, the analysis of project impacts also constitutes the cumulative analysis. In addition to cumulative development within the General Plan Area, the analysis of traffic and related impacts (such as noise) considers the effects of regional traffic growth occurring outside of the General Plan Area.

All projects that are approved or have applications on file have been included in the Draft EIR analysis (Draft EIR 2-16, Table 2-4). CEQA does not require a lead agency to speculate on future development that has not yet been proposed. (*Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 577, 80 Cal.Rptr.2d 294 [speculative possibilities are not substantial evidence of environmental impact].) “An EIR is not required to engage in speculative analysis. (Guidelines, § 15145.) Indeed, this core principle is well established in the Guidelines and case law. While a lead agency must use its “best efforts” to evaluate environmental effects, including the use of reasonable forecasting, “foreseeing the unforeseeable” is not required, nor is predicting the unpredictable or quantifying the unquantifiable. (Guidelines, § 15064, subd. (d)(3) [“A change which is speculative or unlikely to occur is not reasonably foreseeable”]; *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 107–108 [“ ‘agency is required to forecast only to the extent that an activity could be reasonably expected under the circumstances’ ”].)( *Citizens for*

*a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1060–1061.)

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

### Response 9.56

The commenter once again states that the Draft EIR is invalid because it fails to consider the maximum build-out potential of the General Plan, rather than the assumed 3,738 housing units. The commenter then goes on to state that the analyzed housing units of 3,738 is well above the ABAG population growth forecasts by nearly 30 percent. The commenter also states in a footnote that the Draft EIR incorrectly refers to City of Beverly Hills on page 5-1 and fails to describe a significant and unavoidable VMT impact in Section 5.2, *Irreversible Environmental Effects*.

As noted and explained in detail in Response 9.2, use of projected growth rather than maximum potential buildout is supported by CEQA and has been affirmed by the Courts. (*San Franciscans for Livable Neighborhoods v. City and County of San Francisco* (2018) 26 Cal.App.5th 596, 616, 622). Furthermore, as noted on page 4.13-6 of the Draft EIR, ABAG is in the process of adopting an updated regional Plan Bay Area 2050, which will contain the sixth cycle housing requirements and new population estimates for the region. Draft housing allocations are approximately 1,993 units as of the writing of this report. If they were all built and occupied by new residents, this would result in a population increase of 4,800 new residents, for a total Town population of 37,850. This is approximately 13 percent more than the 2040 population estimates and more in line with the model used and described in detail in Response 9.2. Therefore, no revisions to the Draft EIR are necessary in response to this portion of the comment.

The commenter is correct that the page 5-1 of the Draft EIR incorrectly refers to the City of Beverly Hills. Accordingly, page 5-1 of the Draft EIR is revised as follows:

The proposed project would not be expected to induce substantial economic expansion to the extent that direct physical environmental effects would result. Moreover, the environmental effects associated with any future development in or around Los Gatos Beverly Hills would be addressed as part of the CEQA environmental review for such development projects.

The commenter is correct that implementation of the 2040 General Plan would result in a significant and unavoidable impact related to VMT, as described on page 4.15-23 of the Draft EIR. However, the commenter's opinion that Section 5.2, *Irreversible Environmental Effects*, of the Draft EIR fails to describe this significant and unavoidable impact is not correct. As described on page 5-2 of the Draft EIR, Section 15126(c) of the CEQA Guidelines requires that EIRs evaluating projects involving amendments to public plans, ordinances, or policies contain a discussion of significant irreversible environmental changes. Unlike some impacts such as energy consumption, increased VMT is reversible. For example, VMT and its impacts could be reduced by increased access to transit in the future, thereby reversing VMT impacts identified in the Draft EIR. Section 5.1 of the Draft EIR pertains specifically to *irreversible* impacts, and because VMT can be reversed with infrastructure investments at the regional or state level, the significant and unavoidable VMT impact of the 2040 General Plan is not irreversible. Accordingly, no other revisions to the Draft EIR are necessary in response to this comment.

### **Response 9.57**

The commenter states, continuing from its argument that the maximum buildout potential of the General Plan should be the basis for the underlying study, that the fact that in-fill development will occur does not negate the impacts on population growth and referencing Draft EIR page 4.13-7.

As discussed in Response 9.2, the majority of the Town is already developed, limiting the possibility of rapid growth. In fact, if housing trends continue, fewer than 40 new housing units would be developed each year (Draft EIR page 4.13-7). Although the commenter states that the increase in potential housing units creates a greater imbalance between housing and employment, social and economic issues are not CEQA issues.

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

### **Response 9.58**

The commenter, again relying upon the maximum General Plan build-out potential, argues that there are potential population displacement impacts that the Draft EIR ignores - presumably because the Draft EIR does not use the maximum build-out potential of the General Plan.

The commenter does not indicate what potential displacement they believe will occur and ignores the reality that population growth in the Town is low with less than 40 new housing units added each year on average. Response 9.2 identifies how and why 3,738 units are used as a measure for growth for the 2040 General Plan. Based upon these numbers, the Draft EIR rightly assumes that no significant impacts will result from displacement.

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

### **Response 9.59**

The commenter states: "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, page 4.14-1.). It is unclear what this refers to or its relevance to the environmental impact analysis."

The statement means that the County Fire Department provides Insurance Services for the Town. The comment does not address any issues with the environmental analysis. The statement in the Draft EIR is merely an information item and background information found in the setting under Fire Protection.

### **Response 9.60**

The commenter contends that the Draft EIR should analyze impacts associated with potential fire and police facilities and that by failing to do so, the Town has illegally deferred required analysis.

The commenter is incorrect. Section 4.14, *Public Services and Recreation*, provides very specific information on what must be complied with when determining when and where fire and police facilities shall be located. Draft EIR page 4.14-20 and 4.14-20 states:

New development would be required to comply with all applicable Federal, State, and local regulations governing the provision of police services, including compliance with the California Commission on Peace Officer Standards and Training; and fire protection services, including adequate fire access, fire flows, and number of hydrants. This includes consistency with the current California Fire Code, which contains project-specific requirements such as construction

standards in new structures and remodels, road widths and configurations designed to accommodate the passage of fire trucks and engines, and requirements for sprinkler systems and minimum fire flow rates for water mains. The SCCFD would review building and facility plans through the Town's development review and building permit processes. SCCFD personnel would also inspect new and remodeled buildings and facilities to ensure that the structures would meet State and local fire codes and standards.

Given the demand for fire and police services in the Town, fire and police staffing needs in Los Gatos are likely to increase which could require the construction of new facilities. The location and potential impacts of new or expanded facilities are unknown at this time and separate environmental review would be required. Therefore, an evaluation of the physical effects of such facilities would be speculative at this time. The 2040 General Plan would facilitate development primarily in areas of Los Gatos that are currently developed. Therefore, construction of new emergency service facilities, if required, would likely occur on previously disturbed or developed areas. New development is required to pay fees as determined by the Town of Los Gatos in the Los Gatos Municipal Code Section 9.30.745 and 9.30.750 for fire protection and contribute their fair share to the cost of funding Town fire services.

Furthermore, as stated in the Draft EIR (page 4-14.21) the location and what facilities, if any, are unknown. The location of future developments within the Town will dictate where facilities (such as fire hydrants and fire extinguishing systems) will be located. CEQA does not require speculation of what those future developments will be nor where they will be located in order to evaluate potential fire and police facilities. Any such speculative analysis now, could be irrelevant based on the future development and new analysis would need to occur for that future development.

### **Response 9.61**

The commenter states, "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 updated and recirculated traffic analysis responds to this comment within Table 4.15-6 on page 4.15-32 of the Draft EIR. As shown in Table 4.15-6, individual site level measures would reduce VMT by zero to 6 percent, while Town-wide measures would reduce VMT by 3 percent to 10 percent. Regional level measures would reduce VMT by 20 percent to 60 percent. The decision on whether to implement individual site, Town-wide, or regional level measures would depend on the specific project proposed and how much VMT reduction is needed to reduce VMT impacts of that specific project. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

### **Response 9.62**

The commenter states, "The Governor's Office of Planning & Research lists several VMT Reduction Strategies. The DEIR should explain in detail why none of the State's recommended strategies are feasible."

The updated and recirculated traffic analysis responds to this comment. However, for informational purposes, many of the Governor's Office of Planning & Research (OPR)'s recommended reduction strategies mirror or closely correspond to policies within the 2040 General Plan or mitigation within the EIR. These include the following:

- **Improve or increase access to transit:** see Policies MOB-6.2, MOB-6.3, MOB-6.4, MOB-6.6, MOB-6.7, MOB-6.8, MOB-7.1, and Mitigation Measure T-1
- **Increase access to common goods and services, such as groceries, schools, and daycare:** see Policies MOB-2.12, MOB-6.2, MOB-6.3, MOB-6.4, MOB-6.6, MOB-6.7, MOB-6.8, MOB-7.1, and Mitigation Measure T-1
- **Incorporate affordable housing into the project:** see Mitigation Measure T-1
- **Orient the project toward transit, bicycle and pedestrian facilities:** see Policy MOB-5.3
- **Improve pedestrian or bicycle networks, or transit service:** see Policies MOB-2.1, MOB-2.2, MOB-2.3, MOB-2.4, and Mitigation Measure T-1
- **Provide traffic calming:** see Policies MOB-9.1, MOB-9.3, and Mitigation Measure T-1
- **Provide bicycle parking:** see Policy MOB-2.10
- **Limit or eliminate parking supply:** see Policies MOB-6.10, MOB-14.2, and Mitigation Measure T-1
- **Unbundle parking costs:** see Mitigation Measure T-1
- **Provide parking or roadway pricing or cash-out programs:** see Policy MOB-13.6
- **Provide car-sharing, bike sharing, and ride-sharing programs:** see Policy MOB-6.5 and Mitigation Measure T-1
- **Shifting single occupancy vehicle trips to carpooling or vanpooling, for example providing ride-matching services:** see Policies MOB-1.4, MOB-5.1, MOB-6.5, and Mitigation Measure T-1
- **Providing telework options:** see Mitigation Measure T-1
- **Providing incentives or subsidies that increase the use of modes other than single-occupancy vehicle:** see Policy MOB-1.2
- **Providing on-site amenities at places of work, such as priority parking for carpools and vanpools, secure bike parking, and showers and locker rooms:** see Policies MOB-2.8, MOB-6.5, and Mitigation Measure T-1
- **Providing employee transportation coordinators at employment sites:** see Policy MOB-1.4

Several of OPR's potential measures were not included as VMT reduction strategies in the 2040 General Plan or Draft EIR as they were considered infeasible for the purposes of the 2040 General Plan. These include the following:

- **Incorporate neighborhood electric vehicle network.** (This strategy is considered infeasible because the Town cannot propose or force the installation of electric vehicle charging stations on private property, such as at residences or within existing shopping centers).
- **Implement or provide access to a commute reduction program.** (This strategy is considered infeasible because the Town is legally unable to require private employers and businesses to reduce worker commutes and has no ability to enforce use of a commute reduction program by individuals to ensure its effectiveness).
- **Provide transit passes.** (This strategy is considered infeasible because the Town has no approved funding mechanism for providing transit passes to residents or people working in Los Gatos and no means of verification that such passes would be used if issued).
- **Providing a guaranteed ride home service to users of non-auto modes.** (This strategy is considered infeasible because the Town has no transit system that it operates, such as taxi

service or an approved funding mechanism for such services. Further, there is no way to measure the effectiveness or guaranteed use of such service).

However, OPR's reduction strategies are not a requirement for a project to reduce VMT and this list is not exhaustive. Instead, this list is meant to guide lead agencies on potential strategies that could be utilized. Further, the effectiveness of any such strategies is dependent upon the community preferences, the likelihood of successful application of the strategies by users, and ability of the Town to implement the necessary mechanisms and funding. Therefore, it is not necessary to include each measure as part of the proposed project.

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

### **Response 9.63 (Part 1)**

The commenter asserts that while the Transportation section of the Draft EIR lists conflicts with an applicable threshold of significance, the impacts analysis does not address this threshold.

Analyzing Congestion Management Program (CMP) roadway network LOS is no longer considered in CEQA documents under SB 743 as of July 1, 2020. Public Resources Code Section 21099(b)(2) added by SB 743 eliminated LOS from CEQA. Threshold 5 under Transportation Section (4.15) should not have been included and will not be considered in the 2040 General Plan Draft EIR since it is not included in 2021 CEQA Statute & Guidelines ([2021 California Environmental Quality Act \(CEQA\) Statute and Guidelines \(califaep.org\)](https://califaep.org/)) Environmental Checklist Form (Appendix G) and is not a threshold of significance that has been adopted by the Town of Los Gatos.

The 2040 General Plan Draft EIR transportation section was updated and recirculated to include the significance thresholds in Section 4.1.2 of the Transportation Analysis for the Draft EIR and excluding the above mentioned threshold which is no longer applicable. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

### **Response 9.63 (Part 2)**

The commenter further states that, "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. (Draft EIR, Appendix A.)"

The commenter refers to a letter submitted prior to the completion of the Draft EIR that was submitted in response to the NOP. The commenter does not refer the Draft EIR to indicate that the analysis was faulty on this issue.

The Caltrans Vehicle Miles Traveled-Focused Transportation Impact Study Guide (TSIG) (May 20, 2020) states that, "when analyzing the impact of VMT on the State Highway system resulting from local land use projects, the focus will no longer be on traffic at intersections and roadways immediately around project sites. Instead, the focus will be on how projects are likely to influence the overall amount of automobile use" (Caltrans Vehicle Miles Traveled-Focused Transportation Impact Study Guide, May 20, 2020). Therefore, the proposed 2040 General Plan is not required to assess its potential effect on freeway segments and/or freeway on- and off-ramps. Additionally, Caltrans submitted a comment letter (dated September 13, 2021) on the 2040 General Plan Draft EIR and does not make the same request of the Project to evaluate intersection level of service and queuing for on- and off-ramps.

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

### **Response 9.63 (Part 3)**

The commenter states that “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” but the Draft EIR does not disclose or address these impacts.

The commenter is correct that the Transportation section does not discuss the impacts of the project exceeding LOS standards. LOS is no longer considered under transportation impacts within CEQA under SB 743. Therefore, the updated transportation section, which was recirculated for an additional 45-day public review for clarification, does not address this issue.

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

### **Response 9.63 (Part 4)**

The commenter alleges that the Transportation Analysis acknowledges a significant unavoidable impact to transit vehicle operations due to increased delays at intersections. However, the commenter asserts that the Draft EIR likewise does not disclose or address this impact.”

The transit evaluation included in Section 5.1.1 of the Transportation Analysis for the Draft EIR has been added to the transportation section of the Town of Los Gatos 2040 General Plan Draft EIR, which was recirculated for an additional 45-day public review for clarification and improved consistency with the appendices.

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

### **Response 9.64**

The commenter states, “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, pages 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 commenter is referring to a significance threshold that pertained to LOS that was deleted from the Draft EIR during the partial recirculation of the Draft EIR. The threshold was deleted from the partially recirculated Draft EIR because LOS is a measure of automobile delay, a project’s effect on automobile delay shall not constitute a significant environmental impact (CEQA Guidelines Section 15064.3).

- Although LOS and automobile delay is not a significant impact for purposes of CEQA, the Transportation Analysis prepared for the project does evaluate LOS resulting from the implementation of the 2040 General Plan. Intersection LOS deficiencies were identified according to the Town of Los Gatos LOS policies (Policy TRA-3.4 and Policy TRA-3.5) in the Town of Los Gatos 2020 General Plan, 2010. Section 7.4 of the final Transportation Analysis

for the Draft EIR identified the following intersection improvements at intersections with proposed Project-related deficiencies:

- Intersection #1 – Winchester Boulevard and Lark Avenue
  - Modify the westbound configuration from 2 westbound left-turn lanes and 1 westbound right-turn lane to 1 westbound left-turn lane and 2 westbound right-turn lanes.
- Intersection #2 – Los Gatos Boulevard and Samaritan Drive (same as the planned improvements in the approved North 40 Specific Plan)
  - Modify the eastbound configuration from 1 shared eastbound left-through-right lane to 1 eastbound left-turn lane, 1 shared eastbound through-left lane, and 1 eastbound right-turn lane.
- Intersection #3 – Los Gatos Boulevard and Lark Avenue (same as the North 40 Phase 1 Off-Sites Improvements)
  - Add a third eastbound left turn lane on Lark Avenue.
  - Add a third northbound left turn lane on Los Gatos Boulevard.\*
  - Add a third westbound lane on Lark Avenue, which will operate as a second right turn lane for the State Route 17 on-ramp.\*
  - Modify and re-stripe intersection and restrict parking as needed.
- Intersection #7 – North Santa Cruz Avenue and Los Gatos-Saratoga Road
  - Modify the southbound right-turn to an overlap right-turn phase.

As of October 15, 2021, several of the intersection improvements with an asterisk have already been implemented in the Town of Los Gatos. Table 7-3 of the Transportation Analysis for the Draft EIR summarizes the resulting intersection improvement LOS calculations and identified acceptable levels of service. Therefore, the Project would not conflict with the Town of Los Gatos LOS policies (Policy TRA-3.4 and Policy TRA-3.5) in the Town of Los Gatos 2020 General Plan, 2010.

Finally, the case law referenced in this comment concerned project level EIRs which had components that did not conform to the lead agencies' general plans. Conformance with a General Plan is a statutory requirement which requires General Plan amendments if the project cannot be changed and the agency decision-makers want to approve it. In this case, the EIR is a program level EIR document that analyzes the proposed 2040 General Plan. If the 2040 General Plan is approved, any future projects would need to conform to the 2040 General Plan. Projects and provisions that were approved prior to that time would not need to be reapproved under the new 2040 General Plan policies as suggested by the commenter.

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

### **Response 9.65 (Part 1)**

The commenter states, "The DEIR relies on a ratio theory to justify its conclusion that cumulative VMT impacts will be less than significant. (DEIR, pages 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 Los Gatos Town Council considered and adopted VMT thresholds on November 17, 2020, by resolution (Resolution of the Town Council of the Town of Los Gatos Adopting Vehicle Miles Traveled Thresholds of Significance for Purposes of Analyzing Transportation Impacts Under the

California Environmental Quality Act), which established CEQA transportation criteria and thresholds of significance for the Town of Los Gatos. In doing so, the Town Council considered the SB 743 Implementation Decisions for the Town of Los Gatos document package which describes the use of the boundary VMT (i.e., VMT that occurs within a selected geographic boundary) per service population:

**Project's effect on VMT** is estimated within a selected geographic boundary (e.g., town/city, county or region) and captures all VMT on the roadway network including both local trips and longer-distance travel that does not have an origin or destination within the area. It is often referred to as boundary VMT. It is a more complete evaluation of the potential effects of the project because it captures the combined effect of new VMT, shifting of existing VMT to/from other neighborhoods, and/or shifts in existing VMT to alternate travel routes or modes. The absolute change in VMT between a without project and with project condition can be compared directly if the land use totals are equal between scenarios. If the land use totals are different, the VMT should be divided by the service population (typically residents plus employees but may include other VMT generators like students and visitors) to distinguish the effects of population and/or employment growth from the effects of changes in personal travel behavior.

The Town Council adopted a boundary VMT per service population metric for use when evaluating the effects of the project VMT.

The partially recirculated Draft EIR includes the VMT significance thresholds for land use plans under Cumulative Conditions in Section 4.1.2 of the Transportation Analysis for the Draft EIR. The VMT significance thresholds in Section 4.1.2 of the Transportation Analysis for the Draft EIR utilize the thresholds above that were adopted by Town Council on November 17, 2020. The process of adopting VMT significance thresholds taken by the Town of Los Gatos to be compliant with SB 743 follows standard procedure and is consistent with CEQA. The thresholds appear on pages 4.15-19 through 4.15-22 of the partially recirculated Draft EIR.

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

## **Response 9.65 (Part 2)**

The commenter states that “The DEIR also wrongly states that the impacts related to traffic hazards would be less than significant (Draft EIR, page 4.15-31.). Those impacts were not studied, even at a program level.”

The safety of persons who travel by automobile, transit, bicycle or on foot is highly important to the discussion of a general plan. The 2040 General Plan Draft EIR does evaluate the potential hazards due to geometric design features (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment) resulting from the adoption of the under Town of Los Gatos 2040 General Plan using Threshold 3 (Draft EIR, page 4.15-27). The 2040 General Plan Draft EIR states that the Town of Los Gatos 2040 General Plan would have a significant safety impact if roadway geometric design features were not designed to Town standards and standard engineering practices were not followed, thereby resulting in a hazardous condition for motorists, transit users, bicyclists, and/or pedestrians. To address potential safety impacts, the following goals and policies relating to safety are already included in the Town of Los Gatos 2040 General Plan:

- MOB-2: Provide continuous, safe, and efficient bikeway and pedestrian facilities.
- MOB-2.1: Roads designated as bicycle routes (Class III) shall be constructed and maintained to be safe for both bicycles and vehicles.

- MOB 2.5: All new development shall be designed to enhance the safety or convenience of bicycle use through the Town.
- MOB 2.7: Coordinate with all schools that serve Los Gatos to enhance safe bicycling and pedestrian facilities used to access the schools.
- MOB 2.11: Require adequate width of roadway clearance between edge of travel and/or edge of pavement for pedestrian mobility and safety.
- MOB 3.2: Trails shall be safe, continuous, and interconnected with other trails and parking areas, designed for bicyclists and/or pedestrians and be consistent with other relevant plans, including the Los Gatos Bicycle and Pedestrian Master Plan.
- MOB-4: Encourage the development of a comprehensive and integrated transportation network with infrastructure and design features that allow safe and convenient travel for all users.
- MOB-7: Optimize the Town's transportation system to provide safe and efficient movement to meet the needs of all users.
- MOB-8: Provide a safe, efficient, and well-designed roadway network transportation system.
- MOB-8.1: Support the safety of all roadway users of all ages and abilities in the design and management of roadways.
- MOB-8.3: New development shall minimize the number of access points (driveway openings or other curb cuts) along Arterial streets to minimize impacts on circulation flow and safety while providing for safe ingress and egress from a location.
- MOB-8.4: Discourage single access roads that impede safe and continuous access for all roadway users.
- MOB-8.5: Street improvements such as curb cuts, sidewalks, bus stop turnouts, bus shelters, light poles, traffic signals, benches, and trash containers shall be designed to provide safe movement of all users and minimize disruption to the streetscape.
- MOB-12: Ensure that hillside streets maintain safe and continuous access.
- MOB-12.5: New public streetlighting on hillside streets shall be prohibited except where lighting is required to address public safety.
- MOB-13.4: Provide for safe pedestrian travel in parking lots without unnecessarily eliminating parking spaces.
- MOB-15: Provide for the safe and efficient movement of goods to support commerce, industry, and the community.

The 2040 General Plan Draft EIR (July 2021) states that the above goals are intended to result in roadway designs that safely accommodate all users including pedestrian, bikes, and vehicles. Additionally, the Town of Los Gatos 2040 General Plan is a program-level document that does not directly address project-level design features or building specifications. Los Gatos maintains improvement standards that guide the construction of new transportation facilities to minimize design hazards for all users of the system. Since the proposed Town of Los Gatos 2040 General Plan does not directly propose any project features or incompatible uses that could increase hazards within the Town of Los Gatos, the impact is less-than-significant.

Finally, the commenter states that impacts related to traffic hazards are not studied. The commenter does not indicate what additional hazards may exist that have not been addressed and

none were identified during the scoping and Notice of Preparation phase of the environmental review. While future projects may generate traffic hazards that would be required to be analyzed as part of any environmental review at that time, CEQA does not require a lead agency to speculate on future development that has not yet been proposed. (*Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 577, 80 Cal.Rptr.2d 294 [speculative possibilities are not substantial evidence of environmental impact].) “An EIR is not required to engage in speculative analysis. (Guidelines, § 15145.) Indeed, this core principle is well established in the Guidelines and case law. While a lead agency must use its “best efforts” to evaluate environmental effects, including the use of reasonable forecasting, “foreseeing the unforeseeable” is not required, nor is predicting the unpredictable or quantifying the unquantifiable. (Guidelines, § 15064, subd. (d)(3) [“A change which is speculative or unlikely to occur is not reasonably foreseeable”]; *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 107–108 [“agency is required to forecast only to the extent that an activity could be reasonably expected under the circumstances’ ”].)( *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1060–1061.)

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

### **Response 9.66**

The commenter describes several typographical errors in Section 4.15, *Transportation*, of the Draft EIR.

Several of the typographical errors described by the commenter are no longer applicable because the described typographical errors were revised in the partial recirculation Draft EIR. However, one of the typographical errors does occur as described by the commenter, only in the recirculated Draft EIR now instead of the Draft EIR. Therefore, in response to this comment, page 4.15-28 of the partial recirculation of the Draft EIR is revised as follows:

Because implementation of the 2040 General Plan would result in VMT per service population under that which exceeds the threshold of 32.3 due to population and employment growth planned within the Town, impacts would be potentially significant.

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

### **Response 9.67**

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

The commenter is incorrect in stating that relocated utilities were not addressed in the Draft EIR. Impacts from buildup of the 2040 General Plan, including utilities required for development, are evaluated throughout Section 4, *Environmental Impact Analysis*, of the Draft EIR. However, to provide more clarification, Impact U-1 of the Draft EIR has been revised. Specifically, in response to this comment, pages 4.16-18 and 4.16-19 of the Draft EIR are revised as follows:

Existing user fees fund the operations and maintenance of the SJWC’s water system. However, expansion to the existing water system may be needed to service new development, which is funded by connection and development fees. Impacts from any required expansion of existing infrastructure required by new development in the Town would be further analyzed under separate CEQA review when determinations are made on the type, scope, and location of the infrastructure improvements. Additionally, new construction could require the relocation of

utilities which would require ground disturbance. Ground disturbance impacts are evaluated throughout this EIR, such as impacts related to wildlife habitat, trees, cultural resources, and water quality.

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

### **Response 9.68**

The commenter states that the discussion of Impact U-1 is required to be based on a Water Supply Assessment (WSA) that analyzes the projects impacts to available water supply under normal, single, and dry years. The commenter further states that the Draft EIR is deficient and must be revised and recirculated for public review on this ground alone.

The 2040 General Plan Update does not propose any developments that meet the threshold criteria to require the preparation of a WSA. However, individual projects that may be identified in the future and would meet such criteria would be required to prepare project-specific WSAs, consistent with the requirements of California Water Code as amended by SB 610. Additionally, the Urban Water Management Plan (UWMP) for the 2040 General Plan area is based upon the San Jose Water Company's (SJWC) 2015 UWMP, which outlines the availability of water supplies for the service area which includes the City of San Jose, the City of Cupertino, the City of Campbell, City of Monte Sereno, the City of Saratoga, the Town of Los Gatos, and parts of unincorporated Santa Clara County. Pursuant to the 2015 SJWC UWMP, SJWC has enough water supply capacity to meet current demands. The plan projects usage out to 2040, the same year as the General Plan horizon. From 2020 to 2040, the plan predicts that there would be adequate supply to meet water demand in a normal year. SJWC is currently undergoing an update to the 2015 UWMP which would include long-term future projections of water supply availability and reliability.

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

### **Response 9.69**

The commenter states that the Draft EIR uses data based on the Draft 2016 UWMP, not the updated UWMP that was adopted by the SJWC in June 2021. The commenter further states that the Draft EIR must be updated to reflect these new figures.

The commenter is correct in stating that the Draft EIR's analysis is based upon the SJWC's prior UWMP. However, the NOP for the project was circulated prior to the adoption of the updated UWMP in June 2021. Section 15125(a) of the CEQA Guidelines provide that the baseline should normally consist of the physical environmental conditions existing at the time the agency publishes a NOP commencing the EIR process. Therefore, the Draft EIR is not required to utilize the most recent UWMP. However, for information purposes, as shown on page 7-9 of SJWC's 2020 UWMP, SJWC would have sufficient water supplies to meet projected demand, even after six years of consecutive drought. This is an improvement compared with the 2015 UWMP which identified insufficient water supplies as early as two consecutive years of drought. Accordingly, the 2020 UWMP results in no new impacts or required mitigation measures in the Draft EIR. No revisions to the Draft EIR are necessary in response to this comment.

### **Response 9.70**

The commenter states that in the SJWC 2020 UWMP, SJWC acknowledges the potential for water demand to exceed water supplies. The commenter further states that this 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.

This comment is similar to Comment 9.69, please see Response 9.69 above. Therein it discusses that the Draft EIR did not use the 2020 UWMP for its analysis. However, for informational purposes,

based on the water supply projections presented in the 2015 UWMP and the 2020 UWMP, the SJWC's water supply would be sufficient to meet the projected demand of the development envisioned in the 2040 General Plan. In addition, project-specific WSAs would be required to be prepared by proponents of any future large-scale (greater than 500 dwelling units or 500,000 square feet of commercial space) development project in the Town, in accordance with SB 610, to ensure adequate water supply is available to serve such projects. Therefore, the 2040 General Plan, in addition to applicable programs and measures within the Town, would ensure water demand would not exceed that of water supply.

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

### **Response 9.71**

The commenter states that the Draft EIR is relying on rescinded and superseded information because SJWC has acknowledged risks related to water supply availability in its 2020 UWMP. The commenter further states that both of the SJWC's UWMPs are based upon ABAG projections which do not accurately forecast demand because the 2040 General Plan exceeds ABAG projections by nearly 30 percent. Lastly, the commenter states that the Draft EIR incorrectly states that "approximately half of the Town's water supply is local surface water..." (Draft EIR, page 4.16-1). When in actuality, the primary sources of SJWC's water supply are imported water and groundwater.

The first part of this comment is similar to Comment 9.69, please see Response 9.69 above. Therein it discusses that the Draft EIR did not use the 2020 UWMP for its analysis. However, for informational purposes, based on the water supply projections presented in the 2015 UWMP and 2020 UWMP, the SJWC's water supply would be sufficient to meet the projected demand of the development envisioned in the 2040 General Plan.

The second portion of this comment discusses the SJWC's UWMP use of ABAG growth projections. The commenter is correct in stating that the 2040 General Plan would exceed ABAG projections. However, water conservation policies and programs proposed in the 2040 General Plan, along with existing measures, would still be effective at reducing water demand within the Town. Additionally, as described on page 4-2 of the 2020 UWMP ABAG population projections were used to estimate population growth within SJWC's service area. The service area includes not only Los Gatos, but other nearby cities and areas, such as the City of San José. The 2040 General Plan envisions population growth only in the planning area and not the larger SJWC service area. Accordingly, implementation of the 2040 General Plan would not exceed population growth forecasted in the SJWC service area nor water supply.

Lastly, the Draft EIR does address that imported water and groundwater are primary sources for the Town as discussed on page 4.16-17, "Approximately half of SJWC's long-term water supply is provided by the SCVWD each year, while approximately one-third is generally provided through groundwater. Water supply for the Town of Los Gatos is comprised primarily of imported water which serves the eastern Los Gatos area and approximately half is local surface water."

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

### **Response 9.72**

The commenter states that Impact U-4 inconsistently states that the Guadalupe Landfill has "sufficient capacity" and is "near capacity."

The commenter is correct in stating that the Draft EIR does cite the Guadalupe Landfill as both having sufficient capacity and also being near-capacity. However, the Guadalupe Landfill has a remaining capacity of approximately 11,055,000 cubic yards and is projected to reach capacity in 2048. In response to this comment, page 4.16-23 of the Draft EIR is revised as follows:

Solid waste generated by the Town of Los Gatos would increase disposal at the Guadalupe Landfill by approximately 1 percent. With a remaining capacity of 11,055,000 cubic yards, the Guadalupe Landfill would have sufficient capacity to accommodate this increase in solid waste generation. ~~However, because the Guadalupe Landfill is near capacity. In addition,~~ the 2040 General Plan would include goals and policies that would reduce trash production, promote recycling, and potentially introduce Townwide composting.

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

### **Response 9.73**

The commenter states that Table 4.17-1 appears to underreport persons and buildings in high and very high hazard zones.

The table on page 4.17-1 of the Draft EIR contains information provided by Santa Clara County. While the number of dwelling units and person may seem low, it must be kept in mind that a large portion of the area in question is open space or preserved and so does not contain housing or other buildings. Hillside and mountainous regions have higher fire danger but, as in this case, also contain fewer homes and structures that might burn. Open space in this area with limited development and/or development potential is not widely available given the slopes, fire hazards, and Town's hillside policies.

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

### **Response 9.74**

The commenter states that 2040 General Plan Goal HAZ-2 is not discussed in the Draft EIR.

The commenter is incorrect in his statement that the 2040 General Plan policies are not addressed in the Wildfire section. In fact, in the analysis for the various thresholds associated with Wildfire impacts, the various HAZ Goals and Policies are addressed and discussed as to how they help to reduce any impacts associated with Wildfires. HAZ-2 is mistakenly identified as HAZ-4 and HAZ-3 is misidentified as HAZ-5. Though the numbers are incorrect, the goals and policies are correctly stated and therefore no new information is being added.

In response to this comment, pages 4.17-6 and 4.17-7 of the Draft EIR are revised as follows:

**Goal HAZ-4.2.** Incorporate fire safety precautions ~~are as~~ an integral consideration in planning development.

**Policy HAZ-4.3-2.3. Adequate Water Storage for Fire Protection.** During the development review process, carefully consider the adequacy of water storage for fire protection.

**Policy HAZ-4.5. Planning Coordination.** ~~Implement and annually evaluate progress toward implementation of the Santa Clara County OAHMP and CWPP for Los Gatos.~~

**Policy HAZ-2.4. Secondary Emergency Access.** Provide secondary emergency access as required by the Santa Clara County Fire Department.

**Goal HAZ-5-3.** The potential for injuries, damage to property, economic and social displacement, and loss of life resulting from fire hazards. is reduced to the maximum amount possible.

**Policy HAZ-5-1 3.1. Fire Hazard Preparedness.** Minimize exposure to wildland and urban fire hazards through rapid emergency response; proactive code enforcement; public education programs; use of modern fire prevention measures; quick, safe access for emergency equipment and evacuation; and emergency management preparation.

**Policy HAZ-5-2 5.2. Neighborhood Fire Emergency Planning.** Encourage neighborhood fire emergency planning for isolated areas.

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

## Response 9.75

The commenter states that the Draft EIR did not analyze Threshold 5.

The commenter is incorrect. Threshold 5, identified on page 4.17-5 states that the General Plan 2040 may have a significant adverse impact if it would expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires. Although this threshold is not included in the box on page 4.17-7, the risk of exposure to people or structures by wildland fires is discussed at length. Both the direct risk of fire as well as the potential for smoke and air pollutants are addressed, as well as the vegetation and risk of fire spread. The heading box on Page 4.17-7 will be updated to include the stated policy that was discussed at length in the text as follows:

<b>Threshold 2:</b>	If located in or near State responsibility areas or lands classified as very high fire hazard severity zones, would the General Plan due to slope, prevailing winds, and other factors, exacerbate wildfire risks and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?
<b>Threshold 3:</b>	If located in or near State responsibility areas or lands classified as very high fire hazard severity zones, would the General Plan expose people or structures to significant risks, including downslopes or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?
<b>Threshold 5:</b>	<u>If located in or near State responsibility areas or lands classified as very high fire hazard severity zones, would the General Plan expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires?</u>

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

## Response 9.76

The commenter states, “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.” In making this statement and in the subsequent comments regarding alternatives, the commenter does not provide different alternatives that should have been considered.

An examination of an EIR's alternatives analysis must begin with the project's objectives, for it is these objectives that a proposed alternative must be designed to meet. (*In re Bay-Delta, supra*, 43 Cal.4th at page 1163; CEQA Guidelines, § 15124, subd. (b).) (*San Franciscans for Livable Neighborhoods v. City and County of San Francisco* (2018) 26 Cal.App.5th 596, 632). "There is no rule specifying a particular number of alternatives that must be included. 'CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its facts, which in turn must be reviewed in light of the statutory purpose.' " (*Id. at* 633).

Here, the Draft EIR analyzes four separate alternatives:

- Alternative 1: Low Growth; Under Alternative 1, the proposed 2040 General Plan would not include an increase in density ranges outside of Opportunity Areas but would include a modest increase inside designated Opportunity Areas;
- Alternative 2: Medium Growth; Under Alternative 2, the proposed 2040 General Plan would result in a modest increase in density ranges outside of Opportunity Areas but would include additional increases inside designated Opportunity Areas;
- Alternative 3: High Growth; Alternative 3 is a high-growth alternative that includes increased density ranges in all areas and additional increases that allow for higher-density development in Neighborhood Commercial and Mixed-Use Commercial designations outside Opportunity Areas; and
- Alternative 4: No Project (2020 General Plan). Alternative 4 is comprised of a land use pattern that reflects the land use identified in the existing 2020 General Plan. Under this alternative, the proposed 2040 General Plan would not be adopted and the existing General Plan, including the land use map and all of the General Plan goals and policies, would remain in place through the horizon year of 2040.

These alternatives were created based upon both the 2040 General Plan objectives as well as analyzed for potential significant environmental impact. The Town's vision statement encompassing the objectives is:

The Town of Los Gatos is a welcoming, family-oriented, and safe community nestled in the beautiful foothills of the Santa Cruz Mountains. The Town is a sustainable community that takes pride in its small-town character and provides a range of housing opportunities, historic neighborhoods, local culture and arts, excellent schools, and a lively and accessible downtown. Los Gatos offers a choice of mobility options, superior public facilities and services, and an open and responsive local government that is fiscally sound. Los Gatos has a dynamic and thriving economy that includes a mix of businesses throughout Town that serves all residents, workers, and visitors.

The 2040 General Plan sets the guiding principles for the Town. The guiding principles are contained within the 2040 General Plan Introduction and listed below:

- **Community Vitality.** Invigorate downtown Los Gatos as a special place for community gathering, commerce, and other activities for residents and visitors. Foster the economic vitality of all Los Gatos business locations. Preserve and enhance the Town's historic resources and character while guiding the community into the future.
- **Diverse Neighborhoods.** Foster appropriate investments to maintain and enhance diverse neighborhoods, housing opportunities, and infrastructure to meet the needs of all current and future residents.

- **Fiscal Stability/Responsibility.** Provide high quality municipal services to the Los Gatos community while sustaining the Town's long-term fiscal health.
- **Government Transparency.** Conduct governmental processes in an open manner and encourage public involvement in Town governance.
- **Inclusivity.** Recognize the importance of and promote ethnic, cultural, and socio-economic diversity and equity to enhance the quality of life in Los Gatos.
- **Mobility.** Provide a well-connected transportation system that enables safe access for all transportation modes, including pedestrians, bicyclists, motorists, and transit riders of all ages and abilities.
- **Promote Public Safety.** Maintain and enhance Los Gatos as a safe community through preparation and planning, education, and community design that is responsive to the full range of potential natural and man-made hazards and safety issues.
- **Protect Natural Resources.** Protect the natural resources and scenic assets that define Los Gatos, including open space preserves, recreational trails, surrounding hillsides, and natural waterways.
- **Sustainability.** Manage, conserve, and preserve Los Gatos' natural environment for present and future generations. Identify and provide opportunities to enhance the Town's sustainability policies and practices.

Each of the alternatives meet the statutory requirements of CEQA and represent a reasonable range of alternatives under Guidelines section 15126.6. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

### **Response 9.77**

The commenter identifies the four project alternatives and that the alternatives are derived from the 2040 General Plan Land Use Alternatives Report. The commenter also identifies a typographical error in Table 6-1. The commenter also provides a footnote that describes inconsistencies in the Draft EIR pertaining to the 2040 population of Los Gatos.

The commenter accurately restates information from the EIR. The four alternatives are taken from the 2040 General Plan Land Use Alternatives Report found on the Town's website at [https://losgatos2040.com/images/docs/lggpu\\_land\\_use\\_alternatives\\_report\\_web.pdf](https://losgatos2040.com/images/docs/lggpu_land_use_alternatives_report_web.pdf). The commenter accurately describes a typographical error on page 6-3, Table 6-1 of the Draft EIR. This typographical error does not raise a significant environmental issue. In response to this comment, page 6-3, Table 6-1 of the Draft EIR is revised as follows:

Population Growth Scenarios	2018 Population (Estimate)	2040 Population (Estimate)	Growth 2018-2040	Percentage of Growth 2018-2040
ABAG Projections	31,472	303,050	1,578	0.2%
Alternative 1: Low Growth	30,995	33,769	2,774	0.4%
Alternative 2: Medium Growth	30,995	35,553	4,538	0.6%
Alternative 3: High Growth	30,995	38,617	7,622	1.0%
Alternative 4: No Project	30,995			

Source: Town of Los Gatos, 2019

The commenter is correct that there are inconsistencies in the 2040 population of Los Gatos within the Draft EIR. Pages 4.13-6 and 5-1 of the Draft EIR both refer to a 2040 population of 42,021 people. Other sections and pages of the Draft EIR, such as pages 2-15, 4.14-24, and 4.16-17 refer to the 2040 population as 39,221 people. The 2040 population estimate of 39,221 is correct and is based the sum of existing population plus the population that would reside in Los Gatos with buildout of the General Plan, as described on pages 2-15 and 2-16 of the Draft EIR. Accordingly, page 4.13-6 of the Draft EIR is revised as follows:

According to the 2040 General Plan Land Use Element, General Plan 2040 implementation may allow up to 3,738 new residential units by 2040 (Table 4.13-3). This additional housing could result in 8,971 new residents by 2040. This would increase the total population to approximately 39,221 42,021 persons, which would be 18.7 percent 27.1 percent above ABAG's 2040 population forecast of 33,050 (ABAG 2019)

Page 5-1 of the Draft EIR is revised as follows:

As discussed in Section 4.13, *Population and Housing*, the buildout anticipated under the 2040 General Plan could accommodate an estimated 8,971 new residents and 3,738 new dwelling units in Los Gatos. With the estimated growth under the General Plan, Los Gatos would have a 2040 population of approximately 39,221 42,021 residents. This would result in a population that would exceed ABAG growth projections by 18.7 percent 27.1 percent.

The revisions above reduced the severity of impact PH-1 beginning on page 4.13-6 because this impact is a comparison of growth resulting from the project compared to forecasted growth by ABAG, and the correct figure of 39,221 is closer to the ABAG estimate than 42,021. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

## **Response 9.78**

The commenter states that because the alternatives rely upon the Alternatives Report which focuses on "Opportunity Areas" to identify areas of growth, the analysis is invalid because the "Opportunity Areas" no longer exist.

The commenter's allegation is faulty for several reasons. First, the alternatives analysis looks at areas of focused growth to provide a framework for each alternative. Lower growth alternatives focus on growth only in designated areas, while higher growth looks at a broader scope of growth throughout the Town. Whether the areas of focused growth are called "Opportunity Areas" or are

implemented through land use designations within “Community Place Districts,” the effect for purposes of analysis is the same.

Although the specific identifier of “Opportunity Area” is no longer used in the General Plan, the analysis provided in the Alternatives Report is still valid. As identified at 2-1 of the Draft EIR, focus areas for growth identified in the 2040 General Plan include Downtown, Los Gatos Boulevard, North Santa Cruz Avenue, Winchester Boulevard, Lark Avenue, Harwood Road, Pollard Road, and Union Avenue, and are described as “Community Place Districts.” As further identified at 4.1-21, although there are development opportunities in locations throughout Town, these eight locations have been selected because they have the existing infrastructure necessary to support new mixes of land use and additional housing, and their concentration of commercial, office, and mixed-use land use designations result in higher potential for redevelopment. A comparison of the Opportunity Areas in the Alternatives Report (See map on page 27 of Alternative Report, [https://losgatos2040.com/images/docs/lggpu\\_land\\_use\\_alternatives\\_report\\_web.pdf](https://losgatos2040.com/images/docs/lggpu_land_use_alternatives_report_web.pdf)) with Figure 3-10 on page 3-28 of the 2040 General Plan shows that these areas are essentially the same for planning purposes.

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

### **Response 9.79**

The commenter states that they are unable to tell which alternatives would avoid or reduce significant impacts to GHG or VMT and for this reason the alternatives analysis is faulty. The commenter further alleges that by focusing on 2,000 housing units as its objective, the Draft EIR narrowly confines and constrains the alternative analysis.

Each alternative is analyzed in comparison with the proposed Project in 18 categories, including for GHG and traffic. For example, on page 6-6, the Draft EIR specifically states, “Alternative 1 performs better than the 2040 General Plan and would result in reduced GHG impacts compared to the proposed project.” On page 6-8, conclusions are also provided related to traffic: “Overall, effects on transportation related to VMT would be reduced. Therefore, 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 2040 General Plan.” Each alternative analysis provides a similar assessment, which are then summarized in the “Environmentally Superior Alternative” section found on Draft EIR pages 6-25 through 6-26. “An alternatives analysis in an EIR is intended to facilitate consideration of whether an environmentally superior alternative could meet most project objectives; therefore, “the key to the selection of the range of alternatives is to identify alternatives that meet most of the project's objectives but have a reduced level of environmental impacts.” (*Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1086–1089.) (*Bay Area Citizens v. Association of Bay Area Governments* (2016) 248 Cal.App.4th 966, 1014).

With regard to the 2,000-housing-unit objective, this is clearly stated in the Project Description as a central or primary objective for the 2040 General Plan: “Among the central objectives of the 2040 General Plan are to achieve the Regional Housing Needs Allocation (RHNA) goal of 2,000 dwelling units developed by the Association of Bay Area Governments.” (Draft EIR page 2-7). The commenter themselves recognized this in their comment 9.8. This housing unit number is taken from the RHNA and is not arbitrarily applied to the alternatives analysis, but rather, is an allocation from a regional planning document used as a primary objective for the overall 2040 General Plan. This is further reiterated in the General Plan, itself, at page 3-1, which states: “To help plan for the future, Los Gatos used the Town's Regional Housing Needs Allocation (RHNA), developed by the

Association of Bay Area Governments, as a predictor of the housing needed to meet future demands."

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

### **Response 9.80**

The commenter alleges that the VMT discussion for Alternative 1 is incorrect because the estimated VMT is 22.65 while the baseline is significantly higher. The commenter also notes a typographical error on page 6-8.

The VMT looks at the number of vehicle miles that must be traveled for purposes of work, shopping, etc. rather than at the specific number of cars traveling through an intersection at any given time. Where housing is located near alternative transportation options or compatible land uses, the VMT may be reduced even though housing density is increased. Although the 2018 baseline VMT is 36.4, the increased density in specific and/or limited areas in the alternatives analysis results in a decrease in VMTs for each alternative option. As described in the Alternatives Report: "The decrease in VMT per service population can be attributed to the intensification of housing units in Opportunity Areas, which has the potential to make taking transit, walking, and biking more viable options. Most of the new development proposed in the four land use alternatives concentrates housing near other compatible land uses." (Alternatives Report, page 31, [https://losgatos2040.com/images/docs/lggpu\\_land\\_use\\_alternatives\\_report\\_web.pdf](https://losgatos2040.com/images/docs/lggpu_land_use_alternatives_report_web.pdf)). The Town's threshold of significant for VMT is 32.3 (Draft EIR page 4.15-23). Thus, Alternative 1 VMT of 22.65 is below the threshold of significance.

The commenter accurately describes typographical error on page 6-8 of the Draft EIR. This typographical error does not raise a significant environmental issue. In response to this comment, page 6-8 of the Draft EIR is revised as follows:

Implementation of Alternative 1 would involve less overall development and associated growth than would occur under the 2040 General Plan, specifically outside of Opportunity Areas. Under this alternative, VMT per service population would be reduced. Similar to the 2040 General Plan, Alternative 1 would emphasize infill development that would result in a greater demand for transit. This alternative would still comply with goals and policies in the 2040 General Plan that would aim to minimize or avoid VMT generated in Los Gatos. Alternative 1 would result in an increase of 285,000 total daily vehicle trips and would generate less traffic than the 2040 General Plan. However, from a VMT efficiency perspective, Alternative 1 would result in an estimated 22.65 VMT per service population as compared with an estimated 38.45 VMT per service population in the proposed 2040 General Plan. The decrease in VMT per service population can be attributed to the intensification of housing units in Opportunity Areas, which has the potential to make taking transit, walking, and biking more viable options. Additionally, Alternative 1 would support emergency access and safety design and would not conflict with policies contained in *Plan Bay Area 2040* and the Town's Pedestrian and Bicycle Plan. Overall, effects on transportation related to VMT would be reduced. Therefore, compliance with 2040 General Plan goals and policies would result in reduced impacts on VMT but would ~~remain a be~~ less than significant impact similar compared to the proposed 2040 General Plan.

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

## Response 9.81

The commenter states that Alternative 2 is compared to the No Project Alternative, but it is unclear where this comparison occurs. The commenter also identifies typographical errors on page 6-12 and again comments on the VMT for Alternative 2 compared to the baseline.

The commenter accurately describes typographical error on page 6-12 of the Draft EIR. This typographical error does not raise a significant environmental issue. In response to this comment, page 6-12 of the Draft EIR is revised as follows:

Alternative 2 would develop the fewer sites throughout the Town compared to the 2040 General Plan but would have the same potential for projects to be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5. Impacts would be less than significant, similar to the 2040 General Plan.

See Response to 9.80 for understanding of why VMT may be lower for more intense development. No revisions to the Draft EIR are necessary in response to this comment.

## Response 9.82

The commenter identifies a number of typos for Alternative 3, states there is insufficient discussion as to why Alternative 3 would have increased impacts to hydrology/water quality, public services, and utilities/service systems compared to the Project, and again questions how the VMT can be lower for this Alternative as compared to the baseline VMT.

The commenter accurately describes typographical errors on pages 6-15, 6-16, and 6-19 of the Draft EIR. These typographical errors do not raise a significant environmental issue. In response to this comment, page 6-15 of the Draft EIR is revised as follows:

Alternative 3 is a high-growth alternative that includes increased density ranges in all areas and additional increases that allow for higher-density development in Neighborhood Commercial and Mixed-Use Commercial designations outside Opportunity Areas. Typical densities are assumed to vary from 10 to 36 du/ac outside Opportunity Areas and 16 to 36 du/ac inside Opportunity Areas. Intensity varies from 0.75 FAR in LDR to 1.5 FAR in HDR and MU. When compared to Alternative 1, Alternative 3 would result in a three percent (600 to 750) increase in peak hour vehicle trips. Alternative 3 would generate the most traffic, primarily due to the addition of 3,1706 new housing units.

In response to this comment, page 6-16 of the Draft EIR is revised as follows:

Alternative 3 would increase the overall net growth in population and employment in Los Gatos through the year 2040 by approximately 5,527 7,622 residents.

In response to this comment, page 6-19 of the Draft EIR is revised as follows:

Alternative 3 would generate the most traffic, primarily due to the addition of 3,1706 new housing units. However, from a VMT efficiency perspective, Alternative 3 performs the best with an estimated 21.48 VMT per service population. The decrease in VMT per service population can be attributed to the intensification of housing units in Opportunity Areas, which has the potential to make taking transit, walking, and biking more viable options.

With regard to increased impacts to hydrology/water quality, public services, and utilities/service systems compared to the Project, each of these resources are impacted by increased population

numbers. For example, as stated at page 6-18 of the Draft EIR under public services: "An increase in growth would require higher demand for public services in the Town as compared to the 2040 General Plan. Additional facilities would potentially be required to accommodate the increase in population under Alternative 3." This same analysis is applicable to hydrology, and utilities as well.

For explanation on how density impacts VMT, please see response to comment 9.80.

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

### **Response 9.83**

The commenter states that it is illogical that the No Project Alternative would result in greater impacts to all categories but transportation. The commenter also states that Alternative 4 does not compare VMTs but intersection impacts.

The commenter is incorrect in their statement that compared with the 2040 General Plan, the No Project would result in greater impacts to all categories or environmental topics evaluated in the Draft EIR except for transportation. Under Alternative 4, the 2020 General Plan would remain in place and development, growth, and policies would continue as they currently stand.

Alternative 4 is comprised of a land use pattern that reflects the land use identified in the existing 2020 General Plan. Under this alternative, the proposed 2040 General Plan would not be adopted and the existing General Plan, including the land use map and all of the General Plan goals and policies, would remain in place through the horizon year of 2040. Thus, any new development in Los Gatos would occur consistent with the existing land use designations and the allowed uses within each designation. Similarly, any new infrastructure in Los Gatos would occur as envisioned in the 2020 General Plan (Draft EIR pages 6-20).

This also means that policies included in the 2040 General Plan that provide additional protection for resources, scenic views, environment, and open space are not included. Overall, with the exception of air quality and greenhouse gas emissions and VMT, the No Project (2020 General Plan) and 2040 General Plan have similar impacts. As stated on page 6-21, annual VMTs under the No Project Alternative are likely to exceed anticipated VMT under the 2040 General Plan, resulting in increased air quality and GHG emissions.

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

### **Response 9.84**

The commenter states that the Draft EIR improperly conflates the analysis of project-level and cumulative impacts and argues that the Draft EIR should have considered the 2040 General Plan in combination with other reasonably foreseeable development.

The 2040 General Plan EIR is a programmatic EIR that analyzes the planning document, rather than specific projects. As the commenter noted, page 3-2 of the Draft EIR provides the scope of cumulative impacts in the Draft EIR, stating:

Because the proposed project is comprised of a General Plan, cumulative impacts are treated somewhat differently than would be the case for a project-specific development. CEQA Guidelines Section 15130 provides the following direction relative to cumulative impact analysis:

Impacts should be based on a summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or areawide conditions contributing to the cumulative impact.

By its nature, a general plan considers cumulative impacts insofar as it considers cumulative development that could occur within the General Plan Area. Therefore, the analysis of project impacts also constitutes the cumulative analysis. In addition to cumulative development within the General Plan Area, the analysis of traffic and related impacts (such as noise) considers the effects of regional traffic growth occurring outside of the General Plan Area.

All projects that are approved or have applications on file have been included in the Draft EIR analysis (Draft EIR page 2-16, Table 2-4). CEQA does not require a lead agency to speculate on future development that has not yet been proposed. (*Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 577, 80 Cal.Rptr.2d 294 [speculative possibilities are not substantial evidence of environmental impact].) “An EIR is not required to engage in speculative analysis. (Guidelines, § 15145.) Indeed, this core principle is well established in the Guidelines and case law. While a lead agency must use its “best efforts” to evaluate environmental effects, including the use of reasonable forecasting, “foreseeing the unforeseeable” is not required, nor is predicting the unpredictable or quantifying the unquantifiable. (Guidelines, § 15064, subd. (d)(3) [“A change which is speculative or unlikely to occur is not reasonably foreseeable”]; *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 107–108 [“‘agency is required to forecast only to the extent that an activity could be reasonably expected under the circumstances’”].)( *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1060–1061.)

The commenter’s suggestion that the cumulative impacts analysis in the Draft EIR is also flawed because it concludes cumulative impacts are less than significant while also determining if the 2040 General Plan would contribute to the less than significant impact is not correct. Section 15130 of the CEQA Guidelines state that cumulative impacts should be evaluated for significance.

“CEQA requires no cumulative impact analysis in the EIR if the combined impact is not significant or the project’s incremental contribution to the impact is not cumulatively considerable.” *League to Save Lake Tahoe Mountain etc. v. County of Placer* (2022) 75 Cal.App.5th 63, 148 (citing *San Francisco Baykeeper, Inc. v. State Lands Com.* (2015) 242 Cal.App.4th 202, 222; *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 909). If determined significant, the analysis should continue to determine whether the proposed project would contribute to the impact in a way or intensity that is cumulatively considerable. The Draft EIR uses this approach for cumulative impacts determined to be significant. The CEQA Guidelines do not prohibit a lead agency from using the same approach for cumulative impacts that are determined to be less than significant, which is the approach in the Draft EIR. Therefore, the cumulative impacts analysis in the Draft EIR is not flawed, and no revisions to the Draft EIR are necessary in response to this comment.

## Response 9.85

The commenter alleges that because of inadequacies in the Draft EIR, the document must be recirculated.

After careful review of each of the comments in this letter, the information provided in response to comments to address the issues alleged herein does not meet the test for recirculation of the Draft EIR.

Section 21092.1 provides that when a lead agency adds “significant new information” to an EIR after completion of consultation with other agencies and the public (see §§ 21104, 21153) but before certifying the EIR, the lead agency must pursue an additional round of consultation. In *Laurel Heights II, supra*, 6 Cal.4th at page 1129, 26 Cal.Rptr.2d 231, 864 P.2d 502, we held that new information is “significant,” within the meaning of section 21092.1, only if as a result of the additional information “the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a *substantial* adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect.” (Accord, CEQA Guidelines, Cal.Code Regs., tit. 14, § 15088.5, subd. (a).) Recirculation is not mandated under section 21092.1 when the new information merely clarifies or amplifies the previously circulated draft EIR, but is required when it reveals, for example, a new substantial impact or a substantially increased impact on the environment. (*Laurel Heights II*, at pages 1129–1130, 26 Cal.Rptr.2d 231, 864 P.2d 502.) We further held the lead agency’s determination that a newly disclosed impact is not “significant” so as to warrant recirculation is reviewed only for support by substantial evidence. (*Id.* at page 1135, 26 Cal.Rptr.2d 231, 864 P.2d 502.) (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 447, as modified (Apr. 18, 2007).)

Each of the commenters alleged failings of the Draft EIR related to air quality, GHG, noise, transportation, utilities, and alternatives are addressed, and no new or significant impacts have been disclosed. Additionally, the Transportation section of the Draft EIR was recirculated on November 18, 2021, and the public comment period closed on January 7, 2022.

The Town decided to recirculate Section 4.15, Transportation, of the Draft EIR in part based on input from members of the public during the public comment period on the Draft EIR and in part based on the fact that, after completion of the Draft EIR, the Town determined that the Transportation Analysis included as Appendix C to the Draft EIR identified a significant and unavoidable impact that was identified as less than significant in the Draft EIR Section 4.15. Specifically, Impact T-1 in Section 4.15 of the Draft EIR, pertaining to conflicts with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities, was identified as a less-than-significant impact requiring no mitigation. The Transportation Analysis prepared for the project and included as Appendix C to the Draft EIR identified a potentially significant and unavoidable impact related to conflicts with transit operations. Section 4.15 of the Draft EIR was also recirculated to evaluate vehicle miles traveled (VMT) using an additional threshold of significance not included in the first circulation of the Draft EIR. The recirculation also included minor clarifications to Section 4.15, as well, such as correcting typographic errors.

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

## **Response 9.86**

The commenter states that the Notice of Availability (NOA) for the Draft EIR did not meet the statutory requirements.

The Town reopened the public comment period on the Draft EIR for an additional 45-day period providing an updated Notice of Availability with the statutory language required under CEQA Guidelines section 15087.

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

## Response 9.87

The commenter states that it is not clear if the lead agency complied with Government Code section 65352 directing notices of the proposed adoption of a general plan to specific entities.

Specifically, Section 65352 directs that “Before a legislative body takes action to adopt or substantially amend a general plan, the planning agency shall refer the proposed action to all the following entities:” followed by a list of specific entities that should be noticed of the action. This comment is premature as the Town has not yet placed the General Plan and certification of the EIR before its Town Council for adoption. When the matter is placed upon the agenda for adoption the matter will be ripe for noticing. Furthermore, Section (c)(1) of the code specifically states that compliance with this section is not mandatory but directive and any failure to comply does not affect the validity of the action to adopt the General Plan.

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

## Response 9.88

The commenter states that the Draft EIR must be revised and recirculated to address alleged failures in analysis of the project’s environmental impacts, proposed mitigation measures, and alternatives in order to comply with CEQA.

After careful review of each of the comments in this letter, the information provided in response to comments to address the issues alleged herein does not meet the test for recirculation of the Draft EIR.

Section 21092.1 provides that when a lead agency adds “significant new information” to an EIR after completion of consultation with other agencies and the public (see §§ 21104, 21153) but before certifying the EIR, the lead agency must pursue an additional round of consultation. In *Laurel Heights II*, *supra*, 6 Cal.4th at page 1129, 26 Cal.Rptr.2d 231, 864 P.2d 502, we held that new information is “significant,” within the meaning of section 21092.1, only if as a result of the additional information “the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a *substantial* adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect.” (Accord, CEQA Guidelines, Cal.Code Regs., tit. 14, § 15088.5, subd. (a).) Recirculation is not mandated under section 21092.1 when the new information merely clarifies or amplifies the previously circulated draft EIR, but is required when it reveals, for example, a new substantial impact or a substantially increased impact on the environment. (*Laurel Heights II*, at pages 1129–1130, 26 Cal.Rptr.2d 231, 864 P.2d 502.) We further held the lead agency’s determination that a newly disclosed impact is not “significant” so as to warrant recirculation is reviewed only for support by substantial evidence (*Id.* at page 1135, 26 Cal.Rptr.2d 231, 864 P.2d 502.).

The responses to comments on the Draft EIR contain additional explanatory information that clarifies or amplifies information already available to the public through the Draft EIR or public documents, regulations, statutory provision, and materials published on the Town’s website. No new or greater impacts or mitigation are identified. During the review of commentary and the preparation of the Final EIR, the Town became aware of a procedural error in the original Notice of Completion and Availability and also noted that Appendix C erroneously included a draft rather than a final Transportation Analysis. The Town reopened the public comment period on the Draft EIR for an additional 45-day period and provided an updated Notice of Availability with the statutory language required under CEQA Guidelines section 15087. As part of this reopened comment period, Chapter 4.15, *Transportation*, of the Draft EIR was revised to elaborate on transit impacts and

cumulative VMT impacts. As described in Response 9.85, the Town recirculated revised Transportation section and its Appendix, as well as the Executive Summary which includes a summary of transportation impacts. No other sections of the Draft EIR were recirculated.

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

## LETTER 10

### Comments on the Draft General Plan 2040 and the Draft EIR

#### Population and Growth

The Land Use Element of the General Plan 2040 allows for the development of 3,738 new dwelling units, 475 of which are units from existing approved projects, by 2040. This is accomplished by materially increasing all residential zoning densities, mixed use densities, central business district densities, office professional densities and the creation of a new community commercial land use designation.

As documented by the draft General Plan 2040 EIR (page 4.13-6) at full build out, the population of Los Gatos will be approximately 42,021 through the addition of 3,738 dwelling units. This represents a 27% increase in the population over the 2021 estimate of 30,832 and a 27% increase in housing units. The annual growth rate in population would be 1.6% for the period 2021 to 2040.

As documented in the 2007 Housing Element, the population of Los Gatos was 28,813 in 2008. Over the past 13 years the population has increased at an annual rate of .5%.

The Plan Bay Area 2040, which was adopted by ABAG and the MTC, projected the Town's population to be 33,050 by 2040. This represents an annual growth of .3% which is slightly below the historical 13-year growth rate of .5% but substantially in-line with historical long-term growth rate.

10.1

Therefore, the General Plan 2040 would induce substantial unplanned population growth beyond the ABAG population forecast and the 13-year historical growth rate. The General Plan 2040 provides no evidentiary support for the projected 27% increase in population and an annual growth rate that is over 300% greater than the 13-year historical rate.

The projected level of growth is not reasonably expected to occur in the absence of the proposed General Plan 2040. Simply put, the projected population growth in the General Plan 2040 is not projected to occur under any alternative and fosters growth rather than managing and accommodating the reasonably expected growth forecasted by ABAG.

The proposed General Plan 2040 fosters this growth by implementing material increases in zoning densities Town-wide. For example, under current land use zoning densities, potential low density and medium density residential units would be 328 dwelling units. However, under the proposed densities in the General Plan 2040 the total potential housing production increases to 934 – a 184% increase.

This induced population growth directly conflicts with the Town's own assessment of housing opportunities and constraints. In the jurisdiction survey submitted to ABAG, the Town identified land suitability, impact of climate change and natural hazards, construction costs, availability of vacant land and funding for affordable housing as constraints for the development of additional housing by 2030. Additionally, the Town identified that public transit and the lack of a transit hub was a constraint in encouraging more jobs and housing near public transportation. Lastly, the Town stated that residential areas near jobs were largely built out.

10.2

Growth inducement may constitute an adverse impact if the growth is not constrained or accommodated by land use plans and policies for the area affected. The General Plan 2040 and the General Plan 2040 EIR do not adequately analyze and address the potential impacts of non-orderly

10.3

expansion of urban development on public services such as water supply, roadway infrastructure, sewer services, solid waste service and police services.

10.3

Amazingly the Draft General Plan 2040 after adopting a 27% increase in population as the part of the project definition dismisses this forecast by stating “these projections do not reflect actual growth trends” and therefore concludes “no mitigation measures are required, and impacts would be less than significant without mitigation”. Apparently, the Draft General Plan EIR studied a different project than what was defined in the Draft General Plan 2040 and the NOP of the EIR.

10.4

Furthermore, conclusory statements which are unsupported by facts do not equate to a good faith and reasoned analysis. The substantive question that is left unexamined and unanswered is, what are the environment impacts based on the growth in population and dwelling unit development defined in the Draft General Plan 2040.

10.5

#### Jobs/Housing Ratio

The Draft EIR states on page 4.13-7 that “growth under the 2040 General Plan would result in a more balanced jobs-housing ratio in 2040 by increasing housing available in Los Gatos”. The EIR concludes that “such growth would not result in any adverse effects associated with an increased imbalance of jobs and housing in the Town”. Again, this is a conclusory statement which is not supported by any facts or reasoned analysis.

As documented by the 2015 Housing Element, according to ABAG there were approximately 2.1 jobs per household in 2010. The ratio jobs/housing ratio increased from 2005, when it was 1.5 jobs for every household. This increase was attributed to the recovery of the economy and Los Gatos businesses expanding, creating new jobs to support the immediate community. An increasing jobs/housing ratio indicates the potential for increased demand for more housing to accommodate the growth in new jobs.

As documented in the Background Report, in 2018, there were 19,300 jobs in Los Gatos with 13,299 households. This equates to a jobs/housing ratio of 1.45. This ratio is widely viewed as “in balance” since the assumption is for every household there are 1.5 workers. The ratio improved because more dwelling units added over the eight- year period while jobs remained relatively flat.

10.6

The Draft General Plan 2040 assumes that only 1,280 new jobs will be added over the next 20 years. These new jobs are entirely attributed to the current 475 projects that have been approved. The Draft General Plan 2040 assumes no new jobs will be created from the 3,263 new dwelling units to be added over the next 20 years.

Based on this, in 2040 the jobs/housing index will fall to 1.2, which indicates that the Town is a “net provider” of housing to the surrounding community. This decrease is directly attributable to the growth in housing with no corresponding increase in local jobs. On an incremental basis, the Draft General Plan 2040 calls for only 1,280 jobs for 3,736 new dwelling units, which is a jobs/housing ratio of .34. This shows that the individuals living in these new dwelling units will be driving to jobs located outside of the Town, which will further negatively impact VMT generated in Los Gatos, air quality, and will not achieve the goal of increasing non-vehicle transportation modes. This result is also inconsistent with the statutory objective to promote intraregional job-housing relationships.

The EIR conclusion of a “more balanced ratio” is not supported and in fact suggests just the opposite, that the new dwelling units will be occupied by workers who will be driving to jobs outside of Los Gatos.

10.6

## Letter 10

**COMMENTER:** Phil Koen

**DATE:** July 31, 2021

### **Response 10.1**

The commenter summarizes the population growth analyzed in the Draft EIR, compares it to other growth projections for the Town, such as projections produced by ABAG, and then expresses an opinion that the 2040 General Plan would result in substantial unplanned growth.

The commenters summary of the population growth analyzed in the Draft EIR is accurate. As described on page 4.13-6 of the Draft EIR, General Plan 2040 implementation may allow up to 3,738 new residential units by 2040 compared to existing conditions. This additional housing could result in 8,971 new residents by 2040. This 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.

While the population growth analyzed in the Draft EIR exceeds some other population growth projections for the Town, such as the ABAG projections, the population growth envisioned in the 2040 General Plan would not constitute substantial unplanned growth. The 2040 General Plan is a planning document that is used to plan for growth in the Town, including both physical development and the population growth that accompanies the development. The 2040 General Plan would reflect new housing requirements and the next update to the ABAG Plan Bay Area would be brought into consistency with this General Plan update; therefore, the planned growth under the 2040 General Plan would not conflict with the adopted General Plan or the ABAG RTP/SCS.

Therefore, because the 2040 General Plan is planning for the population growth it would accommodate, the growth anticipated in the 2040 General Plan and evaluated in the Draft EIR is not substantial unplanned growth. Because the growth is not unplanned, the 2040 General Plan would not have significant impacts related to substantial unplanned growth. As described for Impact PH-1 on page 4.13-6 of the Draft EIR, impacts related to substantial unplanned growth would be less than significant. No revisions to the Draft EIR are necessary in response to this comment.

### **Response 10.2**

The commenter expresses an opinion that growth in the 2040 General Plan conflicts with the Town's assessments of constraints to development.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

### **Response 10.3**

The commenter expresses an opinion that the Draft EIR does not adequately address impacts to water supply, roadway infrastructure, sanitary sewer, solid waste, and police services resulting from disorderly growth envisioned in the 2040 General Plan.

As described above in Response 10.1, the 2040 General Plan is a planning document that is used to plan for potential growth in the Town, including both physical development and the population growth that accompanies the development. The 2040 General Plan ensures that growth in the Town is orderly. Therefore, the 2040 General Plan would by default result in orderly and planned

growth, instead of unplanned and disorderly growth. The Draft EIR evaluates potential impacts of the 2040 General Plan, including the growth envisioned in the General Plan. The commenter does not provide enough detail or elaboration on inadequacies in the Draft EIR analysis impacts analysis to provide more or additional analysis in response to this comment. However, the Draft EIR does analyze the potential impacts to each of the utilities or public services listed in this comment.

As described on page 4.16-17 of the Draft EIR, the development facilitated by the 2040 General Plan would increase the demand for water supply and water infrastructure. However, the San Jose Water Company projects that the Town's water supply is sufficient to meet the projected water demand under buildout associated with the 2040 General Plan. This impact would be less than significant.

As described on page 4.15-21 of the Draft EIR, the 2040 General Plan includes modifications to existing street facilities to create a more pedestrian- and bicycle-oriented street network. These modifications could cause existing and future local and regional traffic to circulate differently. The expected influence on existing and future traffic would be minimal because roadway modifications would conform to State and local standards and generally be implemented to improve circulation. Overall, there would be few if any reduction in vehicle lanes. The 2040 General Plan would not be expected to interfere with existing roadway facilities, conflict with planned roadway facilities, or conflict with adopted transportation plans, guidelines, policies, or standards. Therefore, the impact of the 2040 General Plan relative to disruption of existing or planned roadways or conflicts with a program, plan, ordinance, or policy would be less than significant.

As described on page 4.16-19 of the Draft EIR, the development facilitated by the 2040 General Plan would increase demand for wastewater and sewer collection and treatment. Because approximately 67 percent of the existing San Jose-Santa Clara Regional Wastewater Facility (WWTP) capacity currently remains, the expected population growth of approximately 30 percent envisioned in the 2040 General Plan would not exceed the Santa Clara Valley Water District (SCVWD) WWTP capacity. Existing flows as well as future additional wastewater flows in the Town, as a result of population growth under the 2040 General Plan, would be met by the existing capacity of the SCVWD WWTP. On-going upgrades to the sewer system within the Town under the West Valley Sanitation District Capital Improvement Plan and 2040 General Plan would ensure adequate wastewater systems and infrastructure would be available to meet future demands and would generally occur in previously disturbed or developed areas. Therefore, impacts from physical disturbance for new or expanded wastewater systems and infrastructure would be less than significant.

As described on page 4.16-23 of the Draft EIR, the development facilitated by the 2040 General Plan would increase waste sent to area landfills. However, landfills serving the Town of Los Gatos would have adequate capacity to accept the additional waste. Further, the 2040 General Plan contains policies to increase recycling and reduce the amount of material sent to landfills. Impacts related to solid waste disposal and capacity would be less than significant.

As described on pages 4.14-20 and 4.14-21 of the Draft EIR, development facilitated by the 2040 General Plan would result in an increase in the Town's population. This would increase demand for police services and potentially create the need for new police service facilities. Given the demand for police services in the Town, police staffing needs in Los Gatos are likely to increase which could require the construction of new facilities. The location and potential impacts of new or expanded facilities are unknown at this time and separate environmental review would be required.

Therefore, an evaluation of the physical effects of such facilities would be speculative at this time. The 2040 General Plan would facilitate development primarily in areas of Los Gatos that are

currently developed. Therefore, construction of new police service facilities, if required, would likely occur on previously disturbed or developed areas. Impacts would be less than significant.

In summary, the Draft EIR evaluates the potential impacts of the 2040 General Plan, including the growth envisioned or facilitated in the General Plan. The Draft EIR adequately evaluates potential impacts to utilities and public services, as well as roadway infrastructure. No additional analysis or further revisions to the Draft EIR are required in response to this comment.

#### **Response 10.4**

The commenter expresses an opinion that the Draft EIR does not evaluate the growth envisioned in the 2040 General Plan because the Draft EIR states that envisioned growth is not consistent with actual growth trends.

The commenter is correct in that page 4.13-7 of the Draft EIR states that the 2040 General Plan growth projections do not reflect actual growth trends based on past and current development rates in the Town. The Draft EIR evaluates the 2040 General Plan, including the growth projections envisioned in it, regardless of whether the projections are consistent with actual growth trends in order to conservatively estimate potential impacts associated with that growth to the physical environmental in accordance with CEQA requirements. Accordingly, no revisions to the Draft EIR are necessary in response to this comment.

#### **Response 10.5**

The commenter expresses an opinion that conclusory statements unsupported by facts do not equate to a good analysis and asks what the impacts would result from the growth envisioned in the 2040 General Plan.

The commenter's opinion regarding conclusory statements unsupported by facts is correct. Unsupported statements do not equate to adequate analysis. However, in the case of the Draft EIR, conclusory impact statements are supported by factual analysis using reasonable assumptions to project impacts associated with the implementation of the 2040 General Plan. Every impact identified in the EIR is accompanied by a detailed analysis that includes in-text citations supporting the analysis. A complete list of the references used for the analysis is included in Section 7, *References*, of the Draft EIR. No additional analysis or further revisions to the Draft EIR are required in response to this comment.

#### **Response 10.6**

The commenter expresses an opinion that the Draft EIR contains a conclusory statement unsupported by facts regarding the job-housing balance of Los Gatos.

Jobs-housing balance is not a physical environmental impact that is covered under CEQA. Section 4.13, *Population and Housing*, of the Draft EIR addresses the potential population growth and housing displacement impacts associated with implementation of the 2040 General Plan. However, the Draft EIR does not evaluate the potential impacts of the 2040 General Plan on the Town's job to housing ratio. No additional analysis or further revisions to the Draft EIR are required in response to this comment.

## LETTER 11

**Sent:** Friday, September 10, 2021 8:35 AM

**To:** GP2040 <GP2040@losgatosca.gov>

**Subject:** [#20210910153453] Comment from LosGatos2040 Website Los Gatos 2040 General Plan Update

Ticket: [#20210910153453]

**Name:** Eric Thune

**Comments:**

The current EIR should not be approved. The 2040 General Plan should plan on adding enough over the regional housing requirements to hit its requirements of 1,993. The city should be targeting about 2,400 units and not the 3,738 in the draft 2040 plan. This is what the state has asked for. The 3,738 units is not required by any State law. By over committing to an excessive number of units to add, the Town is making unnecessary and unneeded changes in density and zoning laws that will lead to more green house gas and terrible traffic issues.

If Los Gatos is serious about building affordable housing, the 2040 GP needs to commit to a specific number of those units and not just allow too much growth all at market rate.

The General Plan should be adopted by a majority vote of residents.

Going from 4 houses per acre to 12 is entirely too high and isn't needed to meet what the State is asking for and the environmental impact report says traffic will be minimized.

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## Letter 11

**COMMENTER:** Eric Thune

**DATE:** September 10, 2021

### Response 11.1

The commenter expresses an opinion that the Draft EIR should not be certified.

The commenter does not provide enough detail to respond to the comment. It is unclear why the commenter feels the Draft EIR should not be certified. Therefore, no revisions to the Draft EIR are required in response to this comment.

### Response 11.2

The commenter expresses an opinion that the 2040 General Plan makes changes in density and zoning laws that will lead to increased GHG emissions and traffic impacts.

The commenter is correct because implementation of the 2040 General Plan would result in increased GHG emissions. As described on page 4.8-25 of the Draft EIR, implementation of the 2040 General Plan would generate annual GHG emissions of approximately 323,446 MT of CO<sub>2</sub>e per year, or 5.29 MT of CO<sub>2</sub>e per service person per year, in 2040. This would exceed the 2040 efficiency threshold of 1.02 MT of CO<sub>2</sub>e per service person per year. Even with implementation of mitigation, GHG emissions would not be reduced to below the efficiency threshold. Therefore, impacts would be significant and unavoidable.

In December 2019, California's Third District Court of Appeal confirmed that under SB 743, automobile delay may no longer be treated as a significant impact in CEQA analysis (*Citizens for Positive Growth & Preservation v. City of Sacramento*). Section 15064.3(a) of the CEQA Guidelines states that except for certain roadway expansion projects, a project's effect on automobile delay shall not constitute a significant environmental impact.

As stated in Section 15002(a)(1) of the CEQA Guidelines, one of the basic purposes of CEQA is to inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities. Because SB 743 establishes that automobile delay may no longer be treated as a significant impact in CEQA and the Draft EIR is prepared pursuant to CEQA to identify potentially significant environmental impacts of the 2040 General Plan, traffic delay or automobile delay is not analyzed as a CEQA impact in the Draft EIR. Instead of evaluating LOS and automobile delay, the Draft EIR evaluates VMT. As described in Impact T-4 beginning on page 4.15-27 of the Draft EIR, VMT impacts of the 2040 General Plan would be significant and unavoidable. Therefore, as traffic congestion and delay are not significant environmental impacts of the project, and GHG emission impacts are evaluated, no additional revisions to the Draft EIR are necessary in response to this comment.

### Response 11.3

The commenter expresses an opinion that the 2040 General Plan should commit to a specific number of affordable dwelling units.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no revisions to the Draft EIR are required in response to this comment.

### **Response 11.4**

The commenter expresses an opinion the General Plan should be adopted by a majority vote of residents. This comment is noted. However, it does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment. However, for informative purposes, the General Plan is adopted by the Town Council which is a group of officials elected by Town residents who are meant to represent the interests of all Los Gatos residents. CEQA does not require a lead agency to adopt a General Plan through a majority vote of residents.

### **Response 11.5**

The commenter states that going from “4 houses per acre to 12” is too extreme and exceeds State requirements. This comment is noted. However, it does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment.

### **Response 11.6**

The commenter cites that the Draft EIR says traffic will be minimized.

Page 4.15-23 through 4.15-26 of the Draft EIR explains that the General Plan would result in significant and unavoidable impacts relating to VMT. The Draft EIR does not suggest that the proposed plan would result in minimized traffic impacts overall. Traffic congestion is not evaluated in the Draft EIR consistent with the State CEQA Guidelines (see Response 11.2, above). No revisions to the Draft EIR are necessary in response to this comment.

## LETTER 12

**Sent:** Thursday, September 9, 2021 8:58 PM

**To:** GP2040 <GP2040@losgatosca.gov>

**Subject:** [#20210910035808] Comment from LosGatos2040 Website Los Gatos 2040 General Plan Update

Ticket: [#20210910035808]

**Name:** Lou Albert

**Comments:**

This EIR fails to predict the full buildout potential under this proposed GP. It is a lawsuit waiting to happen. EX: The EIR LDR buildout estimate is based on an assumption that only 5% of the potential 7,340 new dwellings allowed under this plan's increased LDR density limits will actually be built. The EIR's rational for this limit is basically "more than that hasn't happened in the past, so it won't happen in the future". But higher buildout wasn't really possible under past GPs and this EIR doesn't account for the increased economic incentive to redevelop under the 2040 GP. EX: A home on 1/2 acre could under this plan be redeveloped into a 6-plex that yields more than \$1M in gains over its current market value. But such an incentive will drive buildout beyond 5% and significantly affect the EIR's findings. The TC should reject this EIR and inform every LG residents on how this 2040 GP differs from State requirements by sending a flyer to every LG resident before approval is granted

12.1

12.2

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## Letter 12

**COMMENTER:** Lou Albert

**DATE:** September 9, 2021

### Response 12.1

The commenter states that the Draft EIR fails to predict the full buildout potential under the 2040 General Plan.

This comment is similar to comment 9.4. Please see Response 9.4, above. As described therein, no revisions to the Draft EIR are necessary in response to this comment.

### Response 12.2

The commenter states that the Town Council should reject the Draft EIR and inform every resident on how this 2040 General Plan differs from State requirements in the form of a mailed flyer.

The commenter does not provide enough detail pertaining to why they feel the Draft EIR should be rejected. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment. Pursuant to CEQA, lead agencies are required to provide the general public with an opportunity to comment on the Draft EIR. The Draft EIR was made available for public review on July 30, 2021, and was distributed to local and State agencies and an announcement of its availability were posted electronically on the Town's website, and a paper copy was available for public review at Town Hall and the Library. The Notice of Availability of the Draft EIR was also posted at the office of the Santa Clara County Clerk. The Draft EIR was made available for a second review and comment period that followed the same process described for the first comment period. The second comment period began on November 15, 2021, and ended on January 7, 2022. In addition, the development of the Draft 2040 General Plan included over 40 public meetings and extensive outreach to the Los Gatos community. This outreach, and the outreach soliciting comments on the Draft 2040 General Plan, included newspaper ads, online social media and website posts, emails to interested parties, and notice cards to all addresses in Town.

## LETTER 13

**Sent:** Thursday, September 9, 2021 5:36 PM

**To:** GP2040 <GP2040@losgatosca.gov>

**Subject:** [#20210910003628] Comment from LosGatos2040 Website Los Gatos 2040 General Plan Update

Ticket: [#20210910003628]

**Name:** Marc Caligiuri

**Comments:**

Dear Los Gatos City Council

The current EIR should not be approved.

The 2040 General Plan should plan on adding enough over the regional housing requirements to hit its requirements of 1,993. Please don't ruin our Town!!

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13.1

## Letter 13

**COMMENTER:** Marc Caligiuri

**DATE:** September 9, 2021

### Response 13.1

The commenter expresses an opinion that the Draft EIR should not be certified because the 2040 General Plan forecasts excessive housing development.

While the commenter does mention the Draft EIR, it is in context with their opinion that the 2040 General Plan allows for too much residential development. Therefore, it appears that this comment applies to the 2040 General Plan. The EIR analyses the potential buildup of the 2040 General Plan and does not establish the housing buildup envelope referred to by the commenter. Accordingly, the comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment.

## LETTER 14

**Sent:** Sunday, September 12, 2021 9:51 PM

**To:** GP2040 <GP2040@losgatosca.gov>

**Subject:** [#20210913045043] Comment from LosGatos2040 Website Los Gatos 2040 General Plan Update

Ticket: [#20210913045043]

**Name:** Mitzi Anderson

**Comments:**

The General Plan should not exceed the RENA numbers mandated by the state. By doing so, the GP proposes zoning changes that far exceed what is needed and what the town can support (water, traffic, schools, and VMT rating goes up as we export more people into the areas with jobs.)

14.1

Also, the proposed growth changes for the town are undervalued. The zoning changes will create more growth than the numbers the GP is proposing this the EIR is not an adequate study of the real growth.

14.2

The town was misled when we were told the GP 2050 would have minor changes to the existing plan. This proposed plan is a radical change for the direction and design of the town.

The residents should have the final say if we want these changes to our town not a small committee of people and the Town Council. The changes are just too much to be thrust on the town.

14.3

As a resident of Los Gatos, I do not support the zoning density, height or middle housing proposals.

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## Letter 14

**COMMENTER:** Mitzi Anderson

**DATE:** September 12, 2021

### **Response 14.1**

The commenter expresses an opinion that the General Plan should not exceed “RENA” [RHNA] numbers mandated by the State and by doing so, the Town will far exceed what it can support in terms of utilities and service systems.

This comment is similar to comment 9.2. Please see Response 9.2, above. As described therein, no revisions to the Draft EIR are necessary in response to this comment.

### **Response 14.2**

The commenter expresses an opinion that the proposed “growth changes” for the Town are undervalued. Further stating that zoning changes will create more growth than the 2040 General Plan is proposing.

This comment is similar to comment 9.4. Please see Response 9.4, above. As described therein, no revisions to the Draft EIR are necessary in response to this comment.

### **Response 14.3**

The commenter expresses an opinion that the 2040 General Plan prescribes more land use change than was initially explained to residents, that residents should have final say in whether the 2040 General Plan should be adopted, and that they do not support zoning density or heights.

This comment does not pertain to the Draft EIR or CEQA. Therefore, no additional revisions to the Draft EIR are necessary in response to this comment.

## LETTER 15 RECIRCULATED DEIR



December 7, 2021

To: Los Gatos Planning Commission

Re: December 8th Agenda Item 5: Provide the Public with an Opportunity to Give Verbal Comments on the Draft Environmental Impact Report (DEIR) for the Draft 2040 General Plan

Dear Chair Janoff and Commissioners,

Santa Clara Valley Audubon Society (SCVAS) promotes the enjoyment, understanding, and protection of birds and other wildlife by engaging people of all ages in birding, education, and conservation. We believe schools should be places for children to learn, grow, and explore - inside the classroom and out. Part of this education includes ensuring children are surrounded by natural spaces, native plants, and trees.

The Los Gatos Union School District (LGUSD) is renovating outdoor spaces for Daves Avenue Elementary, Louise Van Meter Elementary, and Blossom Hill Elementary, and deciding whether or not to include artificial turf for courtyard areas and sports fields (for both these renovations and future school renovations). Within the General Plan Update, Implementation Program C: Artificial Turf "determine the appropriate use of artificial turf" (page 6-34) would have critical implications for future LGUSD decisions.

Within the Draft EIR for the General Plan Update, please analyze the cumulative impact of artificial turf on our open spaces, tree canopy, habitat, and water quality. Expanding artificial turf within Los Gatos could have cumulative impacts on biological resources and public health and safety. Artificial turf can exacerbate microplastics pollution, groundwater recharge disturbances, urban heat island effects, toxic chemicals, habitat loss, and trash accumulation. Artificial turf cannot be recycled into another field and it most often ends up in the landfill every ten years. The field's shockpad can be reused once, but then it will go to the landfill too.

15.1

Municipalities, public agencies, and organizations are starting to take action against artificial turf. This year, the City of Millbrae issued a moratorium on artificial turf installations<sup>1</sup>. Mt. Sinai Children's Environmental Health Center, UCSF Children's Environmental Health Department, Valley Water, and other environmental groups caution against its use.

<sup>1</sup>

[https://www.smdailyjournal.com/news/local/millbrae-enacting-temporary-ban-on-new-artificial-turf/article\\_fae35a-3ae9-11ec-87ea-4375ef038f82.html](https://www.smdailyjournal.com/news/local/millbrae-enacting-temporary-ban-on-new-artificial-turf/article_fae35a-3ae9-11ec-87ea-4375ef038f82.html)

SCVAS maintains that there is no appropriate use of artificial turf. We hope Los Gatos considers a moratorium on the use of artificial turf in the city. We recommend looking at all the impacts of expanding artificial turf, cradle to grave. This includes impacts to public services, public health and safety, and landfill capacity. Please reach out to Giuliana Pendleton at [giuliana@scvas.org](mailto:giuliana@scvas.org) with any questions or requests for more information.

Thank you,

Giuliana Pendleton  
Los Gatos Resident  
Environmental Advocacy Assistant  
Santa Clara Valley Audubon Society

## Letter 15

**COMMENTER:** Giuliana Pendleton, Environmental Advocacy Assistant, Santa Clara Valley Audubon Society

**DATE:** December 7, 2021

### **Response 15.1**

The commenter states an understanding of Implementation Program C: Artificial Turf within the 2040 General Plan which states that the Town should “determine the appropriate use of artificial turf”. Further stating that this would have critical implications for future LGUSD decisions, specifically for Daves Avenue Elementary, Louise Van Meter Elementary, and Blossom Hill Elementary schools. The commenter expresses an opinion that there is no appropriate use of artificial turf and a hope that Los Gatos will consider a moratorium on the use of it in the Town.

The commenter correctly states that the 2040 General Plan does include Implementation Program C (page 6-34) which requires the Town to review the appropriate use of artificial turf. Implementation Program C implements Policies PFS-1.1 and PFS-1.2 of the 2040 General Plan which center around ensuring an adequate water supply for the Town’s human, wildlife, and plant populations. Policy PFS-1.1 requires that landscaping and hardscaping for all development is designed to minimize water usage and enhance water conservation. And PFS-1.2 requires the use of the Bay-Friendly Landscaping Guidelines in addition to the landscaping standards in the GreenPoint Rated Building Guidelines for all new home construction and remodeled homes. The installation of artificial turf fields is not guaranteed under the 2040 General Plan under Implementation Program C, Policy PFS-1.1, or Policy PFS-1.2. Additionally, the construction or installation of a new artificial turf field would be a separate project proposal from the 2040 General Plan and would be subject to its own environmental review at that time.

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

**LETTER 16  
RECIRCULATED DEIR**

January 5, 2022

**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 Recirculated Draft Environmental Impact Report**

Dear Ms. Armer:

We appreciate this opportunity to submit comments on the 2040 General Plan Recirculated Draft Environmental Impact Report (“RDEIR”) prepared by Town of Los Gatos (the “Town”) for the 2040 General Plan (the “2040 General Plan” or the “Project”). We write on behalf of Los Gatos Community Alliance (“LGCA”).<sup>1</sup> LGCA has significant concerns with the adequacy of the Draft EIR (“DEIR”) as reflected in our comment letter dated September 13, 2021. While LGCA appreciates the Town recirculating portions of the EIR in response to its comments, even as supplemented by the RDEIR, the DEIR remains a fundamentally flawed document that cannot be relied on to approve the 2040 General Plan. These comments supplement our September 13, 2021 comments on the DEIR and LGCA’s December 1, 2021 comments on the DEIR and RDEIR.

As you know, the California Environmental Quality Act (“CEQA”) calls for public review and comment on environmental documents, such as the DEIR and RDEIR, 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 RDEIR.

As detailed below, the DEIR as supplemented by the RDEIR: (1) continues to fail 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, and (3) fails to adequately analyze and address the Project’s significant transportation impacts. We respectfully request that these comments and questions be addressed and that a new Draft EIR that corrects these fundamental flaws be prepared and circulated for public review and comment prior to any Town action on the Project.

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

16.1

16.2

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**I. The DEIR as supplemented by the RDEIR, still fails to analyze the impacts of the “whole of the project” as required by CEQA.**

As detailed in our prior comment letter, the DEIR fails to analyze the impacts of the buildout potential allowed under the 2040 General Plan and thus fails to comply with CEQA. (See September 13, 2021 letter from Matthew Francois to Jennifer Armer, pp. 2-4.) Instead of the tens of thousands of additional housing units and tens of millions square feet of new commercial development allowed by the changes to the land use densities under the 2040 General Plan, the DEIR analyzes only a small fraction of this development. This undermines the DEIR’s analysis of every single environmental resource from Aesthetics to Wildlife. CEQA does not allow or authorize an agency to greatly upzone every single residential and commercial land use designation and then fail to consider the environmental impacts associated with it. There is also no reason for such upzoning given the 1,993 units needed to satisfy the Town’s Regional Housing Needs Allocation (“RHNA”), which can readily be accommodated in the mixed-use corridors designated as Opportunity Areas (“OA”).<sup>2</sup>

16.3

As with the DEIR, the RDEIR 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.” (RDEIR, p. ES-4; *see also* RDEIR, Appendix C, Transportation Analysis, p. 2 [acknowledging that the “potential changes in land use and intensity or density would be the primary changes from the current 2020 General Plan that may result in environmental impacts.”].) The maximum potential buildout allowed under the 2040 General Plan, however, is far greater than that studied in the DEIR or RDEIR. (See September 13, 2021 letter from Matthew Francois to Jennifer Armer, Exhibit A.)

At the Town Council’s December 7, 2021 study session, Town Staff claimed that it was “standard” practice to assume only a fraction of the growth enabled by changes to a plan. In reality, such an approach is directly contrary to the law, which mandates that an EIR analyze the “whole of an action” that may result in either a direct or reasonably foreseeable indirect physical change in the environment. (See, *e.g.*, Public Resources Code § 21065; CEQA Guidelines §§ 15146(b), 15378; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376 [EIR found inadequate for studying only a portion of a proposed laboratory/office development project]; *Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, 307 [in upholding the cumulative impact analysis of a project EIR that relied upon plan EIRs, the court reasoned that *the plan EIRs “necessarily addressed the cumulative impacts of buildout to the maximum possible densities allowed by those plans”* with mitigation measures proposed and any overriding benefits of development noted]; *accord, Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1228-1229 [upheld project EIR that relied on general plan EIR

16.4

<sup>2</sup> Such upzoning is also unnecessary in light of Senate Bill 9, which takes effect on January 1, 2022, and allows ministerial approvals for up to four housing units per residential lot.

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because plan EIR assumed “worst case” conditions for development on, and access to, the project site].)<sup>3</sup>

At the December 7th study session, Staff also indicated that the Town would monitor growth, and if it reached the maximum amount studied, the Town would conduct additional environmental review. Courts have routinely rejected similar claims to study environmental impacts *after* a project has been approved. (*Laurel Heights Improvement Assn.*, *supra*, 47 Cal.3d at 394 [“If postapproval environmental review were allowed, EIR’s would likely become nothing more than *post hoc* rationalizations to support action already taken.”]; *accord, Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 138; *see also City of Santa Ana v. City of Garden Grove* (1979) 100 Cal.App.3d 521, 533 [EIR should be prepared as early in the planning process as possible to enable environmental considerations to influence project, program, or design especially since general plan EIRs are used as foundation documents for specific project EIRs].)

16.5

It is also important to keep in mind that if the densities proposed by the 2040 General Plan were to be enacted, the Town would generally be prohibited from denying or reducing the density of any housing project that complied with those 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).”].) Further, the increased densities allowed under the Low Density Residential and Medium Density Residential land use designations would not even count towards the Town’s fair share of affordable housing. (Gov. Code § 65583.2(c)(3)(B) [requiring densities of at least 20 units per acre to be deemed appropriate to accommodate housing for lower income households].)

16.6

## **II. The Project Description remains inaccurate, unstable, and inconsistent.**

An accurate and complete project description is necessary for an intelligent evaluation of the potentially significant environmental impacts of an 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, 192-193; *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, 406– 408.)

16.7

As noted in our September 13th comment letter, the DEIR project description is flawed for multiple reasons. After the comment period on the DEIR closed, an additional flaw became apparent. Tables 2-2 and 4.11-2 of the DEIR show a total of 3,738 units with no units labeled

<sup>3</sup> Unless otherwise noted, emphasis in quotations herein is supplied and citations are omitted.

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Hillside Residential. In its September 20, 2021 report to the Town Council and Planning Commission, Town Staff provided a table showing 166 units in the Hillside Residential category for a total of 3,904 units. (Staff Report to Town Council and Planning Commission, September 20, 2021, p. 9.)

The 2040 General Plan calls for the Town to study whether hillside properties should be downzoned to lower densities. (2040 General Plan, p. 3-33.) Contrary to this provision, Staff assumes that growth will continue at current density levels. More fundamentally, the DEIR does not analyze the impacts of 3,904 units, but only the smaller (and even more grossly deflated) amount of 3,738 units.

In sum, the Project description continues to change and evolve thereby undermining the validity of the EIR's analysis. (See, e.g., *County of Inyo, supra* and *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 655.)

### **III. The RDEIR fails to adequately analyze and address Transportation impacts.**

The RDEIR identifies a new significant unavoidable impact. Specifically, Impact T-1 now acknowledges a significant unavoidable impact to transit vehicle operations due to increased delays at intersections. The acknowledgment of this new significant impact requires consideration of feasible mitigation measures and alternatives to avoid or substantially lessen this impact. The RDEIR does neither.

As to Impact T-1, the RDEIR states that “[t]here are no feasible mitigation measures to reduce potentially significant effects related to transit operations and ridership.” (RDEIR, p. 4.15-25.) An EIR cannot simply declare an impact significant and unavoidable without considering and imposing feasible mitigation measures. (Public Resources Code §§ 21002, 21002.1(a), 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.) The RDEIR acknowledges that transit operational improvements, such as signal coordination and transit vehicle preemption, could potentially improve the overall reliability of transit in congested areas. (RDEIR, p. 4.15-25.) Because these measures are “not likely to fully address” the impact, the RDEIR does not impose them as mitigation. (*Id.*) CEQA, however, requires that mitigation be imposed to reduce impacts to the extent feasible. (Public Resources Code §§ 21002, 21002.1(a), CEQA Guidelines § 15126.4.) The RDEIR does not comply with CEQA in this regard.

In addition to discussing feasible mitigation measures, an EIR must describe feasible alternatives. (*Laurel Heights Improvement Assn., supra*, 47 Cal.3d at 400-403 [held that an EIR must include a discussion of both mitigation measures and alternatives so that decision-makers will be provided with adequate information about the range of options available to reduce or avoid

16.8

16.9

16.10

16.11

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significant environmental impacts].) The RDEIR does not consider any alternatives to this newly identified significant impact. This too violates CEQA.<sup>4</sup>

The need to study alternatives is especially important given that the 2040 General Plan results in significant unavoidable impacts to greenhouse gas emissions, vehicle miles traveled, and transit operations. Feasible alternatives such as focused growth in the OA to meet the Town's RHNA obligation could avoid or substantially lessen such impacts. So far, the Town has refused to embrace such a logical and environmentally superior alternative. At a recent Town Council study session, certain Councilmembers stated that they wanted to keep the 2040 General Plan as is so as to allow for additional growth options and opportunities.

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. (RDEIR, p. 4.15-28.) The DEIR does not quantify the reductions in VMT from the measures referenced in Mitigation Measure T-1. Without knowing the reductions from these measures, one cannot know whether additional Individual, Town-Wide, or Regional measures are needed.

The Governor's Office of Planning & Research lists several VMT Reduction Strategies.<sup>5</sup> The DEIR must explain in detail why none of the State's recommended strategies are feasible. Once again, an EIR cannot simply declare an impact significant and unavoidable without considering and imposing feasible mitigation measures. (Public Resources Code § 21081(a)(3); CEQA Guidelines § 15091(a)(3); *California Native Plant Society, supra*, 177 Cal.App.4th at 982; *City of Marina, supra*, 39 Cal.4th at 369.)

The RDEIR acknowledges that Plan Bay Area 2050 was adopted in October 2021. (RDEIR, p. 4.15-17, fn. 2.) Yet, the analysis still relies on Plan Bay Area 2040 forecasts. (RDEIR, pp. 4.15-29 to 4.15-30.)

The RDEIR contains some typographical errors. On page 4.15-5, the second sentence of the third paragraph appears to be incomplete. Note 2 on page 4.15-12 appears to be missing the word "of" before "this section of the EIR varies . . ." The reference note on page 4.15-29 should be to Table 4.15-4. In the next to last sentence of the last paragraph on that page, the word "different" should be "difference." On page 4.15-37, the word "to" appears to be missing after "transit delays due," and on page 4.15-38, the word "with" appears to be missing after "would not conflict . . ."

<sup>4</sup> In the Executive Summary, the RDEIR states that the alternatives examined for other significant impacts focused on seven OA in the Planning Area. (RDEIR, pp. ES-3 to ES-4.) As noted in our comments on the DEIR, the substance of that comment is not accurate. Moreover, there are eight OA, not seven.

<sup>5</sup> (<http://www opr ca gov ceqa updates sb-743>)

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#### IV. Conclusion

While it is plain that an EIR is needed in connection with the proposed Project, it is also clear that the DEIR, even as supplemented by the RDEIR, is flawed and cannot be relied on to approve the 2040 General Plan. The documents fail to adequately analyze the “whole of the project,” thereby thwarting effective public review and comment on the environmental impacts of the 2040 General Plan. The project description keeps evolving, underscoring its inaccurate, inconsistent, and unstable nature. The RDEIR fails to thoroughly and adequately identify the Project’s significant transportation impacts and fails to propose feasible mitigation measures and alternatives to avoid or substantially lessen such impacts.

16.17

\*\*\*\*\*

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

Very truly yours,  
RUTAN & TUCKER, LLP  
  
Matthew D. Francois

cc (via e-mail):

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

## Letter 16

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

**DATE:** January 5, 2022

### Response 16.1

The commenter expresses that they represent the Los Gatos Community Alliance (LGCA) who has significant concerns with the adequacy of the Draft EIR. Further stating that even with the recirculated sections, the Draft EIR remains a fundamentally flawed document that cannot be relied on to approve the 2040 General Plan. The commenter additionally states a brief understanding of the CEQA public review process.

The commentor elaborates in greater detail on their concerns surrounding the Draft EIR which are addressed in the following responses to comments. No revisions to the Draft EIR are necessary in response to this comment.

### Response 16.2

The commenter states that the Draft EIR and supplemental Recirculated Draft EIR (1) continues to fail 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, and (3) fails to adequately analyze and address the project’s significant transportation impacts. The commenter requests that a new Draft EIR which corrects these fundamental flaws be prepared and circulated for public review.

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

### Response 16.3

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

This comment is similar to Comment 9.3. Please see Response 9.3, above. As described therein, no revisions to the Draft EIR are necessary in response to this comment.

### Response 16.4

The commenter states that the maximum buildout allowed under the 2040 General Plan is far greater than what is analyzed under the Draft EIR and Recirculated Draft EIR. The commenter adds that Town Staff verbally claimed it was standard practice to assume only a fraction of growth but that this is contrary to CEQA which requires that the EIR analyze the “whole of an action”. Additionally, the commenter summarizes several court cases to support their argument.

This comment is similar to Comment 9.4. Please see Response 9.4, above. As described therein, no revisions to the Draft EIR are necessary in response to this comment.

### **Response 16.5**

The commenter states that at a study session on December 7, 2021, Town Staff indicated that the Town would monitor growth and if it reached the maximum amount studied, the Town would conduct additional environmental review. The commenter expresses that this is routinely rejected in court.

The Draft EIR and Recirculated Draft EIR both evaluate the anticipated buildout of the 2040 General Plan in its entirety. They do not evaluate a portion of buildout as this comment suggests. Additionally, verbal comments made by Town Staff are not evaluated under the EIR.

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

### **Response 16.6**

The commenter summarizes their understanding of density standards within the 2040 General Plan.

This comment is similar to Comment 9.2. Please see Response 9.2 above. As described therein, no revisions to the Draft EIR are necessary in response to this comment.

### **Response 16.7**

The commenter cites several cases as to the requirements of a project description in a CEQA document and alleges the Draft EIR's project description is flawed for multiple reasons. Further stating that Tables 2-2 and 4.11-2 of the Draft EIR show a total of 3,738 units with no units labeled Hillside Residential. However, the Town Staff provided a table showing 166 units in the Hillside Residential in a September 20, 2021 report to the Town Council and Planning Commission, which results in a total of 3,904 units.

The commenter is correct in stating that Tables 2-2 and 4.11-2 of the Draft EIR show a total of 3,738 units with no units labeled Hillside Residential. However, the Draft EIR evaluates the proposed 2040 General Plan which envisions development of 3,738 residential units as shown in Table 3-1 on page 3-4 of the Draft 2040 General Plan. Therefore, the Draft EIR also evaluates the development of 3,738 residential units. A fraction of the 3,738 residential units could occur in the hillside areas of the Town, but most development would occur outside of the Hillside Residential area due to steep slopes and poor access to the sites that hinder development. The Draft EIR evaluates impacts of development in the Hillside Residential area, which are more closely related to hazards associated with slopes and wildfire, for example, such as Impact GEO-1 beginning on Draft EIR page 4.7-19 pertaining to landslides.

Because the Draft EIR evaluates the projected buildout of 3,738 units, including the fraction that would occur within hillside areas of Los Gatos (including the 166 units mentioned by commenter), no revisions to the Draft EIR are necessary in response to this comment.

### **Response 16.8**

The commenter states that the 2040 General Plan calls for the Town to study whether hillside properties should be downzoned to lower densities. The commenter further states that the Draft EIR does not analyze the impacts of 3,904 units but instead 3,738 units.

This comment is similar to Comment 16.7. Please see Response 16.7, above. As described therein, no revisions to the Draft EIR are necessary in response to this comment. No revisions to the Draft EIR are required because the analysis considers impacts of hillside development and buildout of

3,738 units, including a fraction that could occur in hillside areas of Los Gatos. If the Town were to decide to downzone properties in the Hillside Residential land use designation areas such that fewer units could be constructed in these areas of Los Gatos, buildout of the 2040 General Plan would be less than 3,738 units. Accordingly, by evaluating buildout of 3,738 units, including some within the hillside areas of Los Gatos, the Draft EIR analysis is conservative, and impacts related to unit count, such as unplanned population growth impacts, would be reduced with downzoning.

### **Response 16.9**

The commenter expresses an opinion that the Project Description of the Draft EIR continues to change and evolved which undermines the validity of the EIR's analysis.

No changes have been made to the scope of the proposed project nor to the Draft EIR's Project Description which could undermine or alter the whole of the EIR's analysis. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

### **Response 16.10**

The commenter states that the Recirculated Draft EIR identifies a new significant unavoidable impact which requires the consideration of feasible mitigation measures. The commenter summarizes that the Recirculated Draft EIR acknowledges transit operation improvements are unlikely to fully address the impact and therefore does not impose them as mitigation. The commenter expresses that this is in violation of CEQA because mitigation must be imposed to reduce impacts to the extent feasible.

The commenter correctly states that the Recirculated Draft EIR does contain a new significant unavoidable impact under Impact T-1 (page 4.15-22 of the Recirculated Draft EIR). The updated Transportation section does acknowledge that roadway and intersection operational improvements such as signal coordination and transit vehicle preemption could potentially improve the overall reliability of transit in congested areas but are not likely to fully address this impact. The General Plan does not provide intersection designs or signal timing, as those are specific to each individual intersection and the necessity of such analysis would be determined on a project level as individual projects are implemented and potentially contribute to increased automobile delay at intersections. At the Town-wide planning level, it is unknown which intersections would have unacceptable transit delay and to what degree these measures would decrease transit travel time because it would be largely dependent on the design of individual development projects and their relationship to intersections and transit routes once future development occurs. Therefore, it is infeasible and speculative to develop site specific or intersection specific mitigation measures to modify intersections with new designs or signal timing at this time because there is no information on whether future projects would affect particular intersections in a way that contributes to this impact. (See *San Franciscans for Livable Neighborhoods v. City and County of San Francisco* (2018) 26 Cal.App.5th 596, 636–637 [finding the rejection of mitigation was appropriate where the Housing Element EIR considered potential mitigation measures and determined that none of them were feasible to eliminate the project's potential significant impact on transit].)

Additionally, each project will impact intersections uniquely and in some instances, where intersections already operate unacceptably or close to unacceptable for transit, project

development could indirectly improve those intersection transit impacts, and therefore mitigation measures may not be necessary. As individual projects requiring discretionary approvals or permits are proposed in Los Gatos, those projects would undergo environmental review, as applicable, pursuant to CEQA. The project-level CEQA analysis for individual projects will consider site-specific impacts, such as impacts to transit operations related to intersection congestion. Project-specific mitigation measures would be imposed to the extent feasible to reduce project-level impacts. For the reasons and examples above, potential roadway operation improvements would be a separate project proposal from the 2040 General Plan and would be subject to their own environmental review at that time. Additionally, the 2040 General Plan has many policies to encourage transit use, including working with VTA to facilitate transit services, encouraging ride-sharing and supporting regional efforts. Beyond the public transit efforts, uses and goals already in place there are no known additional feasible mitigation measures to include.

Nor does the commenter identify any potential mitigation to encourage the use of transit services and facilitate transit operations to consider.

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

### **Response 16.11**

The commenter states that the EIR must describe feasible alternatives which the Recirculated Draft EIR does not and therefore is in violation of CEQA. The commenter also provides a footnote stating that the Executive Summary of the Draft EIR refers to seven Opportunity Areas in General Plan area when there are actually eight Opportunity Areas in the General Plan area.

The first portion of this comment pertaining to feasible alternatives is similar to Comment 9.76. Please see Response 9.76, above. As described therein, no revisions to the Draft EIR are necessary in response to this portion of the comment.

The commenter's assertion that there are eight Opportunity Areas in the General Plan area is correct, but the General Plan renamed these areas using the term "Community Place Districts." Although the commenter is correct about the number of Opportunity Areas (Community Place Districts) in the 2040 General Plan, the commenter is incorrect that the Draft EIR inaccurately describes seven Opportunity Areas. The Executive Summary of the Draft EIR does describe seven Opportunity Areas, but this is correct because pages ES-3 and ES-4 of the Draft EIR are describing the Opportunity Areas studied or developed specifically in the Land Use Alternatives Report, which identifies seven Opportunity Areas and not the eight that were ultimately developed and included in the 2040 General Plan. Accordingly, no other revisions to the Draft EIR are required in response to this comment.

### **Response 16.12**

The commenter states that there is a need to study alternatives given that the 2040 General Plan results in significant unavoidable impacts to greenhouse gas emissions, VMT, and transit operations. Further stating that a feasible alternative could be focused growth within the Opportunity Areas. The commenter expresses an opinion that the Town has refused to embrace a logical and environmentally superior alternative to the 2040 General Plan.

The Draft EIR discusses the feasibility of four different alternative scenarios on pages 6-1 through 6-26. These alternatives considered all resource areas and identified an environmentally superior

alternative, Alternative 2, Medium Growth. As the commenter's suggests, this scenario would result in reduced impacts to several resource areas including greenhouse gas emissions. Under this alternative, there would be modest increases in density ranges outside Opportunity Areas and additional increases inside Opportunity Areas. However, this alternative would not be as effective in achieving some of the land use goals and objectives of the 2040 General Plan because it would not contribute substantially to a pattern of compact future development or allow for the 2,000 new dwelling unit target of Town Council.

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

### **Response 16.13**

The commenter states that the 2040 General Plan does not comply with the Town's VMT threshold by decreasing VMT by at least 11.3 percent, instead it increases VMT by approximately 19 percent. The commenter further states that the Draft EIR does not quantify reductions in VMT from Mitigation Measure T-1.

The commenter is correct in stating that the 2040 General Plan would result in a VMT increase of approximately 19 percent. Mitigation Measure T-1 proposes potential reduction strategies at an individual site level, Town-wide level, and regional-level. The potential VMT reduction from implementing Mitigation Measure T-1 are presented in the Recirculated Draft EIR within Table 4.15-6 (page 4.15-32). The reductions are presented as a range of 0 to 60 percent depending on the site level because strategies vary widely in effectiveness. A low reduction in VMT, such as 0, indicates a conservative estimate that is highly defensible and suitable for use in environmental analysis documents, or to mitigate a VMT impact. A high reduction in VMT, such as 60, indicates a potential upper limit to reductions, and requires a very high level of investment in most cases. Furthermore, it would be speculative to conclude what exact reductions would be until further project applications with site specific details were available. However, potential reductions in VMT are quantified within Table 4.15-6 of the Recirculated Draft EIR and additionally supported within the Transportation Study (Appendix C to the Recirculated Draft EIR).

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

### **Response 16.14**

The commenter expresses that the Draft EIR must explain in detail why none of the OPR's VMT reduction strategies are feasible within the Town. The commenter additionally provides a link to these strategies within OPR's website. "CEQA does not, however, require discussion of every mitigation measure the agency rejected as infeasible." (*San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 15, citing *Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4th 1042, 1054–1056).

The link provided by the commenter does not lead to an active site. However, this response will be based upon the Technical Advisory on Evaluating Transportation Impacts in CEQA<sup>3</sup>. Within OPR's Technical Advisory, they suggest a range of potential measures to reduce VMT. Many of these recommendations mirror or closely correspond to policies within the 2040 General Plan or mitigation within the EIR. These include the following:

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<sup>3</sup> OPR Technical Advisory on Evaluating Transportation Impacts in CEQA, 2018. ([https://opr.ca.gov/docs/20180416-743\\_Technical\\_Advisory\\_4.16.18.pdf](https://opr.ca.gov/docs/20180416-743_Technical_Advisory_4.16.18.pdf))

- **Improve or increase access to transit:** see Policies MOB-6.2, MOB-6.3, MOB-6.4, MOB-6.6, MOB-6.7, MOB-6.8, MOB-7.1, and Mitigation Measure T-1;
- **Increase access to common goods and services, such as groceries, schools, and daycare:** see Policies MOB-2.12, MOB-6.2, MOB-6.3, MOB-6.4, MOB-6.6, MOB-6.7, MOB-6.8, MOB-7.1, and Mitigation Measure T-1;
- **Incorporate affordable housing into the project:** see Mitigation Measure T-1;
- **Orient the project toward transit, bicycle and pedestrian facilities:** see Policy MOB-5.3;
- **Improve pedestrian or bicycle networks, or transit service:** see Policies MOB-2.1, MOB-2.2, MOB-2.3, MOB-2.4, and Mitigation Measure T-1;
- **Provide traffic calming:** see Policies MOB-9.1, MOB-9.3, and Mitigation Measure T-1;
- **Provide bicycle parking:** see Policy MOB-2.10;
- **Limit or eliminate parking supply:** see Policies MOB-6.10, MOB-14.2, and Mitigation Measure T-1;
- **Unbundle parking costs:** see Mitigation Measure T-1;
- **Provide parking or roadway pricing or cash-out programs:** see Policy MOB-13.6;
- **Provide car-sharing, bike sharing, and ride-sharing programs:** see Policy MOB-6.5 and Mitigation Measure T-1;
- **Shifting single occupancy vehicle trips to carpooling or vanpooling, for example providing ride-matching services:** see Policies MOB-1.4, MOB-5.1, MOB-6.5, and Mitigation Measure T-1;
- **Providing telework options:** see Mitigation Measure T-1;
- **Providing incentives or subsidies that increase the use of modes other than single-occupancy vehicle:** see Policy MOB-1.2;
- **Providing on-site amenities at places of work, such as priority parking for carpools and vanpools, secure bike parking, and showers and locker rooms:** see Policies MOB-2.8, MOB-6.5, and Mitigation Measure T-1; and
- **Providing employee transportation coordinators at employment sites:** see Policy MOB-1.4.

Several of OPR's potential measures were not included as VMT reduction strategies in the 2040 General Plan or Draft EIR as they were considered infeasible for the purposes of the 2040 General Plan. These include the following (as previously described in Response 9.62):

- **Incorporate neighborhood electric vehicle network.** (This strategy is considered infeasible because the Town cannot propose or force the installation of electric vehicle charging stations on private property, such as at residences or within shopping centers).
- **Implement or provide access to a commute reduction program.** (This strategy is considered infeasible because the Town is legally unable to require private employers and businesses to reduce worker commutes and has no ability to enforce use of a commute reduction program by individuals to ensure its effectiveness).
- **Provide transit passes.** (This strategy is considered infeasible because the Town has no approved funding mechanism for providing transit passes to residents or people working in Los Gatos and no means of verification that such passes would be used if issued).
- **Providing a guaranteed ride home service to users of non-auto modes.** (This strategy is considered infeasible because the Town has no transit system that it operates, such as taxi

service or an approved funding mechanism for such services. Further, there is no way to measure the effectiveness or guaranteed use of such service).

However, OPR's reduction strategies are not a requirement for a project to reduce VMT and this list is not exhaustive. Instead, this list is meant to guide lead agencies on potential strategies that could be utilized. Therefore, it is not necessary to include each measure as part of the proposed project.

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

### **Response 16.15**

The commenter states that the Recirculated Draft EIR acknowledges that Plan Bay Area 2050 was adopted in October 2021, but the analysis relies on Plan Bay Area 2040 forecasts.

The commenter is correct in stating that the Draft EIR does acknowledge the adoption of Play Bay Area 2050 within the recirculated Transportation section and utilizes forecasts from Plan Bay Area 2040. This is addressed within a footnote on page 4.15-17 of the Recirculated Draft EIR which states that Plan Bay Area 2050 was adopted after the release of the NOP and Draft EIR. Furthermore, Plan Bay Area 2050 does not mandate any changes to local zoning rules, general plans, or processes for reviewing projects; nor does the plan create an enforceable direct or indirect cap on development locations or targets in the region. The Bay Area's cities, towns, and counties maintain control of all decisions to adopt plans and to permit or deny development projects. Plan Bay Area 2050 helps guide, but does not directly establish, new state-mandated Regional Housing Needs Allocation (RHNA) numbers for any jurisdiction.

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

### **Response 16.16**

The commenter states that the Recirculated Draft EIR contains the following typographical errors:

1. On page 4.15-5, the second sentence of the third paragraph appears to be incomplete.
2. Note 2 on page 4.15-12 appears to be missing the word "of" before "this section of the EIR varies..."
3. The reference note on page 4.15-29 should be to Table 4.15-4.
4. In the next to last sentence of the last paragraph on that page, the word "different" should be "difference."
5. On page 4.15-37, the word "to" appears to be missing after "transit delays due,"
6. On page 4.15-38, the word "with" appears to be missing after "would not conflict . . ."

In response to this comment, the following edits have been made to the Draft EIR:

1. The third paragraph on page 4.15-5 has been revised to state:

Of the routes that serve Los Gatos, Routes 61 and 62 are the more frequently used routes with approximately 1,500 and 1,400 average weekday boardings for the entire route. ~~VTA light rail train waiting for passengers to board at the Winchester Station in the City of Campbell.~~ Employer-based shuttles play a role in Los Gatos transit as they provide connections to major employers in the area, such as Netflix, Apple, Google, and Facebook. There are a number of employer-based shuttle services located in Los Gatos, as well as in adjacent cities. One example is the Google Commute Program, which provides free shuttle

service for Google employees between the Town and Google Mountain View Campus. Netflix shuttles employees into Los Gatos from locations such as San Francisco, Mountain View, the East Bay, and Santa Cruz.

2. Note 2 of Table 4.15-1 on page 4.15-12 has been revised to state:

2. Existing residents and jobs/employment in Los Gatos is based on population reported for each Traffic Analysis Zone using in the VTA Model that is also within the Town or its SOI, including TAZs for unincorporated parcels within the Town. Accordingly, the existing residents and jobs/employment, and thus the service population, used in this table of this section of the EIR varies from existing or service population used in other sections of the EIR. It is appropriate to use TAZ population for the Transportation Section because people residing in TAZs in the Town or SOI must use roads within the Town for vehicle travel, regardless if the property they reside on is within incorporated or corporated areas, thus contributing to Town VMT.
3. The reference note on page 4.15-29 has been revised to state:

As shown in ~~Error! Reference source not found.~~ Table 4.15-4, the changes in Countywide boundary VMT per service population between the Cumulative 2040 and Cumulative 2040 with Project Conditions shows the relatively small effects of the 2040 General Plan on VMT.
4. The second to last sentence of the last paragraph on page 4.15-29 has been revised to state:

A primary different difference between the analysis for Impact PH-1 and this VMT threshold is that this VMT threshold does not ask whether population growth would substantially exceed forecasts, but rather, if growth would exceed forecasts at all.
5. The second to last paragraph on page 4.15-37 has been revised to state:

These impacts are related to transit ridership and transit delays due to congestion on area roadways.
6. The first paragraph on page 4.15-38 has been revised to state:

As described above in Impact T-2 and T-3, the proposed 2040 General Plan would not conflict with a program, plan, ordinance or policy addressing the circulation system as it relates to roadways, bicycle facilities, and pedestrian facilities.

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

### **Response 16.17**

The commenter expresses an opinion that the Draft EIR and Recirculated Draft EIR are flawed and cannot be relied on to approve the 2040 General Plan. The commenter underscores their above comments by reiterating that the Draft EIR and Recirculated Draft EIR fail to adequately analyze the “whole of the project”, the project description continues to evolve, and fails to thoroughly identify the project’s significant transportation impacts and fails to propose feasible mitigation measures or alternatives to avoid or lessen these impacts.

The commenters concerns have been addressed in Responses 16.1 through 16.18 above. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

## LETTER 17 RECIRCULATED DEIR

January 7, 2022

Town of Los Gatos  
Community Development Department  
Attention: Jennifer Armer, AICP, Planning Manager  
110 E. Main Street  
Los Gatos, CA 95030

Dear Jennifer,

VTA appreciates the opportunity to comment on the Recirculated Draft Environmental Impact Report (DEIR) for the Los Gatos 2040 General Plan project. VTA has reviewed the document and has the following comments:

### Mobility Policies in Draft 2040 General Plan

VTA supports the inclusion of policies in the Mobility element of the Draft 2040 General Plan that would reduce Vehicle Miles Traveled (VMT); provide bicycle, pedestrian and Complete Streets improvements; and support transit service and facilities. The updated General Plan represents a prime opportunity to implement shared Town-VTA goals to reduce VMT and Greenhouse Gas emissions, and improve sustainable travel options.

17.1

### Impact T-1 in the DEIR: Impact to Transit Operations and Ridership from Congestion

VTA commends the Town of Los Gatos for identifying transit impacts in the recirculated DEIR for the 2040 General Plan Update. VTA agrees with the statement in the DEIR that "transit service will experience reductions in quality of experience inconsistent with the project policies, which could contribute to lower transit demand in the future and higher demand for vehicles use contributing to higher VMT levels... Project deficiencies associated with increased vehicle delay at intersections are a result of buses and shuttles operating in mixed-flow lanes with other vehicles... the potential increase in transit vehicles, local street congestion within and near the Town of Los Gatos, and increased delay at off-site intersections would delay transit vehicles" (DEIR pp. 4.15-24, 4.15-25).

17.2

VTA notes that although the DEIR text does briefly discuss potential mitigation measures ("transit operational improvements such as signal coordination and transit vehicle preemption"), the DEIR concludes that "there are no feasible mitigation measures to reduce potentially significant effects related to transit operations and ridership." VTA disagrees with this statement.

17.3

VTA notes that there are several types of mitigation measures can be effective at reducing congestion impacts to transit operations. These include Transit Signal Priority (TSP), queue jump treatments for buses at intersections, and in-lane bus stopping at locations with merge challenges.

Some of these measures (such as TSP) would require coordination with another agency such as VTA to implement, but others (such as queue jump installation or in-lane stopping) can be implemented by the Town because it owns and manages the streets that transit vehicles operate on.

The following sections discuss recommended mitigation measures to address Impact T-1, the impact to transit ridership and ridership due to congestion. VTA recommends adding these as new policies in Section 5.4 of the draft General Plan, implementation items in Section 5.9 of the draft General Plan, and mitigation measures in the Final EIR.

17.4

*Recommended Mitigation Measure for Impact T-1: Transit Signal Priority*

VTA understands that the Town is currently replacing its traffic signal management system, and this new system, including the traffic signal controllers, supports Transit Signal Priority (TSP) functionality. VTA requests that the Town consider a town-wide implementation of TSP (along arterial roads with VTA service including Los Gatos Boulevard, Main Street, Santa Cruz Avenue, and Winchester Boulevard) to address the impact to transit operations in Impact T-1. This would help reduce the incremental delay that buses experience at many intersections along these corridors because they are traveling in mixed-flow lanes. VTA recognizes that setting up TSP would likely require Town staff time and consultant assistance, and we recommend that the General Plan include a policy to pursue funding for TSP implementation from new development, either through individual project contributions or the Town's Transportation Impact Fee program. VTA is willing to work cooperatively with the Town staff to implement this town-wide TSP deployment.

17.5

*Recommended Mitigation Measure for Impact T-1: Queue Jump Treatments at Select Intersections*

VTA recommends that the Town prioritize transit through queue jump treatments at problematic intersections. Public transit buses serving the Town are incrementally slowed by congestion-related delays at many intersections, but they experience more substantial delays at a smaller number of intersections. Thoughtfully placed queue jump intersection treatments could be an effective strategy to mitigate these more substantial delays by allowing public transit buses to bypass traffic congestion at problematic locations. VTA would appreciate the opportunity to work with Town staff to identify where queue jump treatments would be possible and effective, as there are external factors involved and many potential designs to integrate queue jump treatments into the local context. We recommend that the General Plan include a policy to pursue funding for design and implementation of queue jump treatments from new development, either through individual project contributions or the Town's Transportation Impact Fee program.

17.6

*Recommended Mitigation Measure for Impact T-1: In-Lane Bus Stopping*

VTA recommends that the Town work with VTA to identify locations where bus stops can be modified to allow buses to stop in-lane, rather than in a "duck-out" out of the flow of traffic. Merging back into traffic after a stop is a frequent source of delay for buses, but one that can be reduced in some locations through careful redesign of bus stops that improves bus operations while preserving safety of all road users. We recommend that the General Plan include a policy for the Town to work with VTA to identify locations for and implement in-lane stops at key locations.

17.7

Redesign of bus stops for in-lane stopping may naturally work together with other Complete Streets improvements along Los Gatos Boulevard and Winchester Boulevard, discussed below.

**Additional Measures to address both Impact T-1 and Impact T-4 in the DEIR**

In addition to the recommended mitigation measures above to primarily address Impact T-1, VTA recommends several other measures that would address both Impact T-1 and Impact T-4 regarding increasing VMT. VTA recommends incorporating these by adding or strengthening policies in Sections 5.2, 5.3 and 5.7 of the draft General Plan; adding implementation items in Section 5.9 of the draft General Plan; and adding mitigation measures in the Final EIR.

**Recommended Mitigation Measure for Impacts T-1 and T-4: Complete Streets Improvements on Winchester Boulevard**

VTA recommends that the Town include a specific policy regarding implementation of Complete Streets improvements on Winchester Boulevard in the draft General Plan, and a corresponding mitigation measure in the Final EIR. VTA recognizes that the Town is already pursuing Complete Streets improvements on this corridor, and in 2020 VTA staff provided comments the Town's conceptual designs. The vision for this corridor provides many opportunities to invest in bicycle, pedestrian, and transit infrastructure to help offset the impacts of the General Plan buildout. We support the following overall mitigation strategies on Winchester Boulevard:

- Overall lane reduction and implementation of a Class IV separated bikeway
- Installation of bus boarding islands and improvements to address missing sidewalk gaps to make better connections to these bus stops
- Improvements to pedestrian crossings across Winchester Boulevard, including high visibility crosswalks and integration of crossings into VTA bus stops
- Signal improvements, including Transit Signal Priority, at Blossom Hill and Winchester Boulevard

These overall improvements will create a more complete street that is safe and enjoyable for all users. Identifying Winchester Boulevard as a corridor for Complete Streets improvements in the 2040 General Plan would serve as a mitigation measure for increased VMT from development (Impact T-4), and would improve access to transit to offset operational and ridership impacts (Impact T-1).

**Recommended Mitigation Measure for Impacts T-1 and T-4: Complete Streets Improvements on Los Gatos Boulevard**

VTA recommends that the Town include a specific policy regarding implementation of Complete Streets improvements and substantially upgraded bicycle facilities on Los Gatos Boulevard in the draft General Plan, and a corresponding mitigation measure in the Final EIR. In 2021, the VTA Board of Directors adopted the VTA Bicycle Superhighway Implementation Plan (<https://www.vta.org/programs/bicycle-program#accordion-bicycle-superhighway-implementation-plan>) that identifies a network of high-quality, uninterrupted long-distance bikeways separated from motor vehicles that traverse across the county. One of the 17 identified corridors is the

17.8

17.9

Bascom Avenue/Los Gatos Boulevard segment between Hedding Street in San José and Blossom Hill Road in Los Gatos. Through this process, Los Gatos staff supported the inclusion of Los Gatos Boulevard to the network where the existing bicycle lanes could be upgraded to separated facilities. Identifying Los Gatos Boulevard as a corridor for Complete Streets improvements and substantial bicycle improvements in the 2040 General Plan would serve as a mitigation measure for increased VMT from development (Impact T-4), and would improve access to transit to offset operational and ridership impacts (Impact T-1). These improvements would further align stated goals of both VTA and the Town of Los Gatos.

**Recommended Mitigation Measure for Impacts T-1 and T-4: Price and Manage On-Street Parking**

Some of the delays experienced by buses through downtown Los Gatos is caused by private vehicles circling for on-street parking, as well as delivery vehicles and other vehicles stopping or double-parking temporarily. VTA notes that the draft General Plan currently includes policies for Parking Management Downtown (MOB-14.2) and Curbside Management (MOB-14.3), and that the Mitigation Measure for Impact T-4 in the DEIR includes "Implement Market Price Public Parking (On-Street)" as a VMT Reduction Strategy at the Town-Wide Level (DEIR pp. 4.15-31). VTA recommends that the Town add a policy in draft General Plan Section 5.7 to analyze and phase in on-street parking pricing. Pricing on-street parking would help improve the availability of on-street parking (through active monitoring of pricing and utilization), reduce congestion due to circling, lessen delay to transit vehicles, and reduce VMT.

17.10

Thank you again for the opportunity to review this project. VTA would like to meet with Town staff to discuss the recommendations in this letter. Please do not hesitate to contact me at 408-321-5949 or [robert.swierk@vta.org](mailto:robert.swierk@vta.org) to schedule a meeting, or to discuss any questions you may have on this letter.

Sincerely,

*Robert Swierk*

Robert Swierk, AICP

Principal Transportation Planner

## Letter 17

**COMMENTER:** Robert Swierk, Principal Transportation Planner, Valley Transportation Authority

**DATE:** January 7, 2022

### Response 17.1

The commenter states that Valley Transportation Authority (VTA) supports the inclusion of policies in the Mobility element of the 2040 General Plan which would reduce VMT; provide bicycle, pedestrian, and Complete Streets improvements; and support transit services and facilities.

This has been noted and no revisions to the Draft EIR are necessary in response to this comment.

### Response 17.2

The commenter expresses that VTA commends the Recirculated Draft EIR for identifying transit impacts. Further stating that VTA agrees with the statement “transit service will experience reductions in quality of experience inconsistent with the project policies, which could contribute to lower transit demand in the future and higher demand for vehicle use contributing to higher VMT levels... Project deficiencies associated with increased vehicle delay at intersections are a result of buses and shuttles operating in mixed-flow lanes with other vehicles the... potential increase in transit vehicles, local street congestion within and near the town of Los Gatos, and increased delay at off-site intersections would delay transit vehicles.” (pages 4.15-24 and 4.15-25 of the Recirculated Draft EIR).

This has been noted and no revisions to the Draft EIR are necessary in response to this comment.

### Response 17.3

The commenter expresses that VTA disagrees with the statement that “there are no feasible mitigation measures to reduce potentially significant effects related to transit operations and ridership”. The commenter further states that VTA notes that there are several types of mitigation measures that can be effective at reducing congestion related impacts to transit operations. The commenter summarizes their suggestions include Transit Signal Priority (TSP), queue jumping, and in-lane bus stopping.

The mitigation measures suggested by the commenter are discussed further in Response 17.5, Response 17.6, and Response 17.7 below. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

### Response 17.4

The commenter states that VTA recommends adding the policies suggested in their letter as new policies within Sections 5.4 and 5.9 of the 2040 General Plan, as well as mitigation measures in the Final EIR.

The policies suggested by the commenter are discussed further in Response 17.5, Response 17.6, and Response 17.7 below. Therefore, no revisions to the Draft EIR are necessary in response to this comment.

### **Response 17.5**

The commenter states their understanding that the Town is currently replacing its traffic signal management system, and this new system, including the traffic signal controllers, supports Transit Signal Priority (TSP). The commenter provides a potential mitigation measure for Impact T-1 that would request that the Town consider town-wide TSP functionality. Further stating that this would help reduce incremental delays for buses at intersections. The commenter suggests that this action be included as a 2040 General Plan policy that pursues funding from new development.

The commenter is correct in stating that the Town is currently replacing its traffic signal management system which directly supports TSP functionality. Additionally, the 2040 General Plan includes Policy MOB-10.4 which states that developers shall contribute a pro-rata share to the cost of the future installation of traffic signals or future traffic signal modifications with a nexus to the project as a condition of approval. This policy, in combination with actions already taken by the Town, and possible future use of the TSP supported by these controllers, would help address transit impacts within Los Gatos. Therefore, the inclusion of the commenter's proposed mitigation measure would not result in significant reductions to transportation impacts.

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

### **Response 17.6**

The commenter expresses an opinion that the Town should prioritize transit queue jumping at problematic intersections. The commenter recommends a 2040 General Plan policy to pursue funding for design and implementation of queue jump treatments from new development, either through individual project contributions or the Town's Transportation Impact Fee Program.

Queue jumping is not included as a policy within the 2040 General Plan. Additionally, queue jumping was not identified as a feasible mitigation measure within Section 4.15, *Transportation*, or the Transportation Analysis provided as Appendix C to the Draft EIR. On most roadways within Los Gatos, implementing queue jumping is not feasible. Many portions of high traffic streets such as Los Gatos Boulevard, Winchester Boulevard, and Main Street are not constructed in a way that would allow for the addition of bus passing lanes, but in those areas where space is available this may be considered in the development of future roadway designs. The construction or installation of these queue jumping lanes would be a separate project proposal from the 2040 General Plan and would be subject to its own environmental review at that time.

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

### **Response 17.7**

The commenter recommends that the 2040 General Plan include a policy for the Town to work with VTA to identify locations for and implement in-lane stops at key locations.

In-lane stopping for buses is not included as a policy within the 2040 General Plan. On most roadways within Los Gatos, implementing in-lane stopping is not feasible to reduce transportation impacts overall. Many bus routes occur on arterial streets such as Los Gatos Boulevard or Winchester Boulevard which can accommodate two or more lanes of traffic in each direction. Implementing in-lane stopping would require one lane to be blocked while buses make stops along that route, and could be considered in future roadway improvements. While this may only slightly improve transit operations, it would not improve overall circulation within the Town.

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

## Response 17.8

The commenter recommends that the 2040 General Plan include a policy and corresponding mitigation measure in the Draft EIR regarding the implementation of Complete Streets improvements on Winchester Boulevard. The commenter recognizes that the Town is already pursuing Complete Streets improvements on this corridor and VTA provided comments to conceptual designs in 2020.

The commenter is correct in stating that the Town is pursuing Complete Streets improvements through the Town of Los Gatos Complete Streets Policy which guides relevant departments by formally applying Complete Streets principles in transportation projects and funding programs Town-wide. Additionally, the Town uses the Los Gatos Streets Program which lists all proposed Town Capital Improvement Program projects that improve roadway function. Included under this program are Winchester Boulevard Complete Streets Final Design improvements. Furthermore, the 2040 General Plan includes Policy MOB-4.1 which applies complete streets principles in transportation projects within the Town as defined in the Town's Complete Streets Policy. This policy, in addition with actions and programs already proposed by the Town, would implement Complete Streets improvements along Winchester Boulevard.

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

## Response 17.9

The commenter recommends that the 2040 General Plan include a policy and corresponding mitigation measure in the Draft EIR regarding the implementation of Complete Streets improvements and upgraded bicycle facilities on Los Gatos Boulevard. The commenter recognizes that the Town has supported the inclusion of Los Gatos Boulevard to the network where existing bicycle lanes could be upgraded to separate facilities under the VTA Bicycle Superhighway Implementation Plan.

This comment is similar to Comment 17.8. Please see Response 17.8, above. As described therein, the Town is pursuing Complete Streets improvements Town-wide through Policy MOB-4.1 within the 2040 General Plan. Additionally, the 2040 General Plan includes Policy MOB-2.3 which supports regional partners, such as VTA, to create a complete and comprehensive bicycle network connecting the Town to other regional destinations. This policy, in addition with actions and programs already proposed by the Town, would implement Complete Streets improvements and upgrade bicycle facilities along Los Gatos Boulevard.

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

## Response 17.10

The commenter states that some of the delays experienced by buses through downtown Los Gatos are caused by private vehicles circling for on street parking as well as other delivery vehicles stopping or double parking temporarily. VTA recommends that the Town include a policy in the 2040 General Plan to analyze and phase in on-street parking pricing.

Both the 2040 General Plan and Recirculated Draft EIR include strategies for parking management within Downtown Los Gatos. The 2040 General Plan includes Policy MOB-14.2 which implements parking management or Transportation Demand Management (TDM) within Downtown to address long-term and short-term parking demands and maximize the efficient use of parking. It also addresses curbside management through MOB-14.3 which support a curbside management plan for

the Downtown to accommodate passenger loading areas and commercial loading zones to minimize double parking. Furthermore, the Recirculated Draft EIR includes a Mitigation Measure T-1 which discusses potential VMT reduction strategies for projects that generate VMT. Within this, it includes a strategy to Implement Market Price Public Parking (On-Street) which focuses on implementing a pricing strategy for parking by pricing all on-street parking in central business districts, employment centers, and retail centers. Priced parking would encourage “park once” behavior and may also result in area-wide mode shifts. These policies, in addition with VMT reduction strategies proposed by the 2040 General Plan, would help improve parking issues within Downtown Los Gatos.

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

## Spoken Comments

**COMMENTER:** Giuliana Pendleton

**DATE:** September 8, 2021

### PARAPHRASED COMMENT 1

The commenter describes some potential adverse impacts on wildlife that can result from excessive lighting or light pollution. The commenter expresses an opinion that the Biological Resources Assessment for the 2040 General Plan fails to discuss the impacts of lighting on wildlife.

It is unclear why the commenter describes deficiencies in the content of a Biological Resources Assessment for the 2040 General Plan because a Biological Resources Assessment has not been prepared for the project or the Draft EIR. It is possible the commenter misspoke and meant to refer to the Section 4.4, Biological Resources, of the Draft EIR. However, Section 4, Biological Resource, of the Draft EIR does discuss and evaluate potential lighting impacts on wildlife that could result from buildout envisioned in the 2040 General Plan. For example, page 4.4-13 of the Draft EIR discusses how development within proximity to vegetation cover could result in new sources of light that affect nesting patterns or wildlife behavior. As described on page 4.4-16 of the Draft EIR, lighting impacts on biological resources would be less than significant because the 2040 General Plan includes Policy ENV-7.11. As shown on page 4.4-15 of the Draft EIR, Policy-7.11 requires the design of building, street, and parking area lighting to improves safety, energy efficiency, protection of the night skies (dark sky protections), and environmental soundness. Because the Draft EIR evaluates impacts to biological resources resulting from light and light pollution, no revisions to the Draft EIR are necessary in response to this comment.

### PARAPHRASED COMMENT 2

The commenter asserts that the Draft EIR does not identify the location of wildlife movement corridors in Los Gatos. The commenter requests that a Town-wide wildlife corridor study be prepared.

The comment’s assertion that the Draft EIR does not identify the location of wildlife movement corridors in Los Gatos is incorrect. As described on page 4.4-18 of the Draft EIR, wildlife movement corridors in Los Gatos are generally limited to the hillside areas in the southern and eastern parts of the planning area and the creeks in the planning area, such as Los Gatos Creek. These creeks may also be used by migratory fish. As described on page 4.4-20 of the Draft EIR, impacts of the 2040 General Plan on wildlife corridors would be less than significant. Therefore, mitigation, such as a requirement for a Town-wide wildlife corridor study, is not required. No revisions to the Draft EIR

are necessary in response to this comment. However, for informational purposes, individual projects would undergo applicable environmental review at the time they are proposed. The project-level analysis would evaluate potential impacts to wildlife movement and migration, pursuant to Appendix G of the State CEQA Guidelines.

**PARAPHRASED COMMENT 3**

The commenter expresses an opinion that the 2040 General Plan should specify a Town-wide riparian corridor setback width.

The 2040 General Plan does not specify a standard riparian corridor setback width that is applicable to the entire Town. This is because the quality of riparian corridors in the Town, with regard to their benefit for wildlife, varies throughout the Town. For example, some riparian corridor along Los Gatos Creek is immediately adjacent to Highway 17, which is a major freeway that has near continuous traffic noise and potential for wildlife-vehicle collisions. Other riparian corridors in the Town are further from major roadways and development and provide higher quality value to wildlife. Therefore, the Town would evaluate the necessary riparian corridor setback requirements, if any, during review of individual construction projects to ensure proper protection is provided based on the quality of the riparian corridor and type of development proposed. No revisions to the Draft EIR are required in response to this comment.

## 4 Revisions to the Draft EIR

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This section presents specific changes to the text of the Draft EIR that have been made to clarify information presented in the Draft EIR. The changes in this section include both the changes and revisions to the Draft EIR made in response to the comments received on the Draft EIR, as presented in Section 4, *Comments and Responses*, as well as additional changes made for clarification. These revisions are not considered significant new information that would trigger Draft EIR recirculation pursuant to *State CEQA Guidelines* Section 15088.5. For example, they do not disclose a new or substantially more severe significant environmental impact, or a new feasible mitigation measure or alternative not proposed for adoption. Rather, the revisions correct or clarify information presented.

Where revisions to the main text are called for, the page and paragraph are set forth, followed by the appropriate revision. Added text is indicated with underlined text. Text deleted from the Draft EIR is shown in ~~strikethrough~~. Page numbers correspond to the page numbers of the Draft EIR, or when applicable, the partially recirculated Draft EIR.

### 4.1 Executive Summary

Cultural Resources		
<b>Impact CUL-2.</b> Development envisioned in the 2040 General Plan would require ground disturbance that could encounter human remains. Implementation of 2040 General Plan policies and compliance <u>would with</u> existing regulations would reduce potential impacts to human remains to less than significant.	None required	Less than significant

### 4.2 Aesthetics

Section 4.1, *Aesthetics*, page 4.1-18 of the Draft EIR is revised as follows:

The General Plan would ensure new development does not substantially degrade the visual character or quality of the Town. Furthermore, adherence to existing development of formal design guidelines for commercial, residential and hillside development, as well as all forms of developing, including suggested finishes, landscaping, and other aesthetic attributes, would mitigate potential impacts. A adherence to the 2040 General Plan policies and to formally adopted community design guidelines would guide development and ensure the overall visual quality of the Town is considered. Applicable 2040 General Plan goals and their corresponding policies are listed below.

Section 4.1, *Aesthetics*, page 4.1-22 of the Draft EIR is revised as follows:

**Policy CD 7.4. Linkage Connectivity.** Require all new or remodeled developments to include connections and linkages in the form of walkways or paseos between adjacent developments to reduce automobile use and promote walking and biking.

## 4.3 Biological Resources

Section 4.4, *Biological Resources*, page 4.4-3 of the Draft EIR is revised as follows:

Grasslands provide foraging and nesting habitat for a wide variety of wildlife species including raptors, seed eating birds, small mammals, amphibians, and reptiles. Wildlife species typically associated with grasslands include black-tailed jackrabbit (*Lepus californicus*), California ground squirrel (*Otospermophilus beecheyi*), Botta's pocket gopher (*Thomomys bottae*), American badger (*Taxidea taxus*), coyote, western skink (*Eumeces kiltonianus*), Pacific gopher snake, common garter snake (*Thamnophis sirtalis*), deer mouse (*Peromyscus spp.*), western harvest mouse (*Reithrodontomys megalotis*), California vole (*Microtus californicus*), mule deer, western meadowlark (*Sturnella neglecta*), and savannah sparrow (*Passerculus sandwichensis*).

Grasslands also provide important foraging habitat for raptors such as the American kestrel (*Falco sparverius*), white-tailed kite (*Elanus leucurus*), northern harrier (*Circus cyaneus*), and red-tailed hawk (*Buteo jamaicensis*). The ~~endangered San Joaquin kit fox (*Vulpes macrotis mutica*) and threatened California tiger salamander (*Ambystoma californiense*) are~~ is also found in and adjacent to this habitat.

Section 4.4, *Biological Resources*, page 4.4-4 of the Draft EIR is herein revised as shown below:

Seasonal wetlands can be populated by plants species such as spike rush (*Eleocharis macrostachya*), water knotweed (*Polygonum lapathifolium*), water evening primrose (*Ludwigia peploides*), pennyroyal (*Mentha pulegium*), rabbits foot grass (*Polypogon monspeliensis*), barnyard grass (*Echinochloa crus-galli*), and eragrostoid sedge (*Cyperus eragrostis*). These species are either lowgrowing, tenacious perennials that tolerate annual channel and ditch activity, or are annuals that tolerate seasonal wetness and mowing, and produce seed for the next season. The edges of wetlands are often dominated by non-native annual weeds and perennial native plants such as annual ryegrass (*Lolium multiflorum*), alkali mallow (*Malvella leprosa*), peppergrass (*Lepidium latifolium* *Lepidium latifolium*), and bristly oxtongue (*Picris echioides*). Vernal pools, seasonal water features found in small depressions with a hardpan soil layer, support calicoflowers (*downingia spp.*), meadow foam (*Limnanthes alba*), and other species.

Section 4.4, *Biological Resources*, page 4.4-11 of the Draft EIR has been revised as follows:

### Guidelines and Standards for Land Use near Streams

The “Guidelines and Standards for Land Use near Streams” (Guidelines and Standards) were developed under the Santa Clara Valley Water Resources Protection Collaborative (Collaborative) to address land use activities near streams and to protect surface and groundwater quality and quantity in Santa Clara County. The Guidelines and Standards are intended to be used for the purposes of development review of proposed land use activities for new development, major redevelopment and where appropriate, single-family units. The Guidelines and Standards intended to complement existing regulations, such as the City/County/SCVWD National Pollutant Discharge Elimination System (NPDES) Permitting Program provisions.

Section 4.4, *Biological Resources*, page 4.4-16 of the Draft EIR is revised as follows:

Detailed wetland delineations would be needed to determine the extent of any jurisdictional wetlands and other waters at specific locations and the USACE is responsible for making a final determination on the extent of jurisdictional waters for a particular site. The extent of jurisdictional waters, as well as project specific details and plans would be necessary to determine the acres of wetlands and stream channels that could be ~~impacts~~ impacted from development facilitated by the 2040 General Plan.

Section 4.4, *Biological Resources*, page 4.4-22 of the Draft EIR is revised as follows:

Policy ENV-7.5 ~~conservers~~ conserves nesting bird sites unless appropriate mitigation is provided. Therefore, impacts to special status species and their habitat; sensitive habitats; and wildlife movement would be less than significant.

## 4.4 Cultural and Tribal Cultural Resources

Section 4.5, *Cultural and Tribal Cultural Resources*, page 4.5-6 of the Draft EIR is revised as follows:

In accordance with Assembly Bill 52 (AB 52) and Senate Bill (SB 18) (see Regulatory Setting, below), the Town notified the following California Native American tribes of the proposed ~~2045~~ 2040 General Plan and invited them to participate in consultation:

Impact CUL-2 within Section 4.5, *Cultural and Tribal Cultural Resources*, page 4.5-13 of the Draft EIR is revised as follows:

**IMPACT CUL-2 DEVELOPMENT ENVISIONED IN THE 2040 GENERAL PLAN WOULD REQUIRE GROUND DISTURBANCE THAT COULD ENCOUNTER HUMAN REMAINS. IMPLEMENTATION OF 2040 GENERAL PLAN POLICIES AND COMPLIANCE ~~WOULD~~ WITH EXISTING REGULATIONS WOULD REDUCE POTENTIAL IMPACTS TO HUMAN REMAINS TO LESS THAN SIGNIFICANT.**

Section 4.5, *Cultural and Tribal Cultural Resources*, page 4.5-15 of the Draft EIR is revised as follows:

Policies ENV-14.1 and ENV-14.2 would ensure that tribal cultural resources are identified prior to commencement of ground disturbance. Compliance with existing regulations pertaining to human remains, discussed in Impact CUL-2, above would reduce ~~impacts~~ to potential Native American burial sites. Accordingly, impacts to potential tribal cultural resources would be less than significant.

## 4.5 Energy

Section 4.6, *Energy*, page 4.6-13 of the Draft EIR is revised as follows:

Renewable energy sources generally result in reduced long-term environmental impacts compared ~~with~~ to non-renewables because renewable sources do not require combustion of coal or natural gas to generate electricity, which avoids environmental impacts associated with air pollution and GHG emissions.

Section 4.6, *Energy*, page 4.6-14 of the Draft EIR is revised as follows:

**Policy CD 7.4. Linkage Connectivity.** Require all new or remodeled developments to include connections and linkages in the form of walkways or paseos between adjacent developments to reduce automobile use and promote walking and biking.

Section 4.6, *Energy*, page 4.6-14 of the Draft EIR is revised as follows:

The 2040 General Plan contains a land-use strategy that actively promotes infill mixed-use and transit-oriented development, which would result in greater energy efficiency overall for Town residents, businesses, and Town operations.

Section 4.6, *Energy*, page 4.6-15 of the Draft EIR is revised as follows:

CALGreen Code (CBC Title 24, Part 11) requires implementation of energy efficient light fixtures and building materials into the design of new construction projects project, and the State Building Energy Efficiency Standards (CBC Title 24, Part 6) require newly constructed buildings to meet energy performance standards set by the CEC.

SB 100 mandates 100 percent clean electricity for California by 2045. The proposed 2040 General Plan would further reduce its use of nonrenewable energy resources as the electricity generated by renewable resources provided by the renewable portfolio standard (RPS) RPU continues to increase to comply with State requirements through Senate Bill 100, which requires electricity providers to increase procurement from eligible renewable energy resources to 60 percent by 2030 and 100 percent by 2045. Because the proposed 2040 General Plan would be powered by the existing State electricity grid, it would eventually be powered by renewable energy mandated by SB 100.

## 4.6 Geology and Soils

Section 4.7, *Geology and Soils*, page 4.7-18 of the Draft EIR is revised as follows:

The following thresholds of significance are based on Appendix G of the *CEQA Guidelines*. For the purposes of this EIR, implementation of the 2040 General Plan may have a significant adverse impact if it would do any of the following:

1. Directly or indirectly cause ~~Expose~~ people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:
  - a. Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault;
  - b. Strong seismic ground shaking;
  - c. Seismic-related ground failure, including liquefaction; or
  - d. Landslides.
2. Result in substantial soil erosion or the loss of topsoil;
3. Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on or off-site landslide, lateral spreading, subsidence, liquefaction or collapse;

4. Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property; or
5. Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water; or
6. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.

Section 4.7, *Geology and Soils*, page 4.7-19 of the Draft EIR is revised as follows:

New structures built under the 2040 General Plan could also experience substantial damage during seismic groundshaking events. Fault rupture is unlikely to affect new or existing structures in the Town because the only Alquist -Priolo Earthquake Fault Zone is located west east of the Town's western limits.

Section 4.7, *Geology and Soils*, page 4.7-21 of the Draft EIR is revised as follows:

Compliance with the permit requires that each project that disturbs disturb greater than 1 acre of soil, unless eligible for an erosivity waiver, file a Notice of Intent with the SWRCB. Permit conditions require development of a SWPPP, which must describe the site, the facility, and Best Management Practices (BMPs) to manage storm water runoff and to reduce soil erosion.

During or after preparation of the Draft EIR, the 2040 General Plan was revised and reorganized, which resulted in consolidation of some goals and policies in the General Plan. As some goals and policies were consolidated or removed from the General Plan, the remaining goals and policies were renumbered, and in some cases reworded. Accordingly, the following goals and policies edits apply to all instances within Section 4.7, *Geology and Soils*, where they are mentioned:

**Goal HAZ 2.** Risks from geologic and seismic hazards, including slope instability, subsidence, ground shaking, fault rupture, liquefaction and landslides, are minimized.

**Policy HAZ 2.1. Geotechnical Engineering Conditions.** Require preparation of a report from an engineering geologist and/or geotechnical engineer that discusses the geologic, seismic, and geotechnical engineering conditions and potential hazards for developments in hazard zones mapped by the State or identified by the Town, as shown in Figures 8-1 through 8-3 of this Element.

**Policy HAZ 2.2. Geotechnical Report Requirement.** Require geologic and geotechnical reports and Town review during the development review process for projects with significant grading, potential erosion and sedimentation hazards.

**Policy HAZ 2.3. Geotechnical Report Specificity.** Require geologic and geotechnical reports to specify construction methods to protect the proposed project, as well as existing residences in the vicinity, from identified hazards.

**Policy HAZ 2.4. Geologic Hazard Consideration in Development.** Require new development to be sited away from high risk geologic hazard zones, or if located in a high-risk zone, to incorporate building or technologies to reduce risk to an acceptable level.

**Policy HAZ 2.5. Unbuildable Spaces.** Preserve as open space property that is unbuildable due to geologic conditions.

**Policy HAZ-2.6. Buildings that provide Emergency Services.** Ensure that buildings and structures required for emergency services have sufficient resistance to withstand a major earthquake.

**Policy HAZ-2.7. Seismic Retrofit Incentives.** Work with regional, State, and federal agencies and organizations to incentivize seismic retrofits of structures.

**Policy HAZ-2.8. Geologic Hazards Checklist.** As part of development review, require that a geologic/geotechnical consultant complete the Town Geologic Hazards Checklist to demonstrate that potential hazards have been identified and that proposed structures, including grading cuts and fills, will be designed to resist potential earthquake effects.

**Policy HAZ-2.9. Seismic Safety Restrictions.** Enforce the California Building Code seismic safety restrictions. Require fault investigations for structures for human habitation and all critical facilities. Investigation may include field investigations. Reports shall include appropriate design measures to mitigate potential fault ground rupture/deformation to acceptable levels and shall be reviewed by the Town.

**Policy HAZ-2.10. Earthquake Response Facilities.** Retain private buildings and maintain public buildings whose use and function are essential in response to a major earthquake.

**Policy HAZ-2.11. Utility Risk.** Locate, design, and construct vital public utilities, communication infrastructure, and transportation facilities in a manner that maximizes risk reduction and functionality during and after an earthquake.

**Goal HAZ-4.** Minimize community exposure to risks from geologic and seismic hazards, including slope instability, subsidence, ground shaking, fault rupture, liquefaction, and landslides.

**Policy HAZ-4.1. Geologic Hazard Zone Development.** Require new development to be sited away from high risk geologic and seismic hazard zones or, if located in a high-risk zone, incorporate construction techniques or specialized technologies to reduce risk. Restrict new development and redevelopment based on the levels of risk and potential severity of geologic hazards.

**Policy HAZ-4.2. Geotechnical Report – Seismic Hazards.** Require a geotechnical report by a licensed engineering geologist and/or geotechnical engineer for new developments proposed in hazard zones mapped by the State or identified by the Town, as shown in Figures 9-2 through 9-5 of this Hazards and Safety Element. The report shall identify all site geologic, seismic, and geotechnical engineering conditions and potential hazards and include appropriate design measures to mitigate potential fault ground rupture/deformation impacts to acceptable levels.

**Policy HAZ-4.3. Geotechnical Report – Grading.** Require a geotechnical report by a licensed engineering geologist and/or geotechnical engineer for new developments proposed with significant grading, potential erosion, and sedimentation hazards.

**Policy HAZ-4.4. Geotechnical Report – Construction Methods.** Require a geotechnical report by a qualified engineering geologist and/or geotechnical engineer for new developments proposed in areas with identified geologic hazards. The report shall specify construction methods to protect existing and future residences, from identified hazards.

**Policy HAZ-4.5. Unbuildable Property as Open Space.** Preserve open space portions of properties that are unbuildable due to geologic and seismic conditions.

**Policy HAZ-4.6. Emergency Services Structure Safety.** Require that buildings and structures needed for emergency services and other essential services exceed the California Building Code for seismic strengthening to withstand a major earthquake.

**Policy HAZ-4.7. Seismic Retrofit Incentives.** Work with regional, State, and federal agencies and organizations to incentivize seismic retrofits of structures.

**Policy HAZ-4.8. Geologic Hazards Checklist.** Require that a licensed geologic/geotechnical engineer complete the Town Geologic Hazards Checklist for all new proposed development to demonstrate that potential hazards have been identified and that proposed structures, including grading cuts and fills, will be designed to resist potential earthquake effects.

**Policy HAZ-4.9. Resilient Infrastructure.** Require that new public utilities, communication infrastructure, and transportation facilities be located, designed, and constructed in a manner that minimizes risk and maximizes functionality during and after an earthquake.

## 4.7 Greenhouse Gas Emissions

Section 4.8, *Greenhouse Gas Emissions*, page 4.8-32 of the Draft EIR is revised as follows:

See *Significance After Mitigation* discussion under Impact GHG-1. With implementation of Mitigation Measure MM GHG-1 requiring community GHG reduction measures, the proposed 2040 General Plan would result in the following mitigated emissions:

- Emissions under the proposed 2040 General Plan would be reduced to 244,145 231,122 MTCO<sub>2</sub>e per year (or 4.32 4.09 per capita MTCO<sub>2</sub>e per service person per year) beginning in 2030; and
- Emissions under the proposed 2040 General Plan would be reduced to 154,917 135,847 MTCO<sub>2</sub>e per year (or 2.53 2.10 per capita MTCO<sub>2</sub>e per service person per year) beginning in 2040.

Section 4.8, *Greenhouse Gas Emissions*, page 4.8-1 of the Draft EIR is revised as follows:

This section analyzes the potential for implementation of the 2040 Los Gatos General Plan to generate generated greenhouse gas (GHG) emissions in a manner that significantly contributes to climate change or to conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing GHG emissions. The analysis in this section is based upon GHG emissions forecast methodology and modeling outputs that are included in Appendix B, GHG Emissions Supporting Information, of this Environmental Impact Report (EIR).

Section 4.8, *Greenhouse Gas Emissions*, page 4.8-12 of the Draft EIR is revised as follows:

An increase in temperature and extreme weather events. Climate change is expected to lead to increases in the frequency, intensity, and duration of extreme heat events and heat waves in California. More heat waves can exacerbate chronic disease or heat-related illness.

Section 4.8, *Greenhouse Gas Emissions*, page 4.8-28 of the Draft EIR is revised as follows:

- **Measure EN4: Electrify existing residential buildings beginning in 2023:** Adopt an electrification ordinance for existing residential buildings to transition natural gas to electric in two phases, to be implemented through the building permit process:
  - Phase I: Limit expansion of natural gas lines in existing buildings by 2022 2023.

## 4.8 Hazards and Hazardous Materials

Section 4.9, *Hazards and Hazardous Materials*, page 4.9-18 of the Draft EIR is revised as follows:

The HMBP must also consider external events such as seismic activity. Mandatory implementation of risk management plans (RMPs) ~~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. Similarly, the HMBP would prevent or significantly reduce risks to residential and other uses located close to commercial or industrial development facilitated by the 2040 General Plan.

Section 4.9, *Hazards and Hazardous Materials*, page 4.9-18 of the Draft EIR is revised as follows:

In addition to mandatory adherence to laws and regulations, and compliance with programs, the Safety Element of the 2040 General Plan includes goals and associated policies, listed below, that would reduce the potential for accidental exposure and hazards associated with the use and disposal of hazardous materials, as follows.

**Goal HAZ-7 Goal HAZ-13.** ~~Reduce the~~ The potential for injuries, damage to property, economic and social displacement, and loss of life resulting from hazardous materials ~~is eliminated.~~

**Policy HAZ-7.2. Phase I Site Assessment Policy HAZ-13.2. Site Assessment Requirement.**

Require Phase I site assessments ~~for all properties where toxins are suspected~~ new development proposed on land that may be contaminated with hazardous materials or waste.

**Policy HAZ-13.4. Alternative Practices.** ~~Minimize the use of toxic and hazardous materials in Los Gatos, promoting sustainable materials and practices where possible.~~

**Policy HAZ-13.5. Household Hazardous Waste.** ~~Expand and promote household hazardous waste programs to safely dispose of items such as paint, gasoline, engine oil, batteries, and cleaners.~~

**Policy HAZ-7.5. Household Hazardous Waste.** ~~The Town shall develop and distribute educational materials and conduct educational outreach to inform the public about household hazardous waste, proper disposal methods, and proper use and storage of these materials.~~

Section 4.9, *Hazards and Hazardous Materials*, page 4.9-20 of the Draft EIR is revised as follows:

Commercial and industrial development facilitated by the 2040 General Plan could, however, include uses that generate and emit hazardous materials, substances, or contaminated water, such as gas stations, dry cleaners, and light industrial uses. Accidental release or combustion of hazardous materials at new commercial and industrial developments could endanger residents or students in the surrounding community. This future commercial and industrial development could occur within a 0.25-mile radius of existing public and private schools in Los Gatos.

Section 4.9, *Hazards and Hazardous Materials*, page 4.9-21 of the Draft EIR is revised as follows:

Development in Los Gatos at the sites listed in Table 4.9-3 would be subject to investigation, remediation, and cleanup under the supervision of the RWQCB, the Santa Clara Valley Water District, or DTSC, likely before construction activities could begin. The 2040 General Plan Safety

Element contains Goal HAZ-7 ~~Goal HAZ-13~~ and corresponding policies, which relate to reducing the potential risk from contaminated sites.

**Goal HAZ-7 Goal HAZ-13.** ~~Replace the~~ The potential for injuries, damage to property, economic and social displacement, and loss of life resulting from hazardous materials is eliminated.

**Goal HAZ-7 Goal HAZ-13** and its related policies would reduce the potential for release of hazardous substances through inter-organization cooperation, site assessments, and hazardous materials storage monitoring. Additionally, it would minimize the use of toxic and hazardous materials in Los Gatos, promoting sustainable materials and practices where possible and promoting household hazardous waste disposal programs.

Section 4.9, *Hazards and Hazardous Materials*, the last paragraph on page 4.9-21 of the Draft EIR is revised as follows:

The extent to which groundwater may be affected from a UST, if at all, depends on the type of contaminant, the amount released, the duration of the release, and depth to groundwater. If groundwater contamination is identified, the RWQCB ~~or the Santa Clara Valley Water District~~ would need to characterize the vertical and lateral extent of the contamination and remediation activities prior to the commencement of any construction activities that would disturb the subsurface. If contamination exceeds regulatory action levels, the developer would be required to undertake remediation procedures prior to grading and development under the supervision of the RWQCB, depending upon the nature of any identified contamination. Compliance with existing State and local regulations and implementation of the 2040 General Plan policies identified above would reduce impacts to less than significant.

Section 4.9, *Hazards and Hazardous Materials*, page 4.9-23 of the Draft EIR is revised as follows:

In addition to 2040 General Plan policies, the ~~Los Gatos Fire Department and~~ Santa Clara County Fire Department provides ~~provide~~ fire and emergency response services.

## 4.9 Hydrology and Water Quality

Section 4.10, *Hydrology and Water Quality*, pages 4.10-1 and 4.10-2 of the Draft EIR are herein revised as follows:

~~The groundwater sub-basin is managed by the Santa Clara Valley Water District (SCVWD), whose primary objective is to recharge the groundwater basin, conserve water, increase water supply, and prevent waste or reduction of the SCVWD's water supply. Historically, over-extraction of the groundwater basin has resulted in occurrences of subsidence within Santa Clara County. Subsidence occurs when underground water levels drop, and clay layers compact, resulting in a loss of aquifer capacity. In order to avoid any further subsidence and loss of aquifer capacity, the SCVWD has attempted to maintain the basin by augmenting natural percolation of rainfall and local stream runoff with imported water. The SCVWD has maintained a recharge program consisting of 18 major recharge systems, including instream and offstream facilities.~~

~~In addition, the SCVWD operates a treated groundwater recharge/surface water re-injection program that promotes the reuse of treated groundwater from the clean-up of contaminated sites and recharge of groundwater from local and imported surface water. In 2017, the groundwater recharge/re-injection program generated approximately 265 acre-feet (AF) per~~

~~day of recharge. SCVWD also reduced groundwater demands by approximately 192,000 AF in 2017 through treated and recycled water deliveries and water conservation programs. Based on the efforts of the SCVWD, the groundwater elevation in the groundwater basin has been rising steadily for the past 40 years. Groundwater storage at the end of 2017 reached 338,900 AF, with 25,700 AF added in 2017. As stated in the 2017 SCVWD Annual Groundwater Management Report, the groundwater supply has reached a “normal” stage (stage 1) of the District’s Water Shortage Contingency Plan and indicates good water supply conditions.~~

The groundwater sub-basin is managed by Santa Clara Valley Water District (SCVWD), whose primary objective is to recharge the groundwater basin, conserve water, increase water supply, and prevent waste or reduction of SCVWD’s water supply. Subsidence occurs when underground water levels drop and clay layers compact, resulting in the sinking of the ground surface and a loss of aquifer capacity. To avoid any further subsidence SCVWD works to maintain the sub-basin by augmenting natural percolation of rainfall and local stream runoff via managed aquifer recharge using local and imported surface water. SCVWD’s managed recharge program includes 18 major recharge systems with in-stream and off-stream facilities. In addition to directly replenishing groundwater, SCVWD reduces the need for groundwater pumping through treated and untreated surface water deliveries, water conservation, and recycled water programs.

In 2017, approximately 100,000 acre-feet (AF) of local and imported surface water replenished groundwater through SCVWD’s managed aquifer recharge program. SCVWD also reduced groundwater demands by approximately 192,000 AF in 2017 through treated and recycled water deliveries and water conservation programs. Based on the efforts of SCVWD, the groundwater elevation in the groundwater basin has recovered from prior overdraft.

Groundwater storage at the end of 2017 reached 338,900 AF, with 25,700 AF added in 2017. As stated in the 2017 Valley Water Annual Groundwater Management Report, the groundwater supply has reached a “normal” stage (stage 1) of SCVWD’s Water Shortage Contingency Plan and indicates good water supply conditions. While groundwater levels and storage decline during droughts, SCVWD’s comprehensive groundwater management activities provide for subsequent recovery, and groundwater in the sub-basin is sustainably managed.

Section 4.10, *Hydrology and Water Quality*, page 4.10-1 of the Draft EIR is herein revised as follows:

The Town has several surface water channels within its limits. Los Gatos Creek, San Tomas Aquinas Creek, and Smith Creek flow south to north through the Town, and Ross Creek flows in a northeasterly direction. With the exception of Smith Creek and San Tomas Aquinas Creek, the water channels listed in the prior sentence are ultimately tributaries to the Guadalupe River, which is not within Town limits but nearby. Smith Creek is a tributary to San Tomas Aquinas Creek, which flows to Guadalupe Slough as direct tributary to the San Francisco Bay. A large valley in Los Gatos is also drained northward to the San Francisco Bay by tributaries including the Guadalupe River and Los Gatos Creek. Other unnamed natural water courses are also located within the Town limits.

Section 4.10, *Hydrology and Water Quality*, the last paragraph on page 4.10-4 is revised as follows:

#### **a.e. Flood Hazards**

Flood hazards occur when the amount of rainfall exceeds the infiltration capacity of the surrounding landscape or the conveyance capacity of the storm water drainage system. The

Federal Emergency Management Agency (FEMA) delineates regional flooding hazards as part of the National Flood Insurance Program. FEMA identifies flood hazard risks through its Flood Insurance Rate Map (FIRM) program. Higher flood risk zones are called Special Flood Hazard Areas; these areas have a 1 percent chance or greater of flooding in any given year (also called the 100-year flood). Figure 4.10-1 shows the portions of the planning area that are located within the 100-year and 500-year FEMA designated flood hazard zones.

Additional flood hazards are posed by dam failure, tsunamis and seiches. Portions of Los Gatos are subject to flooding inundation from dam failure, such as failure of the dam at Lexington Reservoir. A tsunami is a wave generated by the sudden displacement of a large amount of water. Tsunamis can be triggered by earthquakes, volcanic eruptions, or similar events that occur under the water or the shore. Impacts of tsunamis can be both immediate and long-term. Seiches are a related hazard that can occur when a sudden displacement event or very strong winds happen in an enclosed or semi-enclosed body of water such as a lake or bay. Los Gatos is not susceptible to seiche.

Section 4.10, *Hydrology and Water Quality*, page 4.10-8 of the Draft EIR is revised as follows:

~~SCVWD Chapter 83-2 of Ordinance 06-01 requires a permit for work where SCVWD has a property interest or has a facility impacted by the proposed work. construction activities near a stream. It is intended to secure the health, safety, and welfare of people by facilitating prudent floodplain management, protecting water quality, securing maintenance of watercourses, and prohibiting injury to SCVWD property and facilities. The ordinance also defines the SCVWD's permitting jurisdiction on streams and describes the requirements and procedure to obtain a permit for construction or encroachment activities on a stream. The Town has not directly adopted Ordinance 06-01 in 2007 and instead uses Guidelines and Standards for Land-Use Near Streams. The Guidelines and Standards were developed cooperatively between SCVWD, Santa Clara County, all 15 cities within Santa Clara County, with citizens, business, and agricultural interests to streamline the permitting process and protect stream and streamside resources. The Guidelines and Standards are designed to address land use activities near streams and to protect surface and groundwater quality and quantity in Santa Clara County. The Guidelines and Standards are intended to be used for the purposes of development review of proposed land use activities for new development, major redevelopment and where appropriate, single-family units.~~

Section 4.10, *Hydrology and Water Quality*, page 4.10-8 of the Draft EIR is revised as follows:

Nearly half of the water used in Santa Clara County is pumped from the Santa Clara and Llagas subbasins, with some communities relying solely on groundwater. Imported water includes the District's State Water Project and Central Valley contract supplies and supplies delivered by the San Francisco Public Utilities Commission (SFPUC) to cities in northern Santa Clara County. Local sources include natural groundwater recharge and surface water supplies. A growing portion of the County's water supply is recycled water. The SCVWD operates and maintains 10 surface water reservoirs, 169,000 acre-feet total reservoir storage capacity, 17 miles of raw surface water canals, 393 acres of groundwater recharge ponds, 91 miles of controlled in-stream recharge, 142 miles of pipelines, three pumping stations, three drinking water treatment plants, and the Silicon Valley Advanced Water Purification Center.

The SCVWD's groundwater management goals, strategies, activities, and metrics are described in the 2016 Groundwater Management Plan for the Santa Clara and Llagas Subbasins. This plan,

adopted by the SCVWD Water's Board of Directors, was submitted to the Department of Water Resources as an Alternative to a Groundwater Sustainability Plan. In 2019, the Groundwater Management Plan was approved by the Department of Water Resources as an Alternative to a Groundwater Sustainability Plan for Sustainable Groundwater Management Act compliance. As required by the Sustainable Groundwater Management Act, the SCVWD will submit updates every five years, with the first update due by January 1, 2022.

Section 4.10, *Hydrology and Water Quality*, page 4.10-10 of the Draft EIR is revised as follow:

**Threshold 1:** Would the project violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?

**Threshold 3:** Would the project substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or through the addition of impervious pavements, in a manner which would:

- a. ~~Result in substantial erosion or siltation on or off site;~~
- b. ~~a. Substantially increase the rate or amount of surface runoff in a manner in which would result in flooding on- or off-site;~~
- c. ~~Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff;~~  
or
- d. ~~b. Impede or redirect flows.~~

**Threshold 5:** Would the project conflict with or obstruct implementation of a water quality control plan?

**Threshold 3:** Would the project substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or through the addition of impervious pavements, in a manner which would:

**Threshold 4:** Would the project risk release of pollutants due to project inundation in a flood hazard zone?

Section 4.10, *Hydrology and Water Quality*, page 4.10-11 of the Draft EIR is revised as follows:

Projects that result in the creation, addition, or replacement of two thousand five hundred square feet of impervious surface are required to comply with the Town's stormwater control section of engineering standards.

The Town uses the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) and developed a stormwater management guidance document, the C.3 Stormwater Handbook, The C.3 Stormwater Handbook that outlines the procedure for the Town's fulfillment of the NPDES Construction General Permit Order 2009-0009-DWQ. As part of the Permit the Town is required to incorporate construction site storm water runoff control elements into the Stormwater Management Program.

Section 4.10, *Hydrology and Water Quality*, the following sentence on page 4.10-14 of the Draft EIR is revised as follows:

~~Growth in the Town of Los Gatos that would be facilitated by the 2040 General Plan has been incorporated into the SCVWA 2015 Urban Water Management Plan (UWMP).~~

Section 4.10, *Hydrology and Water Quality*, page 4.10-14 of the Draft EIR is revised to remove discussion of water supply and demand, specifically as follows:

Development facilitated by the 2040 General Plan could potentially interfere with groundwater recharge through the creation of new impervious surfaces. For new developments and redevelopment projects, the amount of new impervious surfaces would be reduced through Low Impact Development (LID) goals and policies in the 2040 General Plan and would not substantially interfere with groundwater recharge or redirect runoff such that it results in on- or off-site flooding. This impact would be less than significant.

Implementation of the proposed project could potentially increase the demand for water resources. However, as described in Section 4.16, Utilities and Service Systems, the majority of water used in Los Gatos is from surface water. Impacts pertaining to water supply and demand are evaluated As described in Section 4.16, Utilities and Service Systems, of the Draft EIR. the Town's potable water supply has been provided primarily from mountain surface water treated at a SJWC treatment facility. Additional sources of water supply include regional groundwater and imported surface water purchased from SCVWD. Growth in the Town of Los Gatos that would be facilitated by the 2040 General Plan has been incorporated into the SCVWA 2015 Urban Water Management Plan (UWMP). Future water demand in Los Gatos is projected to be met by SCVWD's current water supply (SCVWD 2016). The SJWC has rights to pump water from the aquifers in the service area when it is in compliance with Valley Water permitting requirements. Therefore, projected growth under the 2040 General Plan would not result in a depletion of groundwater supplies in the Santa Clara Valley Subbasin.

The Impact Analysis statement within Section 4.10, *Hydrology and Water Quality*, on page 4.10-16 is revised as follows:

**IMPACT HWQ-2 HWQ-3 DEVELOPMENT FACILITATED BY THE 2040 GENERAL PLAN COULD BE SUBJECT TO FLOOD HAZARDS AND COULD IMPEDE OR REDIRECT FLOOD FLOWS TO ADJACENT AREAS. COMPLIANCE WITH APPLICABLE PROVISIONS OF THE LOS GATOS MUNICIPAL CODE WOULD REQUIRE NEW DEVELOPMENT TO BE DESIGNED AND CONSTRUCTED SUCH THAT THE RISK AND DAMAGE OF FLOODING IS NOT EXACERBATED BY IMPLEMENTATION OF THE 2040 GENERAL PLAN. IMPACTS RELATED TO FLOODING AND FLOOD HAZARDS WOULD BE LESS THAN SIGNIFICANT.**

The Impact Analysis statement within Section 4.10, *Hydrology and Water Quality*, on page 4.10-16 is revised as follows:

**IMPACT HWQ-3 HWQ-4 THE TOWN OF LOS GATOS IS NOT WITHIN AN AREA AT RISK FROM INUNDATION BY SEICHE OR TSUNAMI, AND THEREFORE WOULD NOT BE AT RISK OF RELEASE OF POLLUTANTS DUE TO PROJECT INUNDATION. THERE WOULD BE NO IMPACT.**

Section 4.10, *Hydrology and Water Quality*, page 4.10-16 of the Draft EIR is revised as follows:

Los Gatos Municipal Code Section 29.90.070 requires that a development permit be obtained before construction or development begins in a Special Flood Hazard Area as designated by Los Gatos Municipal Code Section 29.90.040. The development permit must show plans that outline the flood characteristics and flood hazard reduction on the site, including elevation of the area in question, existing structures on site, utilities, grading, proposed fill, and location of the regulatory floodway information. The application for a development permit is reviewed by the designated Floodplain Administrator, who determines whether the "site is reasonably safe

from flooding" and whether development would adversely affect the carrying capacity of areas where base flood elevations have been determined.

Section 4.10, *Hydrology and Water Quality*, page 4.10-18 of the Draft EIR is further revised as follows:

As stated in Section 4.10.1, *Setting*, the Town of Los Gatos is not located in a tsunami or seiche zone. Therefore, development facilitated by the project would not risk release of pollutants due to tsunami or seiche inundation of the planning area. The 2040 General Plan does not propose uses in flood zones that would involve the use or storage of large quantities of hazardous materials that could be released if inundated during a flood, such as new wastewater treatment plants or chemical manufacturing facilities. There would be no impacts related to flood flows or project inundation.

## 4.10 Noise

Section 4.12, *Noise*, page 4.12-9 of the Draft EIR is revised as follows:

Projected traffic volumes in the year 2040, provided by Fehr & Peers, were used to qualitatively describe future noise levels resulting from project traffic. The traffic impact analysis prepared by Fehr & Peers is provided as Appendix C Appendix TRA.

Section 4.12, *Noise*, page 4.12-12 of the Draft EIR is revised as follows:

### Significance After Mitigation

~~Implementation of 2040 General Plan policies, Los Gatos Town Code requirements, and Mitigation Measure N-1, would reduce potential impacts but not to a less than significant level. Mitigation Measure N-1, and policies, would not necessarily reduce equipment noise to 85 dBA at 25 feet or at properties adjoining a project site. However, Mitigation Measure N-1 would reduce construction noise such that temporary increases in noise would not be substantial. Combined with Los Gatos Town Code requirements, which requires most construction noise to be below 85 dBA and occur during daytime, when most people are awake or away from residences at work, impacts would be reduced to less than significant.~~

Section 4.12, *Noise*, page 4.12-17 of the Draft EIR is revised as follows:

### N-2 Construction Vibration Reduction

The Town shall include the following measures as standard conditions of approval for applicable projects involving construction to minimize exposure to construction vibration:

1. Avoid the use of pile drivers and vibratory rollers (i.e., compactors) within 50 feet of buildings that are susceptible to damage from vibration.
2. Schedule construction activities with the highest potential to produce vibration to hours with the least potential to affect nearby institutional, educational, and office uses that the Federal Transit Administration identifies as sensitive to daytime vibration (FTA 2006).
3. Notify neighbors of scheduled construction activities that would generate vibration.

During or after preparation of the Draft EIR, the 2040 General Plan was revised and reorganized, which resulted in consolidation of some goals and policies in the General Plan. As some goals and

policies were consolidated or removed from the General Plan, the remaining goals and policies were renumbered, and in some cases reworded. Accordingly, the following goals and policies edits apply to all instances within Section 4.12, *Noise*, where they are mentioned:

**Goal HAZ-6.** ~~Noise from new development and new land uses does not adversely affect neighboring land uses.~~

**Policy HAZ-6.1. Acoustical Analysis Requirement.** ~~Applicants shall submit an acoustical analysis for their project as part of the Environmental Review process. All input related to noise levels shall use the adopted standard of measurement shown in Table 8-2. (Table 8-2 of the 2040 General Plan)~~

**Policy HAZ-8.1. Road Construction Noise.** ~~Ensure that roads constructed or improved by the Town of Los Gatos shall meet Town noise level standards or, in some situations, the Los Gatos Noise Ordinance, to the maximum extent feasible.~~

**Policy HAZ-8.3. Noise Control Measures.** ~~Require that stringent noise control measures accompany construction of new County, State, and Federal roads and highways, preferably by depressing them. Consider constructing aesthetically pleasing sound walls and berms, and landscaping. Solicit funds to modify existing noise sensitive buildings where appropriate.~~

**Goal HAZ-9.** ~~Equipment noise does not adversely affect land uses.~~

**Policy HAZ-9.1. Noise Producing Equipment Purchases.** ~~Consider noise ratings in the purchase of Town equipment, prioritizing the most sound efficient products.~~

**Policy HAZ-9.2. Contracted Services Noise.** ~~Ensure that services contracted or performed by the Town not cause unreasonable noise problems.~~

**Policy HAZ-9.4. Noise Attenuation Equipment Requirement.** ~~Continue to ensure that Town owned and operated equipment and equipment operated under contract with the Town contain state of the art noise attenuation equipment.~~

**Goal HAZ-10.** ~~Residential land uses are not adversely affected by noise.~~

**Policy HAZ-10.1. Residential Site Design Noise Consideration.** ~~Protect residential areas from noise by requiring appropriate site and building design, sound walls, and landscaping and by the use of noise attenuating construction techniques and materials.~~

**Policy HAZ-10.2. Noise Restrictions in Commercial and Industrial Developments.** ~~For commercial and industrial developments adjacent to residential neighborhoods, additional restrictions beyond the Noise Ordinance may be applied in designated areas to reduce noise intrusions in residential districts to an acceptable level.~~

**Goal HAZ-11.** ~~Sensitive receptors such as residences and schools are not exposed to unacceptable noise levels.~~

**Policy HAZ-11.1. Noise Sensitive Land Uses.** ~~Deny land use applications and traffic impacts that expose sensitive land uses or sensitive noise receptors to unacceptable noise levels.~~

**Goal HAZ-18.** ~~Consider existing and future noise levels when making land use decisions in order to protect people from exposure to excessive noise levels, as defined for each land use type. Particular attention will be given to protecting noise sensitive land uses.~~

**Policy HAZ-18.1. Acoustical Analysis Requirement.** Applicants for proposed new non-residential development projects shall submit an acoustical analysis prepared by a licensed acoustician for their project as part of the environmental review process.

**Goal HAZ-19.** Ensure proposed new development is not located in areas with existing higher than-acceptable noise levels.

**Policy HAZ-19.1. Noise-sensitive Developments.** Require all new noise-sensitive developments to provide a noise study prepared by a licensed acoustician with recommendations for reducing noise impacts to the maximum allowed level in the Noise Ordinance.

**Policy HAZ-19.2. Locating Development.** Locate new development in areas where noise levels are appropriate for the proposed use. Use Town standards, including Figure 8-6 as a part of development review.

**Goal HAZ-20.** Ensure that roadway-related noise does not adversely affect people in Los Gatos.

**Policy HAZ-20.1. Road Construction Noise.** Ensure that the construction of roadways or roadway improvements consider noise level standards for scheduling and construction methods to the maximum extent feasible.

**Policy HAZ-20.3. Noise Control Measures.** Require that stringent noise control measures accompany construction of new County, State, and Federal roads and highways by constructing aesthetically pleasing sound walls, berms, and dense landscaping where appropriate.

**Goal HAZ-21.** Ensure that construction and maintenance equipment noise does not adversely affect land uses.

**Policy HAZ-21.1. Noise Producing Equipment Purchases.** All Town-owned and operated construction and maintenance equipment, and equipment for these activities operated under contract with the Town, shall contain state-of-the-art noise attenuation equipment.

**Policy HAZ-21.2. Noise Attenuation, Private Equipment.** Monitor and modify Town ordinances, as appropriate, to control nuisance noise from maintenance equipment used in the community.

**Policy HAZ-21.3. Noise Reduction Legislation.** Continue to support State legislation reducing noise levels for machinery, motor vehicles, and other equipment that generates excessive noise.

## 4.11 Population and Housing

Section 4.13, *Population and Housing*, page 4.13-2 of the Draft EIR is revised as follows:

In accordance with CEQA, a program-level EIR for a general plan must look at the plan's impacts on the physical environment is obligated to analyze the maximum potential buildup allowed under the subject plan or program. It has been calculated that the Los Gatos 2040 General Plan accommodates a potential for 3,738 dwelling units by the year 2040, and the EIR has used this figure to calculate and project environmental impacts.

Section 4.13, *Population and Housing*, page 4.13-6 of the Draft EIR is revised as follows:

According to the 2040 General Plan Land Use Element, General Plan 2040 implementation may allow up to 3,738 new residential units by 2040 (Table 4.13-3). This additional housing could result in 8,971 new residents by 2040. This would increase the total population to approximately 39,221 ~~42,021~~ persons, which would be 18.7 percent ~~27.1 percent~~ above ABAG's 2040 population forecast of 33,050 (ABAG 2019).

## 4.12 Transportation

Section 4.15, *Transportation*, the third paragraph on page 4.15-5 of the partially recirculated Draft EIR has been revised to state:

Of the routes that serve Los Gatos, Routes 61 and 62 are the more frequently used routes with approximately 1,500 and 1,400 average weekday boardings for the entire route. ~~VTA light rail train waiting for passengers to board at the Winchester Station in the City of Campbell.~~ Employer-based shuttles play a role in Los Gatos transit as they provide connections to major employers in the area, such as Netflix, Apple, Google, and Facebook. There are a number of employer-based shuttle services located in Los Gatos, as well as in adjacent cities. One example is the Google Commute Program, which provides free shuttle service for Google employees between the Town and Google Mountain View Campus. Netflix shuttles employees into Los Gatos from locations such as San Francisco, Mountain View, the East Bay, and Santa Cruz.

Section 4.15, *Transportation*, page 4.15-8 of the partially recirculated Draft EIR is herein revised as shown below:

### Bay Area Ridge Trail

The Bay Area Ridge Trail (Ridge Trail) is a multi-use trail system along the ridgelines encircling the San Francisco Bay Area, open to open to hikers, mountain bicyclists, and equestrians. At the time of this report, 393 miles of the Ridge Trail are open to the public today. The Ridge Trail is planned to connect to the Los Gatos Creek Trail at the Highway 17 crossing, which will provide a valuable recreational amenity to Town residents as a connection to trails throughout El Sereno, St. Joseph's Hill, and Sierra Azul Open Space Preserves.

Section 4.15, *Transportation*, Note 2 of Table 4.15-1 on page 4.15-12 of the partially recirculated Draft EIR has been revised to state:

2. Existing residents and jobs/employment in Los Gatos is based on population reported for each Traffic Analysis Zone using in the VTA Model that is also within the Town or its SOI, including TAZs for unincorporated parcels within the Town. Accordingly, the existing residents and jobs/employment, and thus the service population, used in this table of this section of the EIR varies from existing or service population used in other sections of the EIR. It is appropriate to use TAZ population for the Transportation Section because people residing in TAZs in the Town or SOI must use roads within the Town for vehicle travel, regardless if the property they reside on is within incorporated or unincorporated areas, thus contributing to Town VMT.

Section 4.15, *Transportation*, the last sentence on page 4.15-28 of the partially recirculated Draft EIR has been revised to state:

Because implementation of the 2040 General Plan would result in VMT per service population under that which exceeds the threshold of 32.3 due to population and employment growth planned within the Town, impacts would be potentially significant.

Section 4.15, *Transportation*, the reference note on page 4.15-29 of the partially recirculated Draft EIR has been revised to state:

As shown in ~~Error! Reference source not found.~~ Table 4.15-4, the changes in Countywide boundary VMT per service population between the Cumulative 2040 and Cumulative 2040 with Project Conditions shows the relatively small effects of the 2040 General Plan on VMT.

Section 4.15, *Transportation*, the second to last sentence of the last paragraph on page 4.15-29 of the partially recirculated Draft EIR has been revised to state:

A primary different difference between the analysis for Impact PH-1 and this VMT threshold is that this VMT threshold does not ask whether population growth would substantially exceed forecasts, but rather, if growth would exceed forecasts at all.

Section 4.15, *Transportation*, the second to last paragraph on page 4.15-37 of the partially recirculated Draft EIR has been revised to state:

These impacts are related to transit ridership and transit delays due to congestion on area roadways.

Section 4.15, *Transportation*, the first paragraph on page 4.15-38 of the partially recirculated Draft EIR has been revised to state:

As described above in Impact T-2 and T-3, the proposed 2040 General Plan would not conflict with a program, plan, ordinance or policy addressing the circulation system as it relates to roadways, bicycle facilities, and pedestrian facilities.

## 4.13 Utilities and Service Systems

Section 4.16, *Utilities and Service Systems*, pages 4.16-18 and 4.16-19 of the partially recirculated Draft EIR are revised as follows:

Existing user fees fund the operations and maintenance of the SJWC's water system. However, expansion to the existing water system may be needed to service new development, which is funded by connection and development fees. Impacts from any required expansion of existing infrastructure required by new development in the Town would be further analyzed under separate CEQA review when determinations are made on the type, scope, and location of the infrastructure improvements. Additionally, new construction could require the relocation of utilities which would require ground disturbance. Ground disturbance impacts are evaluated throughout this EIR, such as impacts related to wildlife habitat, trees, cultural resources, and water quality.

Section 4.16, *Utilities and Service Systems*, page 4.16-23 of the Draft EIR is revised as follows:

Solid waste generated by the Town of Los Gatos would increase disposal at the Guadalupe Landfill by approximately 1 percent. With a remaining capacity of 11,055,000 cubic yards, the Guadalupe Landfill would have sufficient capacity to accommodate this increase in solid waste generation. However, because the Guadalupe Landfill is near capacity In addition, the 2040 General Plan would include goals and policies that would reduce trash production, promote recycling, and potentially introduce Townwide composting.

Section 4.16, *Utilities and Service Systems*, pages 4.17-6 and 4.17-7 of the Draft EIR are revised as follows:

**Goal HAZ-4-2.** Incorporate fire safety precautions are as an integral consideration in planning development.

**Policy HAZ-4-3-2.3. Adequate Water Storage for Fire Protection.** During the development review process, carefully consider the adequacy of water storage for fire protection.

**Policy HAZ-4-5. Planning Coordination.** Implement and annually evaluate progress toward implementation of the Santa Clara County OAHMP and CWPP for Los Gatos.

**Policy HAZ-2-4. Secondary Emergency Access.** Provide secondary emergency access as required by the Santa Clara County Fire Department.

**Goal HAZ-5-3.** The potential for injuries, damage to property, economic and social displacement, and loss of life resulting from fire hazards is reduced to the maximum amount possible.

**Policy HAZ-5-1 3.1. Fire Hazard Preparedness.** Minimize exposure to wildland and urban fire hazards through rapid emergency response; proactive code enforcement; public education programs; use of modern fire prevention measures; quick, safe access for emergency equipment and evacuation; and emergency management preparation.

**Policy HAZ-5-2 5.2. Neighborhood Fire Emergency Planning.** Encourage neighborhood fire emergency planning for isolated areas.

## 4.14 Wildfire

During or after preparation of the Draft EIR, the 2040 General Plan was revised and reorganized, which resulted in consolidation of some goals and policies in the General Plan. As some goals and policies were consolidated or removed from the General Plan, the remaining goals and policies were renumbered, and in some cases reworded. Accordingly, the following goals and policies edits apply to all instances within Section 4.17, *Wildfire*, where they are mentioned:

**Goal HAZ-4.** Fire safety precautions are an integral consideration in planning development.

**Policy HAZ-4-1. Development in Fire Hazard Areas.** Designate and site new development located in or adjacent to fire hazard areas to minimize hazards to life and property. Utilize fire preventive site design, access, fire-safe landscaping, and building materials, and incorporate fire suppression techniques.

**Policy HAZ-4-2. Fire Safety Improvements.** Encourage fire safety improvements for existing homes and commercial buildings.

**Policy HAZ-4-3. Adequate Water Storage for Fire Protection.** During the development review process, carefully consider the adequacy of water storage for fire protection.

**Policy HAZ-4-5. Planning Coordination.** Implement and annually evaluate progress toward implementation of the Santa Clara County OAHMP and CWPP for Los Gatos.

**Goal HAZ-5.** The potential for injuries, damage to property, economic and social displacement, and loss of life resulting from fire hazards. is reduced to the maximum amount possible.

**Policy HAZ-5-1. Fire Hazard Preparedness.** Minimize exposure to wildland and urban fire hazards through rapid emergency response; proactive code enforcement; public education

~~programs; use of modern fire prevention measures; quick, safe access for emergency equipment and evacuation; and emergency management preparation.~~

**Policy HAZ-5.2. Neighborhood Fire Emergency Planning.** Encourage neighborhood fire emergency planning for isolated areas.

**Policy HAZ-5.4. Development Restrictions.** Restrict development in areas with inadequate water flow.

**Goal HAZ-2.** Incorporate fire safety precautions as an integral consideration in planning development.

**Policy HAZ-2.1. New Development in Fire Hazard Areas.** Require new development, including additions to existing structures, located in or adjacent to fire hazard areas to minimize hazards to life and property, by using fire preventive site design, access, fire-safe landscaping, building materials, and incorporating defensible space and other fire suppression techniques.

**Policy HAZ-2.2. Fire Safety Improvements.** Encourage fire safety improvements for existing homes and commercial buildings.

**Policy HAZ-2.3. Adequate Water Storage for Fire Protection.** During the development review process, carefully consider the adequacy of water storage for fire protection.

**Policy HAZ-2.4. Secondary Emergency Access.** Provide secondary emergency access as required by the Santa Clara County Fire Department.

**Policy HAZ-2.5. Fire Buffer Zones.** Designate Fire Buffer Zones in collaboration with Santa Clara County Fire Department between urban areas in Town and the hillsides.

**Goal HAZ-3.** Reduce the potential for injuries, damage to property, economic and social displacement, and loss of life resulting from fire hazards.

**Policy HAZ-3.1. Fire Hazard Preparedness.** Minimize exposure to wildland and urban fire hazards through rapid emergency response; proactive code enforcement; public education programs; use of modern fire prevention measures; quick, safe access for emergency equipment and evacuation; and emergency management preparation.

**Policy HAZ-3.2. Neighborhood Fire Emergency Planning.** Coordinate neighborhood fire emergency planning for WUI areas.

**Policy HAZ-3.4. Development Restrictions.** Restrict development in areas with inadequate water flow or emergency access.

Within Section 4.17, *Wildfire*, the heading box on Page 4.17-7 will be updated to include the stated policy that was discussed at length in the text as follows:

**Threshold 2:** If located in or near State responsibility areas or lands classified as very high fire hazard severity zones, would the General Plan due to slope, prevailing winds, and other factors, exacerbate wildfire risks and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?

<b>Threshold 3:</b> If located in or near State responsibility areas or lands classified as very high fire hazard severity zones, would the General Plan expose people or structures to significant risks, including downslopes or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?
<b>Threshold 5:</b> <u>If located in or near State responsibility areas or lands classified as very high fire hazard severity zones, would the General Plan expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires?</u>

## 4.15 Other CEQA Required Discussions

Chapter 5, *Other CEQA Required Discussions*, page 5-1 of the Draft EIR is revised as follows:

As discussed in Section 4.13, *Population and Housing*, the buildout anticipated under the 2040 General Plan could accommodate an estimated 8,971 new residents and 3,738 new dwelling units in Los Gatos. With the estimated growth under the General Plan, Los Gatos would have a 2040 population of approximately 39,221 ~~42,021~~ residents. This would result in a population that would exceed ABAG growth projections by 18.7 percent ~~27.1 percent~~.

Chapter 5, *Other CEQA Required Discussions*, page 5-1 of the Draft EIR is revised as follows:

The proposed project would not be expected to induce substantial economic expansion to the extent that direct physical environmental effects would result. Moreover, the environmental effects associated with any future development in or around Los Gatos Beverly Hills would be addressed as part of the CEQA environmental review for such development projects.

## 4.16 Alternatives

Chapter 6, *Alternatives*, page 6-8 of the Draft EIR is revised as follows:

Implementation of Alternative 1 would involve less overall development and associated growth than would occur under the 2040 General Plan, specifically outside of Opportunity Areas. Under this alternative, VMT per service population would be reduced. Similar to the 2040 General Plan, Alternative 1 would emphasize infill development that would result in a greater demand for transit. This alternative would still comply with goals and policies in the 2040 General Plan that would aim to minimize or avoid VMT generated in Los Gatos. Alternative 1 would result in an increase of 285,000 total daily vehicle trips and would generate less traffic than the 2040 General Plan. However, from a VMT efficiency perspective, Alternative 1 would result in an estimated 22.65 VMT per service population as compared with an estimated 38.45 VMT per service population in the proposed 2040 General Plan. The decrease in VMT per service population can be attributed to the intensification of housing units in Opportunity Areas, which has the potential to make taking transit, walking, and biking more viable options. Additionally, Alternative 1 would support emergency access and safety design and would not conflict with policies contained in *Plan Bay Area 2040* and the Town's Pedestrian and Bicycle Plan. Overall, effects on transportation related to VMT would be reduced. Therefore, compliance with 2040 General Plan goals and policies would result in reduced impacts on VMT but would remain a be less than significant impact similar compared to the proposed 2040 General Plan.

Chapter 6, *Alternatives*, page 6-12 of the Draft EIR is revised as follows:

Alternative 2 would develop the fewer sites throughout the Town compared to the 2040 General Plan but would have the same potential for projects to be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5. Impacts would be less than significant, similar to the 2040 General Plan.

Chapter 6, *Alternatives*, page 6-15 of the Draft EIR is revised as follows:

Alternative 3 is a high-growth alternative that includes increased density ranges in all areas and additional increases that allow for higher-density development in Neighborhood Commercial and Mixed-Use Commercial designations outside Opportunity Areas. Typical densities are assumed to vary from 10 to 36 du/ac outside Opportunity Areas and 16 to 36 du/ac inside Opportunity Areas. Intensity varies from 0.75 FAR in LDR to 1.5 FAR in HDR and MU. When compared to Alternative 1, Alternative 3 would result in a three percent (600 to 750) increase in peak hour vehicle trips. Alternative 3 would generate the most traffic, primarily due to the addition of 3,1706 new housing units.

Chapter 6, *Alternatives*, page 6-16 of the Draft EIR is revised as follows:

Alternative 3 would increase the overall net growth in population and employment in Los Gatos through the year 2040 by approximately 5,527 7,622 residents.

Chapter 6, *Alternatives*, page 6-19 of the Draft EIR is revised as follows:

Alternative 3 would generate the most traffic, primarily due to the addition of 3,1706 new housing units. However, from a VMT efficiency perspective, Alternative 3 performs the best with an estimated 21.48 VMT per service population. The decrease in VMT per service population can be attributed to the intensification of housing units in Opportunity Areas, which has the potential to make taking transit, walking, and biking more viable options.

## 4.17 Appendices

Appendix D, *Mitigation Monitoring and Reporting Program*, has been included to the Final EIR.

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## **Mitigation Monitoring and Reporting Program**

CEQA requires that a reporting or monitoring program be adopted for the conditions of project approval that are necessary to mitigate or avoid significant effects on the environment (Public Resources Code 21081.6). This mitigation monitoring and reporting program is intended to track and ensure compliance with adopted mitigation measures during the project implementation phase. For each mitigation measure recommended in the Final Environmental Impact Report (Final EIR), specifications are made herein that identify the action required, the monitoring that must occur, and the agency or department responsible for oversight.

Mitigation Measure/ Condition of Approval	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
Air Quality							
<b>AQ-1: Construction Emissions Reduction</b>	<p>New discretionary projects in the General Plan Area that exceed the construction screening criteria of the Bay Area Air Quality Management District (BAAQMD) shall be conditioned to reduce construction emissions of reactive organic gases, nitrogen oxides, and particulate matter (<math>PM_{10}</math> and <math>PM_{2.5}</math>) by implementing the BAAQMD's Basic Construction Mitigation Measures or equivalent, expanded, or modified measures based on project and site specific conditions.</p> <ul style="list-style-type: none"> <li>▪ Require that all Basic Construction Mitigation Measures are followed: <ul style="list-style-type: none"> <li>▫ Water exposed surfaces two times per day, giving priority to the use of recycled water for this activity when feasible;</li> <li>▫ Cover all haul trucks;</li> <li>▫ Remove all visible mud or dirt track-out using a wet power vacuum street sweepers at least once a day;</li> <li>▫ Limit speed on unpaved roads to 15 mph;</li> <li>▫ Complete paving as soon as possible. Lay building pads as soon as possible after grading unless seeding or soil binders are used;</li> <li>▫ Minimize idling times by shutting off equipment when not in use or reducing maximum idling time to 5 minutes;</li> <li>▫ Provide clear signage at all construction access points;</li> <li>▫ Maintain all construction equipment in accordance with manufacturer's specifications. Have all equipment checked by a certified visible emissions evaluator;</li> <li>▫ Post a visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. Respond to complaints and take corrective action within 48 hours. Make the Air District's phone number visible to ensure compliance.</li> </ul> </li> </ul>	Review of construction monitoring activities during construction	Periodically throughout construction activities	Town of Los Gatos Planning Division			

Mitigation Measure/ Condition of Approval	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
<b>AQ-2: Odor Reduction</b>							
Land Use Element Policy LU-11.5 Industrial Compatibility shall be updated in the 2040 General Plan to read: "Require that industrial projects be designed to limit the impact of truck traffic, air, odor, and noise pollution on adjacent sensitive land uses."	<ul style="list-style-type: none"> <li>▪ Update the Land Use Element policy in the 2040 General Plan.</li> <li>▪ Ensure limitations on truck traffic, air, odor, and noise pollution adjacent to sensitive land uses.</li> </ul>	<p>Prior to project approval.</p> <p>Review of construction monitoring activities during construction</p>	Once  Periodically throughout construction activities	Town of Los Gatos Planning Division			
<b>Cultural Resources</b>							
<b>CR-1: Cultural Resources Study Implementation Program</b>							
If a project requires activities that have the potential to impact cultural resources, the Town shall require the project applicant or proponent to retain a qualified archaeologist meeting the Secretary of the Interior's (SOI) Professional Qualification Standards (PQS) in archaeology and/or an architectural historian meeting the SOI PQS standards in architectural history to complete a Phase 1 cultural resources inventory of the project site (NPS 1983). A Phase 1 cultural resources inventory shall include a pedestrian survey of the project site and sufficient background archival research and field sampling to determine whether subsurface prehistoric or historic remains may be present. Archival research shall include a records search conducted at the Northwest Information Center (NWIC) and a Sacred Lands File (SLF) search conducted with the Native American Heritage Commission (NAHC). The technical report documenting the Phase 1 cultural resources inventory shall include recommendations to avoid or reduce impacts to cultural resources. These recommendations shall be implemented and incorporated in the project.	<ol style="list-style-type: none"> <li>1. Retain a qualified archeologist meeting the SOI PQS in archaeology and/or an architectural historian meeting SOI PQS standards.</li> <li>2. Complete a Phase 1 cultural resources inventory of the project site.</li> <li>3. Complete a pedestrian survey of the project site as part of the Phase 1.</li> <li>4. Conduct a records search at the Northwest Information Center.</li> <li>5. Complete a Sacred Lands File search.</li> <li>6. Review and implement mitigation strategies as suggested by the Phase 1.</li> </ol>	<p>1. Prior to construction and grading activities</p> <p>2. Prior to construction and grading activities</p> <p>3. Prior to construction and grading activities</p> <p>4. Prior to construction and grading activities</p> <p>5. Prior to construction and grading activities</p> <p>6. Review of construction monitoring activities during construction</p>	Once  Once  Once  Once  Once  Periodically throughout construction activities	Town of Los Gatos Planning Division			

Mitigation Measure/ Condition of Approval	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification						
					Initial	Date	Comments				
<b>Geology and Soils</b>											
<b>GEO-1: Paleontological Resource Studies</b>											
The Town shall require paleontological resource studies for projects that involve ground disturbance in project areas mapped as high paleontological sensitivity at the surface or subsurface determined through environmental review. Additionally, in the event that a paleontological resource is disclosed, construction activities in the area shall be suspended, a qualified paleontologist shall be retained to examine the site, and protective measures shall be implemented to protect the paleontological resource.	<ul style="list-style-type: none"> <li>▪ Complete a paleontological resource study for all projects that involve ground disturbance.</li> <li>▪ In the event that a paleontological resource is discovered, construction activities shall be suspended.</li> <li>▪ Retain a qualified paleontologist to examine sites where paleontological resources are discovered.</li> </ul>	<p>Prior to construction and grading.</p> <p>Review of construction monitoring activities during construction</p> <p>Prior to construction and grading.</p>	<p>Once</p> <p>As needed</p> <p>Once</p>	Town of Los Gatos Planning Division							
<b>Greenhouse Gas Emissions</b>											
<b>GHG-1: Implement Community GHG Emissions Reduction Measures</b>											
Los Gatos shall implement the following GHG emissions reduction measures by sector:	<ul style="list-style-type: none"> <li>▪ Adopt and implement GHG emissions reductions strategies as outlined</li> </ul>	Periodically through the year 2040	As needed	Town of Los Gatos Planning Division							
<b>Energy (EN)</b>											
<ul style="list-style-type: none"> <li>▪ <b>Measure EN1:</b> Adopt an ordinance requiring new commercial construction to be all-electric or otherwise operationally carbon neutral by 2025: Adopt a new building ordinance which bans the installation of natural gas in new commercial construction by 2025 and requires new commercial buildings to install all-electric equipment or otherwise be operationally carbon neutral. Support this action by conducting outreach and education to local developers about the benefits and resources associated with building carbon neutral buildings.</li> <li>▪ <b>Measure EN2: Identify and partner with stakeholders to conduct electrification outreach, promotion, and education:</b> Leverage partnerships with stakeholders to conduct outreach, promotion, and education around new and existing building electrification.</li> </ul>											

Mitigation Measure/ Condition of Approval	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
<ul style="list-style-type: none"> <li>▪ <b>Measure EN3: Develop a Community-wide Existing Residential Building Electrification Plan (EBEP):</b> Support community-wide existing building electrification through the development of an EBEP that addresses the feasibility, timeline, equity concerns, local stakeholder involvement, costs, funding pathways, and implementation for electrifying existing residential buildings in Los Gatos.</li> <li>▪ <b>Measure EN4: Electrify existing residential buildings beginning in 2023:</b> Adopt an electrification ordinance for existing residential buildings to transition natural gas to electric in two phases, to be implemented through the building permit process: <ul style="list-style-type: none"> <li>▫ Phase I: Limit expansion of natural gas lines in existing buildings by 2023.</li> <li>▫ Phase II: Require HVAC system replacements and hot water heaters replacements to be all-electric by 2023.</li> </ul> </li> <li>▪ Measure EN5: Identify and partner with stakeholders to develop resident-level funding pathways for implementing electrification ordinance: Leverage partnerships with stakeholders and establish funding pathways to ease community members' costs when complying with the electrification ordinance, including: <ul style="list-style-type: none"> <li>▫ Pass a transfer tax ordinance and provide a rebate for electric panels and/or other upgrades.</li> <li>▫ Partner with PG&amp;E, SVCE, and/or other stakeholders to create or expand electrification/retrofit programs and incentives, especially for low-income residents. These could include the PACE program, PG&amp;E's low-income weatherization program, tariffed on-</li> </ul> </li> </ul>							

Town of Los Gatos  
**2040 General Plan**

Mitigation Measure/ Condition of Approval	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
bill financing, metered energy efficiency, or others.							
<ul style="list-style-type: none"> <li>▪ <b>Measure EN6: Decarbonize municipal buildings by 2040:</b> Adopt a municipal building energy decarbonization plan to decarbonize municipal building energy operations by 2040. This plan would include a new building electrification policy as well as an existing building natural gas phase-out policy.</li> <li>▪ <b>Measure EN7: Coordinate with stakeholders to provide local energy generation support and incentives for the community:</b> Partner with PG&amp;E, SVCE, and/or other stakeholders to support and incentivize local on-site energy generation and storage resources within the community.</li> <li>▪ <b>Measure EN8: Develop an EV Readiness Plan to Support Installation of 794 Chargers by 2030:</b> Develop an EV Readiness Plan that supports the installation of 794 chargers (at least 160 of which would be public chargers) and a 30 percent EV share of registered passenger vehicles in Los Gatos by 2030. This plan should establish a path forward to increase EV infrastructure within the Town, promote equitable mode shift to EVs, and identify funding for implementation of public charging infrastructure in key locations. In conjunction with an EV Readiness Plan, conduct a community EV Feasibility Study to assess infrastructure needs and challenges, particularly in frontline communities.</li> <li>▪ <b>Measure EN9: Increase privately owned EV charging infrastructure:</b> Amend the Town's Building Code and Local Reach Code to require the following:</li> </ul>							

Mitigation Measure/ Condition of Approval	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
<ul style="list-style-type: none"> <li>▫ EV capable attached private garages for new single-family and duplex residential development;</li> <li>▫ 20 percent EV capable charging spaces and panel capacity for new multi-family residential development;</li> <li>▫ 20 percent EV capable charging spaces for new commercial development; and</li> <li>▫ At least 1 percent working chargers for all new development and major retrofits.</li> </ul> <p>▪ <b>Measure EN10: Increase Town-owned and publicly accessible EV charging infrastructure:</b> Work with public and private partners to ensure there are sufficient publicly accessible DCFC and Level 2 EV chargers around the Town by 2030, with a focus on providing access to low-income households and affordable housing. Install new publicly accessible EV chargers at Town-owned facilities. Develop and implement a fee for use of Town-owned chargers to encourage efficient use and turnover, especially for those without home charging capability.</p> <p>▪ <b>Measure EN11: Identify and partner with stakeholders to develop EV-related rebates:</b> Investigate partnerships with public and private partners for rebates on at-home electric circuits, panel upgrades, and Level 2 chargers, with a focus on supporting EV purchases for low-income households in frontline communities.</p> <p>▪ <b>Measure EN12: Encourage EV adoption and infrastructure improvements:</b> Conduct outreach, promotion, and education to encourage EV adoption and infrastructure improvements. This would include the following:</p> <ul style="list-style-type: none"> <li>▫ Providing education and outreach to the community on the benefits of ZEVs,</li> </ul>							

Town of Los Gatos  
**2040 General Plan**

Mitigation Measure/ Condition of Approval	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
availability of public charging, and relevant rebates and incentives available for businesses and residents.							
<ul style="list-style-type: none"> <li>▫ Working with major employers to provide EV charging for employees and encourage EV adoption among employees.</li> </ul>							

**Transportation (TR)**

- **Measure TR1: Implement Full Recommended Buildout of the Bicycle and Pedestrian Master Plan (BPMP):** Fully implement the BPMP and add 23.2 new miles of bike network by 2035 to achieve 6 percent bicycle mode share by 2035.
- **Measure TR2: Identify and partner with stakeholders to conduct outreach, promotion, and education:** Leverage partnerships with stakeholders to conduct ongoing outreach, promotion, and education around active transportation in Los Gatos. This could include:
  - Establishing Town-wide events or programs that promote active transportation in the community;
  - Regularly updating the Town's Bicycle and Pedestrian Network Map and sharing through Town and stakeholder partnership platforms;
  - Supporting local bike groups in hosting workshops and classes on bike riding, safety, and maintenance by certified instructors;
  - Instituting car-free days downtown, potentially coupled with other large and regular events; or
  - Consolidating a list of local employer-provided bicycle parking, lockers, showers, and incentives as a demonstration tool for other interested employers.

Mitigation Measure/ Condition of Approval	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
<ul style="list-style-type: none"> <li>▪ <b>Measure TR3: Facilitate a bike share program:</b> Conduct a bike share pilot program and facilitate full implementation of a bike share program within the Town.</li> <li>▪ <b>Measure TR4: Establish parking meter rates and invest in transportation improvements:</b> Establish parking meter rates, considering dynamic parking pricing in the downtown area. Allocate a designated portion of paid parking revenue to investing in TDM strategies that will ensure cost-effective downtown access by improving transit, bicycle facilities, and create incentives for people to avoid driving.</li> <li>▪ <b>Measure TR5: Improve curbside management:</b> Improve curbside management, including updating the municipal code to require active loading only, prohibit double parking, define locations for additional loading zones, and design loading zone signage.</li> <li>▪ <b>Measure TR6: Require transportation system management for new construction:</b> Draft and implement a Transportation System Management Plan (TSMP) ordinance for new construction to allow the Town to shift travel behavior away from single-occupancy vehicles. Ensure telecommuting is an optional trip reduction strategy.</li> <li>▪ <b>Measure TR7: Eliminate parking minimums for developments:</b> Remove parking minimums and establish parking maximums.</li> </ul>							
<b>Waste (WS)</b>							
<ul style="list-style-type: none"> <li>▪ <b>Measure WS1: Require residential and commercial organic waste collection consistent with SB 1383 requirements:</b> Work with local waste haulers and other community partners to expand organic</li> </ul>							

Mitigation Measure/ Condition of Approval	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification		
					Initial	Date	Comments
waste collection capacity. Pass an ordinance by 2022 requiring residential and commercial organics generators to subscribe to organics collection programs or alternatively report organics self-hauling and/or backhauling. Allow limited waivers and exemptions to generators for de minimis volumes and physical space constraints and maintain records for waivers/exemptions.  ▪ <b>Measure WS2: Require edible food recovery consistent with SB 1383</b> <b>requirements:</b> Adopt an edible food recovery ordinance or similarly enforceable mechanism to ensure edible food generators, food recovery services, and food recovery organizations comply with requirements to increase recovery rates.							
<b>N-2 Construction Vibrations Reduction</b>  The Town shall include the following measures as standard conditions of approval for applicable projects involving construction to minimize exposure to construction vibration:  1. Avoid the use of pile drivers and vibratory rollers (i.e., compactors) within 50 feet of buildings that are susceptible to damage from vibration. 2. Schedule construction activities with the highest potential to produce vibration to hours with the least potential to affect nearby institutional, educational, and office uses that the Federal Transit Administration identifies as sensitive to daytime vibration (FTA 2006). 3. Notify neighbors of scheduled construction activities that would generate vibration.	▪ Ensure that all projects meet the applicable standards to minimize exposure to construction vibration.	Prior to project approval	Once	Town of Los Gatos Planning Division			

Mitigation Measure/ Condition of Approval	Action Required	Monitoring Timing	Monitoring Frequency	Responsible Agency	Compliance Verification						
					Initial	Date	Comments				
<b>Transportation</b>											
<b>T-1: VMT Reduction Strategies</b>											
For projects that would generate VMT, one or more VMT reduction strategies included in the <i>SB 743 Implementation Decisions for the Town of Los Gatos</i> (July 2020) document shall be required to reduce VMT of the project. Examples of VMT reduction strategies that shall be implemented are provided below. The VMT reduction strategies are organized by their relative scale for implementation (i.e., individual site level, Town-wide level, and regional level).	<ul style="list-style-type: none"> <li>▪ Ensure that one or more of the VMT reduction strategies outlined within Section 4.15, <i>Transportation</i>, of the EIR are implemented wherever feasible.</li> </ul>	Review of construction monitoring activities during construction	Periodically throughout construction activities	Town of Los Gatos Planning Division							

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