

From: Phil Koen [<mailto:pkoen@monteropartners.com>]  
Sent: Monday, July 31, 2017 12:54 PM  
To: Laurel Prevetti  
Subject: CEQA section 21166 and CEQA Guideline 15162

Laurel,

Would you please pass this to the Town Council so they can consider this as part of the discussion regarding the approval of the North40 Phase 1 A&S application and Vesting Map.

Thank you.

Dear Council Members,

In connection with the request for approval of the North 40 Phase 1 development, a memo of required findings and consideration has been prepared by the Town in its capacity as lead agency in the development of the North 40 Specific Plan.

As background, a Notice of Preparation of Draft EIR was issued by the Town on February 13, 2013 as lead agency and an EIR was prepared and certified for the North 40 Specific Plan on January, 20, 2015. The Town adopted the North 40 specific plan on June 17, 2015. On March 18, 2016 the applicants submitted a revised A&S application for the portion of the specific plan south of Noddin Ave. The applicant has requested certain waivers of the Town development standard.

An initial study for Phase 1 Development was prepared March 23, 2016 to compare the proposed project with the development standards in the North 40 EIR and to assess whether additional environmental review is required in accordance with Sections 21166 of CEQA and Section 15162 of the State CEQA Guidelines.

The initial study determined that the project could have significant effect and all potentially significant effects have been adequately analyzed in an earlier EIR and have been avoided or mitigated pursuant to that EIR or Negative Declaration. The initial study concluded nothing further was required.

The Town of Los Gatos is now considering the discretionary approval of Architecture and Site Application S-13-090 and Vesting Tentative Map M-13-014. The lead agency can approve subsequent actions without additional environmental documentation unless otherwise required by Section 21166 of CEQA and Section 15162 of the State CEQA Guidelines.

The Required Findings and Considerations states that pursuant to CEQA Guidelines Sections 15162 and 15163, no subsequent or supplemental EIR is necessary.

**ATTACHMENT 20**

PRC 21166 states that when an EIR has been prepared for a project, no subsequent or supplemental EIR shall be required by the lead agency unless new information which was not known and could not have been known at the time the EIR was certified as complete becomes available.

Section 15162 of the Guidelines states that when an EIR has been certified for a project, no subsequent EIR should be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, new information of substantial importance, which was not known and could not be known with the exercise of reasonable due diligence at the time of the previous EIR was certified as complete, shows significant effects previously examined will be substantially more severe than in the previous EIR.

The EIR TIA studied the environmental impact of traffic and concluded the project is anticipated to have significant impacts at a few intersections and will impact one freeway segment currently operating at LOS E by contributing an amount of traffic that will deteriorate the segment to an unacceptable LOS.

The traffic counts used in the TIA were observed on Tuesday, Wednesday and Thursday during the winter months of January and February, 2013. It should be noted that there were no observations during weekends nor during the summer months.

The trip generation rates used in the Initial Study to estimate traffic impacts from Phase 1 were the same rates presented in the North 40 EIR TIA.

The Town as lead agency has received new information from public testimony and the Town's own congestion management program which shows the EIR TIA baseline counts do not reflect the effect of cut through traffic caused by Waze. There is substantial public testimony in the record to support the finding that on many weekends Los Gatos Boulevard between Good Samaritan and Lark Avenue is at capacity as a result of re-routing software directing traffic off a highly congested Highway 17 onto Los Gatos Boulevard and Lark Avenue. This impact has become fully known during the past 18 months. The effect of this re-routed traffic on the previously examined significant effects on intersections 19 and 23 will be substantially more severe than noted in the EIR TIA and the Phase 1 Initial Study.

Waze is a GPS navigational software that works on smartphones and provides user submitted travel times and route details. The app also provides turn by turn navigation information allowing users to by pass congested routes. The app was first introduced in 2006 and was acquired by Google in 2013. Since the acquisition by Google, the the adoption rate by users has been extraordinary and has resulted in significant changes in traffic patterns particularly on side streets that enable drivers to "cut through". In the past 18 months the impact of Waze on traffic patterns has been highly publicized in the Town of Los Gatos.

Since the trip generation rates that were presented in the TIA were generated in January and February, 2013 the devastating impact of Waze on traffic patterns was not considered. While

the app had been in the public domain for almost 6 years, the TIA and the EIR failed to evaluate the potential impact this re-routing software would have on the existing baseline traffic counts on Los Gatos Boulevard and intersections 19 and 23 as adoption of the app increased. It is fair to say the increase in traffic counts could not have been fully known with the exercise of reasonable due diligence at the time the EIR was certified since user adoption of Waze was still early.

It is now clear that Waze has had a significant impact on traffic counts. The public testimony along with the Town 's congestion management program clearly shows there have been significant effects on intersections 19 and 23 and the traffic volumes on Los Gatos Boulevard and Lark Avenue. These effects are substantially more severe than what was previously examined by the North 40 EIR TIA and this new information is of substantial importance.

In evaluating whether Section 21166 of CEQA and Section 15162 of the State CEQA Guidelines apply, the lead agency must weigh the substantial evidence test. Substantial evidence is reasonable in nature, credible, contains solid value and a reasonable mind might accept as adequate to support a conclusion. A complete review of the public testimony and the Town's own congestion management monitoring supports there is substantial evidence in the record that cut through traffic caused by Waze was an existing condition. As a result of increased user adoption new information is now available which supports the finding that that there has been a substantial impact on intersections 19 and 23 and the significant effects previously examined will be substantially more severe than reported in the EIR TIA.

Based on this, I respectfully request the Town to comply with CEQA Section 21166 and Section 15162 of the State CEQA Guidelines and prepare a subsequent or supplemental EIR to properly analyze the new traffic flow information before the Town Council approves this project.

Sincerely,

Phil Koen

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**TRANSMITTED VIA EMAIL**

July 31, 2017

Los Gatos Town Council  
110 E. Main Street  
Los Gatos, CA 95030

Dear Mayor Sayoc, Vice-Mayor Rennie, and Town Council Members Jensen, Leonardis, and Spector.

**RE: North Forty Phase 1. Architecture and Site Application S-13-090, Vesting Tentative Map Application M-13-014 (Agenda Item 16, August 1, 2017)**

On behalf of all of our members and the many organizations and individuals working to create a more equitable Silicon Valley, we want to thank you for providing us the opportunity to provide input at the July 24<sup>th</sup> hearing on the North 40 Phase 1 development, and for providing us with the chance to submit additional comments in advance of your discussion and decision on Monday. **We write today to voice our strong support for the staff recommendations outlined in the Staff Memo dated July 27, 2017 and strongly urge the Council approve the Project without additional delay.**

Over the course of more than six (6) years, the North 40 Project has been thoroughly vetted and the Town has conducted an extremely exhaustive public process. To deny the project or subject it to any further delays is a disservice to the Town's public engagement process, flaunts State Housing Law, and only serves to exacerbate the housing affordability crisis faced by the Town of Los Gatos and all its neighbors.

The persistent lack of housing and affordable housing options within the Town requires action. Here are the facts:

- A net 100,000 workers travel into Santa Clara County each day. Many workers in the Town, such as those employed at Netflix and Roku, make good wages but have few housing choices.
- In fact, 93 percent of the Town's workforce commutes in from other places in the Bay Area and beyond.
- With a median home sales price of \$1.7 million, a prospective Los Gatos household would need to earn more than \$300,000 annually.
- And with the median rent for all properties at \$4,900 monthly, a Los Gatos renter needs an income of \$196,000.
- Between 2007 and 2014, Los Gatos addressed only 41% of its total housing need and only 13% of its affordable housing responsibilities. From 2014 to today, the Town has permitted only 26 housing units, 4% of its regional need goals.
- According to the Town's Housing Element, "given Los Gatos' aging population, senior housing is a significant issue for the Town." And yet, the Town only has 150 affordable homes for seniors.

Honorable Mayor Sayoc, Vice-Mayor Rennie, and Town Council Members

RE: North Forty Phase 1. Architecture and Site Application S-13-090, Vesting Tentative Map Application M-13-014 (Agenda Item 16, August 1, 2017)

Page 2 of 2

Housing is an issue of regional concern and all jurisdictions, including Los Gatos, must act decisively, swiftly, and consistently to increase the stock of affordable homes. The Town of Los Gatos can take meaningful action to improve its jobs and housing imbalance by approving the North 40 Phase 1 project and the 50 affordable senior homes that it provides. Even priced at \$900,000 per unit, the 270 market rate homes brought about through this Project are half the cost of the current median priced home in Los Gatos.

We appreciate the challenging position you find yourselves in and count on your leadership to do what is right for the entire Los Gatos community - including people who work in the Town but are unable to afford the high housing prices, people who grew up in Los Gatos and want to stay or return, and seniors who raised their families here but have fixed incomes that no longer cover the cost of housing.

We thank Staff for providing clear and thorough responses to questions posed by Council on June 27<sup>th</sup> and we strongly support their recommendation to approve the North 40 Phase 1 application.

Please let us know if we can provide any information to aid in your decision. As always, we thank you for the opportunity to provide feedback and weigh in on this critical project.

Sincerely,



Pilar Lorenzana  
Deputy Director, **SV@Home**

cc:

Laurel Prevetti, Town Manager, [manager@losgatosca.gov](mailto:manager@losgatosca.gov)

Rob Schultz, Town Attorney, [attorney@losgatosca.gov](mailto:attorney@losgatosca.gov)

Joel Paulson, Community Development Director, [jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)

*SV@Home's mission is to drive the creation of affordable housing for a more vibrant and equitable Silicon Valley. Our members represent a broad range of voices and interests – from leading employers that drive regional, national, and worldwide economies, to labor and service organizations, to affordable and market-rate developers who house and serve those most in need.*

TOWN OF LOS GATOS

JUL 31 2017

7/28/17

By Mail - 2:30pm  
CLERK DEPARTMENT

Dear Town of Los Gatos,

I am a senior and I love this wonderful town of Los Gatos. I have been here since 1965. Before that I lived in Willow Glen so I'm a valley native. We were apricot farmers in <sup>the</sup> Los Gatos hills. It was called Santa Clara Valley - not silicon valley. Before that it was the "Valley of the Heart's Delight." What a change!!

Now I am trapped into my home on week-ends, and school times, and commute times. I can no longer shop or eat in Los Gatos. I have to go to the other side to shop and eat (Almaden-

Willow Glen, etc.)

I am so sad. When you develop the "North 40" I will be trapped into <sup>not</sup> going North. I will not be able to go South or North.

I am too old to fight all this. I saw and remember the good days. So sad!

But Money is Money and money talks. What a Legacy you are leaving for Los Gatos! (Not good). Is no one able to do the right thing for the local people? I guess citizens don't count, but money does. I was hoping you would save our town. The developers will leave here and go back to their native states

and we will struggle with  
their impact on our lives.

What do they care. - Who the  
dastardly dead and be gone.

They are not vested in this  
community. They do not care.

So --- these are my  
comments and feelings and the  
end of a great town.

Good Luck, Best Wishes

Sincerely

Barbara Murphy

15025 Sky Lane,

Los Gatos, CA. 95032

**From:** John Shepardson [mailto:shepardsonlaw@me.com]

**Sent:** Monday, July 31, 2017 2:57 PM

**To:** Council; Marico Sayoc; Rob Rennie; Steven Leonardis; Marcia Jensen; BSpector; Laurel Prevetti; Carl Guardino; wasserman Mike; Swanee Edwards; Robert Schultz; [nchase@bayareanewsgroup.com](mailto:nchase@bayareanewsgroup.com); [dborenstein@bayareanewsgroup.com](mailto:dborenstein@bayareanewsgroup.com); [bmarshman@bayareanewsgroup.com](mailto:bmarshman@bayareanewsgroup.com); Kamala Harris for Attorney General; Scheduling Harris; Howard Miller; Rod Sinks; Barry Chang; [kchurches@brookings.edu](mailto:kchurches@brookings.edu); [sean.McMahon@heritage.org](mailto:sean.McMahon@heritage.org); [Bruce.mcpherson@co.santa-cruz.ca.us](mailto:Bruce.mcpherson@co.santa-cruz.ca.us); Senator Beall; [district1@co.monterey.ca.us](mailto:district1@co.monterey.ca.us); sam liccardo; [district2@co.monterey.ca.us](mailto:district2@co.monterey.ca.us); [district3@co.monterey.ca.us](mailto:district3@co.monterey.ca.us); [district4@co.monterey.ca.us](mailto:district4@co.monterey.ca.us); [district5@co.monterey.ca.us](mailto:district5@co.monterey.ca.us); [dkuehne@lodi.gov](mailto:dkuehne@lodi.gov); [greg.scharff@cityofpaloalto.org](mailto:greg.scharff@cityofpaloalto.org); [lizg@cityofcampbell.com](mailto:lizg@cityofcampbell.com); [mayor.garcetti@lacity.org](mailto:mayor.garcetti@lacity.org); [Mayor@bakersfieldcity.us](mailto:Mayor@bakersfieldcity.us); [mayoredwinlee@sfgov.org](mailto:mayoredwinlee@sfgov.org); [MayorSteinberg@cityofsacramento.org](mailto:MayorSteinberg@cityofsacramento.org); [Gavin.newsome@ltg.ca.gov](mailto:Gavin.newsome@ltg.ca.gov); Rishi Kumar; [rod.diridon@sjsu.edu](mailto:rod.diridon@sjsu.edu); [cchase@cityofsantacruz.com](mailto:cchase@cityofsantacruz.com); [dterrasas@cityofsantacruz.com](mailto:dterrasas@cityofsantacruz.com); Chris Krohn; [District3@sanjoseca.gov](mailto:District3@sanjoseca.gov); chappie Councilmember Jones; [District5@sanjoseca.gov](mailto:District5@sanjoseca.gov); [District7@sanjoseca.gov](mailto:District7@sanjoseca.gov); rocha Councilmember; [District2@sanjoseca.gov](mailto:District2@sanjoseca.gov); [District4@sanjoseca.gov](mailto:District4@sanjoseca.gov); [district6@sanjoseca.gov](mailto:district6@sanjoseca.gov); [district8@sanjoseca.gov](mailto:district8@sanjoseca.gov); [District10@sanjoseca.gov](mailto:District10@sanjoseca.gov)

**Subject:** No. 40 & the Future of Los Gatos: Los Gatos \$54M Unfunded Liabilities//California \$206B Unfunded Liabilities

**Copy and paste from <https://www.merriam-webster.com/dictionary/town>**

#### Definition of town

1. **1a** : a compactly settled area usually larger than a village but smaller than a city **b** : a compactly settled area as distinguished from surrounding rural territory **c** : a large densely populated urban area : city **d** : an English village having a periodic fair or market
2. **2**: a particular town or city under consideration the circus came to *town*
3. **3**: the city or urban life as contrasted with the country
4. **4a** : the inhabitants of a city or town practically the whole *town* turned out for the parade **b** : the townspeople of a college or university town as distinct from the academic community relations between *town* and gown
5. **5**: a New England territorial and political unit usually containing under a single town government both rural areas and urban areas not having their own charter of incorporation; *also* : a New England community governed by a town meeting
6. **6** *dialectal, England* : a cluster or aggregation of houses recognized as a distinct place with a place-name : hamlet
7. **7**: a group of prairie dog burrows

The tidal wave of debt is coming. We see the rising mound of water. If we take precautionary steps, we can mitigate the damage. I urge action now. I want a community center. I want the debt paid down. I want green bike lanes. I want smart traffic lights. I want lots of rental bikes available. I want our town to not be dependent on large developments (Netflix and now N. 40) to fund

town services. If we don't get off this track we are on, we are doomed to become a city. We now appear dependent on bigger commercial projects to pay for town services, which requires by law more affordable housing, which is a drain on town services, which requires more commercial development, etc. i want a train between Santa Clara County and Santa Cruz County.

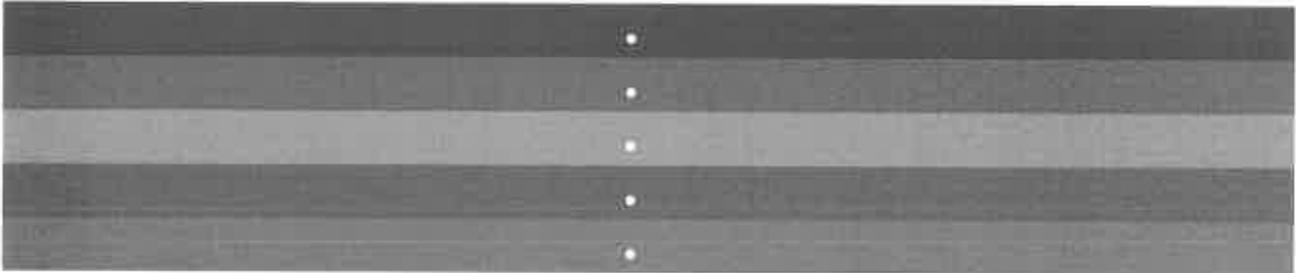
Perhaps we should change our name to the City of Los Gatos and not pretend to wish to be a town.

Can anyone honestly say the N. 40 is consistent with a town?

John Shepardson:) (aka your favorite fiscal agitator)

Copy and paste from <https://www.forbes.com/sites/oliviergarret/2017/06/09/the-disturbing-trend-that-will-end-in-a-full-fledged-pension-crisis/#42b515fe6620>

# The Disturbing Trend That Will End in a Full-Fledged Pension Crisis





**Olivier Garret,**  
CONTRIBUTOR

Opinions expressed by Forbes Contributors are their own.

**The crisis is happening as we speak.**

Though the challenges are well known by now, many believe that public-sector pension funds will be maintained and the gaps filled by strong investment returns, increasing employee contributions, raising taxes, or some combination of the three. They hope with these measures and ongoing strong asset returns, liabilities can be reduced and pensions salvaged. Unfortunately, this is wishful thinking at best.

Even though the facts are on the table, state and local governments continue to underestimate the crisis at hand. According to *Hidden Debt, Hidden Deficits*, a 2017 data-rich study of

US pension systems by Hoover Institution Senior Fellow Joshua Rauh, almost every state or local government has an unbalanced budget—due to runaway pension fund costs that are continually chipping away at already inadequate budgets.

In 2016, Rauh stated, “while state and local governments across the US largely claimed they ran balanced budgets, in fact they ran deficits through their pension systems of \$167 billion.” That amounts to 18.2% of state and local governments’ total tax revenue.

Copy and paste from <http://www.sandiegouniontribune.com/opinion/commentary/sd-illinois-california-pension-crisis-parallel-20170705-story.html>

# Illinois at the brink: Parallel should give Californians pause

Illinois Gov. Bruce Rauner gestures during interview on Tuesday about his state's budget crisis. (AP)



Chris Reed Contact Reporter

**Copy and paste  
from <http://www.mercurynews.com/2017/07/30/steve-westly-california-pensions-are-its-206-billion-elephant-in-the-room/>**

## Steve Westly: California pensions are its \$206 billion elephant in the room



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- 



Steve Westly, right, campaigns for the Democratic nomination for governor in 2006 in Los Angeles. (AP Photo/Ric Francis)

By **STEVE WESTLY** |

PUBLISHED: July 30, 2017 at 8:30 am | UPDATED: July 31, 2017 at 8:41 am

Jerry Brown has been a strong governor and a moderating force on budget issues. But when it comes to pensions, the new state budget projects that California has nearly \$206 billion in “unfunded liabilities” for the state’s two public pension funds.

## Related Articles

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Over the last eight years, we added \$100 billion in unfunded retirement liability for these funds. This is the elephant in the room of state finances, and it is time we got serious about it.

You probably haven't heard much about the looming pension crisis because elected officials don't like talking about it and it's easy for them to kick the can down the road: they can make promises to public employees now that won't come due until they're out of office.

But the slow creep of pension costs is crowding out investments in other areas, including education, environmental stewardship, social services, and public transportation. In essence, the state is being forced to default on its social obligations to pay for its pension obligations. If you're a progressive, fixing this problem may be the most important issue facing the state.

California's state employees' pension fund (CalPERS) manages close to \$330 billion, making it the largest public pension fund in the nation. Unfortunately, it's only funded at 65 percent of the amount needed for its commitments to retirees. And this is with the stock market at historic highs. If there is a downturn CalPERS could find itself with a much larger shortfall.

When pension shortfalls occur, Californians are on the hook to cover the unfunded liabilities. That will require us to draw on the state's general fund: state money that would otherwise pay for education, health care, roads and other public services.

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We're already seeing pension liabilities crowd out other spending. General fund revenues have grown 28 percent over the past six years, but the share available for discretionary spending outside of public safety has declined from 21 percent of the budget to 12 percent. Over the same time frame, spending on pensions increased 99 percent.

We're also pushing some pension obligations onto the next generation: This year alone, we're deferring \$4.5 billion in obligations. Without changes, millennials and their children will face an enormous tax burden or severe cuts in public services.

The solution is easy to understand but hard to do. Elected officials have three choices: raise taxes, reduce pension benefits or raise the retirement age. These are tough decisions that few politicians want to touch, but we need to make hard choices now. The alternative is finding ourselves with worse options down the road.

Meanwhile, there is a simple first step we can take: lower the assumed rate of return on pension investments. When we lower the rate of return that we expect from investments, we require those who receive pension benefits to pay more up front.

Since taking office, Brown has taken laudable steps to push the assumed rate of return down from 7.75 percent to 7.0 percent. In anticipation of a potential market downturn, however, we should push the rate lower. We would then pay more up front, but we would ensure that we can cover our liabilities down the road.

The 2013 annual report for Detroit's general retirement system said the city's pension plan was "stable and secure." Less than two years later, the system was in default. We can do better in California, if our politicians can show courages—but we need to act now.

*Steve Westly is the former California State Controller and served as a fiduciary on the boards of CALPERS and CALSTERS. He lives in Atherton and is Managing Director of the Westly Group, a sustainability venture capital fund. He wrote this for The Mercury News.*

John Shepardson, Esq.  
[shepardsonlaw@me.com](mailto:shepardsonlaw@me.com)

59 N. Santa Cruz Avenue, Suite Q  
Los Gatos, CA 95030  
T: (408) 395-3701  
F: (408) 395-0112

August 1, 2017

To: Mayor Sayoc and the Town Council  
From: Lee Quintana  
Subject: Agenda Item 16:  
North 40 Phase 1 Architecture and Site Application S-13-090 and  
Tentative Vesting Map M-13-014

Dear Mayor Sayoc and Members of the Town Council,

As currently written Condition 22.f for Tentative Map does not cover interior pathways, plazas, public open space areas such as the demonstration garden, vineyard, orchard planting along Lark and Los Gatos Blvd. or the Garden Retreat that are proposed in the North 40 Phase 1 Application.

Please consider deleting Condition 22.f for the Tentative Map and replacing it with a more comprehensive condition that requires a public access easement be placed over all areas identified as public open space, both areas that meet the minimum public space requirement of the Plan and any additional proposed public open space that exceeds the Plan's minimum requirement. This was agreed to by the applicants at a previous hearing.

Please also consider adding the same condition to the Conditions for A&S approval as well as including access to public open space areas to A&S Condition 24.

Thank you for your consideration

Lee Quintana  
5 Palm Ave.  
Los Gatos

July 25, 2017

To: Town Council

From: Angelia Doerner  
[SaveOurHood@yahoo.com](mailto:SaveOurHood@yahoo.com)

Reg: Supporting Information for July 24 '17 TC Public Comments –  
“Chapter 2.6 and Uncontrollable Transportation Patterns”

Please note – the first couple of slides are “very well-known/understood” – therefore needs no elaboration, but are left herein to be part of the public record and as they lay the foundation for the imperative that the County/VTA get actively focused on addressing the regional transportation needs that have become an “everyday” traffic nightmare for our Town – especially within the Nexus of the North 40. I want to thank you for addressing the only thing within your purview to address this growing overcapacity issue – the summer weekend closure at Wood Road. Unfortunately, literally all other opportunities to manage our congestion from Regional Cut-Through Traffic are in the hands of the County/State/VTA.

<p><b>INABILITY OF STATE/COUNTY HIGHWAYS TO ACCOMMODATE NOW-ROUTINE REGIONAL TRAFFIC</b></p> <p><b>FINAL 17 CHOKEPOINT (Third Lane From SSC's Unmetered OnRamp Must Merge Into Two Lanes)</b></p> <p>Angelia Doerner SaveOurHood@yahoo.com</p>	<p><b>TOWN OF LOS GATOS HAS NO CONTROL OVER RE-ROUTING OF REGIONAL CUT-THROUGH TRAFFIC!</b></p> <p><b>INABILITY OF STATE/COUNTY HIGHWAYS TO ACCOMMODATE NOW-ROUTINE REGIONAL TRAFFIC</b></p> <p><b>FINAL 17 CHOKEPOINT (Third Lane From SSC's Unmetered OnRamp Must Merge Into Two Lanes)</b></p> <p>Angelia Doerner SaveOurHood@yahoo.com</p>
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<p><b>INABILITY OF STATE/COUNTY HIGHWAYS TO ACCOMMODATE NOW-ROUTINE REGIONAL TRAFFIC</b></p> <p><b>FINAL 17 CHOKEPOINT (Third Lane From SSC's Unmetered OnRamp Must Merge Into Two Lanes)</b></p> <p>Angelia Doerner SaveOurHood@yahoo.com</p>	<p><b>TOWN OF LOS GATOS HAS NO CONTROL OVER RE-ROUTING OF REGIONAL CUT-THROUGH TRAFFIC!</b></p> <p><b>INABILITY OF STATE/COUNTY HIGHWAYS TO ACCOMMODATE NOW-ROUTINE REGIONAL TRAFFIC</b></p> <p><b>FINAL 17 CHOKEPOINT (Third Lane From SSC's Unmetered OnRamp Must Merge Into Two Lanes)</b></p> <p>Angelia Doerner SaveOurHood@yahoo.com</p>
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Two Development Projects Coming Before TC on Appeal:

- Winch/Shelburne 32k Office Aug 15 '17
- Alberca Way/Hwy9 85k Office Sept 19 '17

Three Development Projects Waiting in Wings for PC:

- “Dead End” of Alberca Way 22k-32k Office
- Santa Cruz/Hwy9 20k Office/10k Rest/Retail
- LGB/Shannon 13k Commercial

**How Can We Continue to Develop With No Means of Managing Regional Cut-Through Traffic??**

**2020 GENERAL PLAN**  
**Section 6 – Transportation Element**  
**F. Goals, Policies, and Actions**

**Goal TRA-1 To develop transportation systems that meet current and future needs of residents and businesses.**

- **Policy TRA-1.1 Development shall not exceed transportation capacity.**
- **Policy TRA-1.4 Consider the fiscal implications to the Town of the construction and operation of all circulation and transportation improvements and the enforcement of any associated regulations.**
- **Policy TRA-1.5 Make effective use of the traffic-carrying ability of Los Gatos's arterials and collectors while considering the needs of pedestrians, bicyclists, and adjacent residents.**
- **Policy TRA-1.6 Initiate and participate in regional efforts to meet regional transportation needs.**

Angella Doerner  
SaveOurHood@yahoo.com

Although there are many General Plan policies that are critical to this argument, these are a few specific ones relating to the current over-capacity of the Town's roadway network, primarily due to Regional Cut-Through traffic, and the network's inability to accommodate any additional traffic.

A separate document has been prepared to address noncompliance with various policies in the Transportation Element of the General Plan.

**CALIFORNIA HOUSING ACCOUNTABILITY ACT**

**65589.5. (e) Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).**

Angella Doerner  
SaveOurHood@yahoo.com

Reference is made to Chapter 2.6... 65088. Following is a detailed review of the Chapter 2.6 requirements.

GOVERNMENT CODE - GOV  
TITLE 7. PLANNING AND LAND USE  
DIVISION 1. PLANNING AND ZONING  
CHAPTER 2.6. Congestion Management [65088]

(a) Although California's economy is critically dependent upon transportation, its current transportation system relies primarily upon a street and highway system designed to accommodate far fewer vehicles than are currently using the system.



LG CHECK

(b) California's transportation system is characterized by fragmented planning, both among jurisdictions involved and among the means of available transport.



LG CHECK

(c) The lack of an integrated system and the increase in the number of vehicles are causing traffic congestion that each day results in 400,000 hours lost in traffic, 200 tons of pollutants released into the air we breathe, and three million one hundred thousand dollars (\$3,100,000) added costs to the motoring public.



LG CHECK

(d) To keep California moving, all methods and means of transport between major destinations must be coordinated to connect our vital economic and population centers.



LG CHECK

As per maps on Page 1, LG is "landlocked" by CalTrans network (85/17/9); LG is the "gateway to Santa Cruz and the Coast and abundant housing SE of 17 on 85 – LG is the "Hub of Regional Traffic".

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GOVERNMENT CODE - GOV  
TITLE 7. PLANNING AND LAND USE  
DIVISION 1. PLANNING AND ZONING  
CHAPTER 2.6. Congestion Management [65088]

(e) In order to develop the California economy to its full potential, it is intended that federal, state, and local agencies join with transit districts, business, private and environmental interests to develop and implement comprehensive strategies needed to develop appropriate responses to transportation needs.



LG CHECK

LG has a strong street maintenance program, has increased developmental traffic impact fees.



State/CalTrans?  
Transit Districts/VTA?

(f) In addition to solving California's traffic congestion crisis, rebuilding California's cities and suburbs, particularly with affordable housing and more walkable neighborhoods, is an important part of accommodating future increases in the state's population because homeownership is only now available to most Californians who are on the fringes of metropolitan areas and far from employment centers.



LG CHECK

LG fully complies with a certified Housing Element Plan.

(g) The Legislature intends to do everything within its power to remove regulatory barriers around the development of infill housing, transit-oriented development, and mixed use commercial development in order to reduce regional traffic congestion and provide more housing choices for all Californians.



LG CHECK

LG has complied with new requirements;  
Major transit-oriented improvements are outside of LG control.

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TITLE 7. PLANNING AND LAND USE  
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CHAPTER 2.6. Congestion Management [65088]

**h) The removal of regulatory barriers to promote infill housing, transit-oriented development, or mixed use commercial development does not preclude a city or county from holding a public hearing nor finding that an individual infill project would be adversely impacted by the surrounding environment or transportation patterns.**

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## ***Ask Not What the North 40 Phase One will do LG Transportation Patterns; Ask What LG Transportation Patterns will do the North 40 Phase One – and Our New Los Gatos Residents!!!***

Under a separate email communication, I have compiled the majority of social media “threads of communication” on NextDoor for the Los Gatos and abutting neighborhoods, from 2015 through this past weekend, concerning the onslaught of regional cut-through traffic which escalated dramatically early in 2015 due to WAZE and other mapping applications. In such threads, I have highlighted, or otherwise noted, the statements I believe are objective and quantifiable (time and distance) or fact-based, e.g., accidents, car/bike/pedestrian conflicts, road rage incidents, etc.

These mapping applications, coupled with the significant employment growth over the last few years (and much more to occur) from “complex”/commercial development in Palo Alto, Cupertino, Santa Clara and Sunnyvale (Google, Apple, etc.), these traffic-routing programs have already done their major damage. Los Gatos arterials of Lark, Winchester, Los Gatos Boulevard (all of which increases the severity of adverse conditions within the North 40 Phase One Nexus), collector streets University, Blossom Hill Santa Cruz Ave., and Hillside Collector streets of Shannon and Kennedy are now used throughout the year for regular commuting “shortcuts” in addition to the unfathomable influx every weekend from Memorial Day to Labor Day, and all regular and school Holidays.

***“Once a rat learns the Waze Maze - you only change behavior if you modify the “start” and “finish” of the Maze.....”.***

***We need CalTrans/VTA to address the re-routing of Regional traffic into the “Maze=Los Gatos” created by the inadequacies of 17, 85 and 9 (e.g., interchanges, merging options, light rail, etc.) .....to restore health and safety of the Town!***

**Staff Report Excerpt/Schultz :**

***Government Code Section 65088 - 65089.10 is a legislative scheme requiring Public Agencies to implement a Congestion Management Plan. The Town is part of Santa Clara County's established Congestion Management Program (CMP). The intent of the CMP legislation is to develop a comprehensive transportation improvement program among local jurisdictions that will reduce traffic congestion and improve land use decision-making and air quality. The EIR was prepared according to objective standards of the Town of Los Gatos and the Santa Clara Valley Transportation Authority (VTA), which is the congestion management agency for Santa Clara County that reviewed the requirements of the Congestion Management Plan in evaluating traffic impacts of the Specific plan.***

It is important to understand the scope of information available at the time the EIR for the Specific Plan was being developed. State Statute 65089 requires Congestion Management Agencies (CMAs) to conduct analysis of all Congestion Management Program (CMP) roadways every two years to ensure Member Agencies – the cities, towns and county – are developing in a manner consistent with the CMP level of service standard of LOS E. As the responsible CMA for Santa Clara County, the Valley Transportation Authority (VTA) undertakes this analysis on an annual basis. VTA prepares the annual Monitoring and Conformance Report which documents the CMP conformance findings. **The scope of data collection is reduced every other year during odd-numbered years to minimize the costs of analyzing the CMP network annually. During the “off-years,” the reduced scope of work includes only land use and freeway level of service data, and Deficiency Plan Status Reports.** All other CMP elements are collected biennially as part of the full scope.

Regarding the data used in the EIR for the Specific Plan – the majority of data was collected in late 2012 and some within the first half of 2013. The Draft EIR was circulated in early 2014. At that time, the most recent full scope of data collection would have been in 2012. However, it is highly unlikely that the analysis and report was available for review and consideration. The most recent “formalized” data analysis CMP Monitoring and Conformance Report would have been utilizing full scope data from 2010, with a more limited “off-year” scope of CMP analysis for 2011.

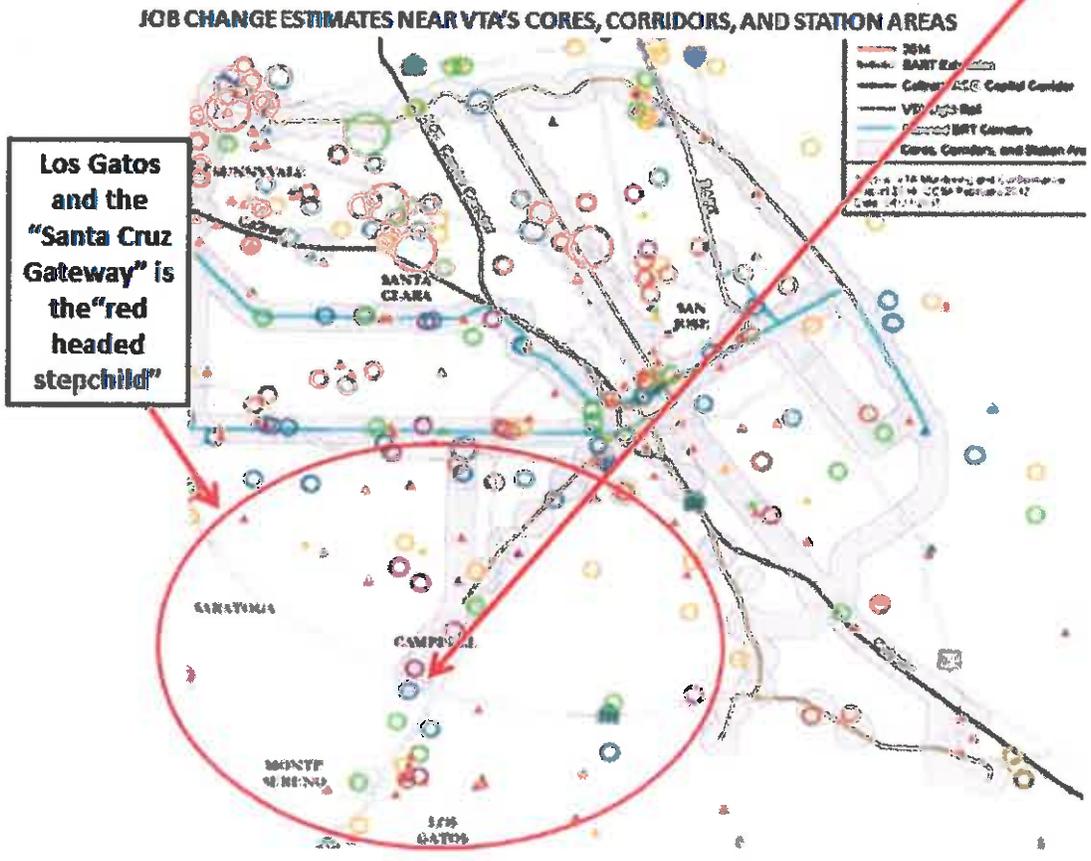
As stated previously, in the ***Master Response on Transportation***, included in the Final Specific Plan EIR dated July 18, 2014:

***“Analysis and Mitigation. The transportation impact analysis was conducted to specifically address traffic generation from the proposed project and the effects of that traffic on nearby streets and highways. The transportation analysis was conducted following guidelines of the Town of Los Gatos and the Santa Clara Valley Transportation Authority to ensure that it addresses the project’s impacts to the roadway system and meets CEQA standards. The Draft EIR evaluates full project build-out conditions, when all Specific Plan-related traffic is added to local streets. Therefore, the transportation analysis and the evaluation in the Draft EIR encompass impacts of interim phases. Supplemental analyses may be completed for development applications.”***

At the time of certification of the Specific Plan EIR by the Town Council (January 2015), the full scope 2014 Monitoring Program was not available – therefore, the most recent full scope CMP analysis was for 2012 with a limited scope 2013 data update.

The most recent CMP Monitoring and Conformance Report (2014), features the full scope of data collection and analysis of each CMP element. The following data is extracted from that Report.

There is highly significant new information in the 2014 CMP Monitoring Report that will/has created a welcome influx of economic vitality to the region, but it is coupled with the related population and housing needs; thereby, increasing the interregional traffic flows in/out of the higher-urbanized areas. The resulting traffic flow exacerbates the already critical LOS measures in the Southern portion of the County. However, Los Gatos (for residential growth) and the sole "Santa Cruz Gateway" are completely ignored from consideration in the 2014 CMP as shown in the following map of Bart, VTA Light Rail, CalTrain, Planned BART Corridors. In fact, the defined "Cores, Corridors, Stations" (shown by the shaded area surrounding the major freeways, highways, Arterials, etc.,) completely stops at Campbell.



Of utmost importance is the 2013/2014 "Jobs Approved" compared to "Approved Housing". The following data is derived from the 2014 CMP Monitoring Report. The CMP Reports look at these numbers "side by side" by year. However, I believe, a more realistic analysis is to acknowledge that there is at least a two-year time lag between the time that "Jobs Are Approved" and the "Filling of those Jobs" with people requiring/looking for Housing.

Member Agency	Jobs Approved				Total Jobs	Housing Approved		Total Housing
	2011	2012	2013	2014		2013	2014	
Campbell	-179	-140	0	9	-310	12	21	33
Cupertino	-3	432	277	700	1,406	-30	15	-25
Filroy	56	0	39	639	734	278	350	628
Los Altos	-40	50	211	0	221	20	0	20
Los Altos Hills	0	0	0	0	0	7	0	7
Los Gatos	264	70	555	23	912	20	23	43
Milpitas	706	-1,176	-399	0	-869	793	466	1,259
Monte Sereno	0	0	0	0	0	0	0	0
Morgan Hill	10	0	57	0	67	564	103	647
Mountain View	598	798	1,151	2,304	4,851	537	399	936
Palo Alto	4,584	585	924	-993	5,100	2	311	313
San Jose	853	1,247	4,211	7,913	14,224	729	3,182	3,911
Santa Clara	460	2,583	3,407	13,700	20,150	140	1,363	1,503
Santa Clara County	693	80	1,071	318	2,162	369	0	369
Saratoga	0	0	0	0	0	0	0	0
Sunnyvale	635	2,524	1,179	4,031	8,369	583	1,144	727
<b>Total</b>	<b>8,636</b>	<b>7,053</b>	<b>12,683</b>	<b>31,047</b>	<b>59,419</b>	<b>4,012</b>	<b>7,325</b>	<b>11,337</b>

**Assume 2 Year Lag Between Job Approvals and Housing Approvals**

Shortfall of 2011/12 Housing to 2009/10 Jobs: 11,947

Shortfall of 2013/14 Housing to 2011/12 Jobs: 4,532

2013/14 Jobs 43,730

**50,209**

Not only does the magnitude of the increased yearly generation of jobs far surpass what could have been anticipated in the 2012 projections of future traffic flows, the significant shortfalls of housing approved in the Member Agencies with the largest influx of such jobs forces people to "go South, young dude/dudette" for a place to live. Obviously, current commuting traffic is higher than anticipated. **IN ADDITION, ALL OF THESE PEOPLE UTILIZE THE "SANTA CRUZ GATEWAY" ON SUMMER WEEKENDS, REGULAR AND SCHOOL HOLIDAYS, SPECIAL EVENTS (e.g., WHARF TO WHARF), ETC.**

The three intersections in Los Gatos that are considered in the CMP Analyses are: Hwy9/Santa Cruz, Hwy9/University, and Lark/Los Gatos Blvd. As to the commuting traffic, the increased daily flow from Hwy9, and cut-through traffic from 85/Winchester/Santa Cruz Ramp, 85/Winchester/Lark/University/Santa Cruz Ramp, 85/17/Lark/University/Santa Cruz Ramp, 85/17/Lark/LGB(SB)/Santa Cruz Ramp, 85/17/Lark/LGB(NB)/85, and 85/17/Lark/LGB(NB)/Samaritan/Union/85 – all have a monumental impact on the critical circulation and capacity of Lark, the Lark/LGB intersection, LGB from 85 to Hwy9 – literally the entire area surrounding the North 40. These routes, as well as essentially all neighborhood streets in Los Gatos are "swamped" constantly for 4-6 hours on weekends. **No traffic analysis/counts/LOS assessments for weekends are performed in connection with the CMP Monitoring Program!**

## EXCERPTS FROM CEQA

### **Thresholds for Additional Environmental Review**

Pursuant to CEQA there are three types of additional analysis that can be required after an EIR is certified: a Subsequent EIR, a Supplement to an EIR, and an Addendum to a previous EIR.

- **A Subsequent EIR can be prepared for *projects* that change substantially due to new information, a changed project description, or *changed circumstances within which the project would take place*. Generally, new information requiring a Subsequent EIR would pertain to *significant effects that were not previously analyzed*. In order to require a Subsequent EIR, the Town must determine, pursuant to CEQA Guidelines Section 15162, based on substantial evidence in the light of the whole record, one or more of the following:**
  - *Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;*
  - *Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or*
  - *New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified, shows any of the following:*
    - *The project will have one or more significant effects not discussed in the previous EIR;*
    - *Significant effects previously examined will be substantially more severe than shown in the previous EIR;*
    - *Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or*
    - *Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.*
- **A Supplement to an EIR may be prepared for projects in which only minor changes would be necessary to make the previous EIR adequate for the project as revised. A Supplement to an EIR may be circulated by itself without recirculating the previous Draft or Final EIR, but the Supplement must receive the same circulation and review as the previous EIR (CEQA Guidelines Section 15163).**

There is no time limit that I could find anywhere regarding not having the ability to demand a subsequent, or supplemental, EIR. In fact, as stated previously, in the **Master Response on Transportation**, included in the **Final Specific Plan EIR dated July 18, 2014**:

***“Analysis and Mitigation.* The transportation impact analysis was conducted to specifically address traffic generation from the proposed project and the effects of that traffic on nearby streets and highways. The transportation analysis was conducted following guidelines of the Town of Los Gatos and the Santa Clara Valley Transportation Authority to ensure that it addresses the project’s impacts to the roadway system and meets CEQA standards. The Draft EIR evaluates full project build-out conditions, when all Specific Plan-related traffic is added to local streets. Therefore, the transportation analysis and the evaluation in the Draft EIR encompass impacts of interim phases. Supplemental analyses may be completed for development applications.”**

In addition, as it relates to identifying objective, quantifiable adverse effects – it is important to note the following:

*“A “significant adverse impact” is defined as a “significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, polices, or conditions as they existed on the date the application was complete.””*

The application was deemed complete as of March '16. As the Town does not have its own defined “thresholds of significance” for EIR purposes (not many agencies do), our Planning Department uses the “*written public health or safety standards, polices, or conditions*” set forth in Appendix G of the CEQA law – i.e., the standard checklist/chart of the EIR. Ergo, if we are aware of *significant, quantifiable, direct and unavoidable impacts*, e.g., air quality near freeways and re-routing of Regional traffic, occurring between the date of EIR certification and March '16, they can/should be used to support the need for a subsequent or supplemental EIR.

An important distinguishing factor that I believe can cause confusion – note that I have highlighted the term “**project**”. For purposes of the EIR, the “project” is the entire 40 acres encompassed by the Specific Plan. For purposes of Phase 1, it is not a “project” under CEQA – rather, an “application for a portion of the “project”” – or just an “A&S”.

- My interpretation is that *“Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects”* means the issues affecting the “project” as a whole – like things at/near the perimeter/borders – which can encompass both air quality and traffic which will impact the residents/users of the project. The “A&S” does not, in itself, create a substantial increase in the severity of these factors. **However, there has been a substantial increase in the severity of traffic surrounding the Project which may create adverse effects on the Project, and, consequently, on the successful viability of the A&S.**
- I have highlighted the CEQA text (above) in purple that I think may pertain to BOTH – and in green for text that may only pertain to air quality (if it was not considered “significant” in the original EIR and/or if the new research studies include risk variables that were not considered at all).
  - As to Air Quality – It obviously had to have been considered in the original EIR but there is new information (there may also be new variables) that I trust will either cross the threshold into “being a significant factor” or “increasing the severity” of a previously-identified significant factor. I don’t believe the dates necessarily matter as the risks existed at Mar ‘14/Jan ‘15, but the fact that traffic on all borders of the North 40 has substantially increased – the traffic analysis from Mar ‘14/Jan ‘15 through Mar ‘16 will add support to the case of obviously increasing the severity of such risks delineated in the new research studies. In addition, regarding the severity of the health issues in the EIR – might the research (provided by others in public testimony) contain enough substantial evidence to qualify for a full “supplement”?
  - As to Traffic – The EIR for the Specific Plan included a full Traffic Impact Analysis (TIA). The TIA studied the impact of the **full build out** of the North 40 Specific Plan on the existing roadways. The analysis concluded that the full build out would result in significant traffic impacts at several intersections, and identified mitigation measures to reduce those impacts to a less than significant level. The TIA included in the Initial Study (Mar ‘16) for the Phase 1 A&S (which studied the potential traffic impacts specific to the Phase 1 A&S, found, according to the Staff Report: the Phase 1 A&S **would generate a portion of the North 40 Specific Plan build out traffic** – so nothing else had to be done. That assertion is correct, in a sense, because as a Housing Element site, the A&S is considered to be “by right” and no additional environmental assessment or discretionary permits, such as CUP/PUDs can be required.

However, my concerns do not necessarily address the traffic **generated by the “A&S”** – we may assume it stays static, i.e., consistent with the original EIR counts and Initial Study (an increase of **3,819** average daily trips (ADT) and **155** (i.e. **2.5 cars/min**) new AM peak and **360** (i.e. **6 cars/min**) new PM peak hour trips). My focus is to objectively analyze/quantify the increase in the base used in the original EIR to

**provide substantial evidence regarding the increase in severity of existing traffic at the date of A&S completion (late March 2016) – thereby decreasing transportation capacity to absorb the overall impact of the additional traffic (static from EIR) from the A&S. Actually, as these significant changes affect the “Project”/Specific Plan as a whole, current data should be utilized – we are not bound by the A&S date of completion.**

**SO, I truly believe, that the result will demonstrate that the existing traffic (primarily due to re-routing of Regional traffic) has already caused our streets to be overcapacity – which violates the #1 GP Transportation policy: *TRA-1.1 Development shall not exceed transportation capacity*. Therefore – ALL development (including the A&S) shall stop until mitigating factors can be defined and implemented to reduce traffic to the level below capacity necessary to incorporate the incremental traffic from each new development.**

**At a minimum, this analysis is required, based on the sheer magnitude of job growth presented in the 2014 CMP Report, and the common knowledge that there have been significant announcements of continuing increased volume of large commercial (and office - which has the highest job-generation quotient) since 2014. The 2016 CMP Monitoring Report is not yet available – but I trust it will confirm the additional job growth, ergo population growth, ergo traffic – which will all be car-centric until VTA commits additional resources to the “red-headed step child” of Los Gatos and the Santa Cruz Gateway.**

**RECOMMENDS THAT COUNCIL MAKE THE FOLLOWING FINDINGS:**

- That **the level of traffic currently traversing the Town's arterial, collector and neighborhood roads are over capacity due to now-routine Re-Routing of Regional Traffic Due to Inability of State-Controlled Highways (9, 17, 85) to Handle such Regional traffic and/or provide alternative methods of transport.**
  - **Objective and quantifiable evidence**, incorporated by reference, is **real-time reports**, including videos, photos and screenshots, extracted from NextDoor; and the **letter from the Town's PPW Director to Google/Waze.**
  - **Supplemental EIR for Current traffic surrounding the "project as whole" to assure viability of the A&S.**

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**RECOMMENDS THAT COUNCIL MAKE THE FOLLOWING FINDINGS:**

- That, as required by CALIFORNIA HOUSING ACCOUNTABILITY ACT 65589.5. Paragraph (e), the Town of Los Gatos has complied with **the congestion management program required by Chapter 2.6** (commencing with Section 65088) of Division 1 of Title 7.
  - **Objective evidence**, incorporated by reference, is all materials, including transcripts, of public testimony and deliberations of the following Town Council Hearings regarding Management of Re-Routed Regional Cut-Through Traffic. **DATES to be provided by Staff.**
  - **Quantifiable data** provided by the commitment and cost of Town resources and spending over \$XXXX,XXXX from May 2015 through the 2016-2017 budget cycle. **Amounts to be provided by Staff.**

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**RECOMMENDS THAT COUNCIL MAKE THE FOLLOWING  
RESOLUTIONS:**

- Therefore, **as allowed by Chapter 2.6** (commencing with Section 65088) of Division 1 of Title 7, Paragraph (h), the **Town of Los Gatos shall avail itself to the provisions allowing the Town to find that an individual infill project (namely, Phase One of the North 40) would be adversely impacted by the surrounding environment (\*) and transportation patterns, and is, therefore DENIED!**
- Therefore, **in compliance with the Town of Los Gatos 2020 General Plan, Policy TRA-1.1 "Development shall not exceed transportation capacity."**, the **Town of Los Gatos initiates a hiatus on all development initiatives until a date to be determined.**

(\*) Environmental issues addressed in separate communications.

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**RECOMMENDS THAT COUNCIL MAKE THE FOLLOWING  
RESOLUTIONS:**

- That the **Town of Los Gatos is calling upon the Santa Clara County/VTA to develop and implement comprehensive strategies needed to develop appropriate responses to the critical transportation needs of regional traffic traversing the chokepoints of 85/17/9/SC Ramp onto 17 to mitigate the increased severity of rerouted regional traffic that permeates the Town.**
- That **the Town of Los Gatos is ready, willing and able to WELCOME its "fair share" of its regional housing needs pursuant to the Housing Element Law – once the improvements stated in the preceding Resolution are accomplished BY THE State/County/CalTrans/VTA (with Town coordination and cooperation).**
- That, once determined that such in-fill project **(namely, the North 40 Phase One)** will not be adversely impacted by the surrounding environment and transportation patterns, it shall be reconsidered in due process.

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**LETTER: FROM LOS GATOS – TO GOOGLE/WAZE  
DIRECTOR OF PARKS & PUBLIC WORKS  
MR. MATT MORLEY**

=====

For a number of years now, the Town of Los Gatos has been engaged in efforts to mitigate the impacts from mapping applications that direct traffic from Freeways, Highways, onto local streets. What began as an inconvenience has now grown to a point where the traffic directly impacts commerce at local businesses, and most recently, has morphed from the use of arterial streets to local residential streets. These residential streets were never designed, nor intended for gridlocked through traffic, but rather to facilitate the coming and going of the neighborhood. The impact is real, with residents blocked in their driveways by gridlocked traffic in front of their homes, unable to come and go. This results in a growing fear that public safety may be compromised, including extended response times for police and fire services. The consequences of which we do not wish to test.

The Town leadership, including the Mayor and Town Manager, continue the commitment to mitigate these traffic impacts and in demonstration of this, the Town invests hundreds of thousands of dollars every year to manage this issue. The Town has struggled in identifying solutions that work as every action taken on local streets creates a reaction that moves and spreads the impacts to other residential streets.

At this point, we would like the opportunity to engage with you specifically on how we may collaborate on solutions that balances the needs of the Town with those of your business model. We make ourselves available to meet constructively at any time and hope for an outcome that can provide positive media coverage for all.

Thank you in advance for your willingness to engage.

**Matt Morley • Director**  
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August 1, 2017

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Re: Eden Housing Inc., et al v. Town of Los Gatos (Santa Clara County Superior Court Case No. 16-CV-300733)  
Town Council Agenda: August 1, 2017

Dear Mr. Paulson:

This letter is written on behalf of the Project Applicants SummerHill Homes, LLC, Grosvenor USA Limited, and Eden Housing, Inc. Submittal of this letter is not a waiver of our stated position that the Project must be evaluated based upon the existing record at the time of the last Town Council action on this Project on September 6, 2016.

We have reviewed Attachment 18 on the Town's website, entitled "Proposed Modifications to Conditions of Approval from the Mayor." We wish herein to respond to the modifications proposed by the Mayor, on a voluntary basis, without any waiver of our position that the Town Council may not impose new development constraints or financial burden on the Project in the form of modified conditions of approval. The Santa Clara County Superior Court's Writ of Mandate in this case directs the Town Council to reconsider the Project as it was submitted when the Town Council unlawfully denied it on September 6, 2016. The sole exception to this requirement is the specific modifications agreed to by the Applicants in their letter dated August 25, 2016, as reconfirmed and modified by the Applicants' July 21, 2017 letter and comments before the Town Council on July 24, 2017.

Joel Paulson  
August 1, 2017

We also have reviewed additional proposed conditions proposed by various members of the public and posted on the Town's website. To be clear, we do not agree to any of those conditions.

However, having reviewed the Mayor's proposed modifications to the original conditions of approval, we are willing voluntarily to accept a number of them. Some we cannot accept because they are either unworkable, or potentially make the project infeasible. And some need minor clarification. Specifically:

- 1) Condition 2. The last sentence proposed reads: "Additionally, the applicant may work with staff to explore architectural and/or use modifications to include commercial activity for Buildings 24, 25, 26 and 27." Because this is a purely voluntary action with no binding power, we would agree to: "Additionally, the Applicant may work with staff to explore architectural and/or use modifications to include commercial activity for Buildings 24, 25, 26 and 27, at the Applicant's sole discretion."
- 2) Condition 4. OK.
- 3) Condition 7. Not acceptable. We had agreed with the prior wording of this condition, which had required essentially that the affordable housing be finished before the issuance of the 200<sup>th</sup> final certificate of occupancy for the market rate housing. That condition was extensively negotiated with Staff and furnished appropriate protection to the Town that the affordable housing will get built, while allowing the Project to proceed in an economically feasible manner. However, changing the requirement from the 200<sup>th</sup> certificate of occupancy to the very first one would make the entire project financially infeasible and impossible to build. Construction financing and phasing is very complex in a project such as this one, and the prior agreed-to staging was acceptable, but it will simply not be possible to finance or build the project, including the affordable housing, if it is changed as proposed. We would regard imposition of the proposed change as a denial of the Project.
- 4) Condition 10. A few units are shown on the plans with optional bedrooms. Thus we can accept the condition with the words "(standard and optional bedrooms)" added after "Development Plans."
- 5) Condition 13. This is acceptable, if the language is added to the end of the sentence, "and subject to reasonable protocols established by the Applicant to ensure safety and orderliness of access."
- 6) Condition 24. OK.
- 7) Condition 58. OK.
- 8) Condition 87. We suggest a minor rewording to make this condition completely clear in not requiring a Class II bike lane on the Project frontage (where there will be a multi-modal path). So the language should read: "LARK AVENUE BIKE LANES: A 10-foot multi-use trail will be installed on the project's Lark Avenue frontage. The Applicant shall install from

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this multi-use trail a Class II bike lane extending west to the connection point with the Los Gatos Creek Trail. Applicant will install a Class II bike lane on the east side of Lark Avenue from the intersection of Los Gatos Boulevard to the Los Gatos Creek Trail. The Lark Avenue roadway along this section shall be slurry sealed prior to final striping. The improvements must be completed and accepted by the Town before a Certificate of Occupancy for any new building can be issued.”

- 9) Condition 103. OK.
- 10) Condition 104. The currently proposed sound wall is consistent with the requirements of the Specific Plan. We are willing to work with the Town on esthetics but are worried about potential project delays in the review process. Accordingly, please revise the final sentence to read: “The sound wall design shall be reviewed by the Arts and Culture Commission to ensure that it has an appropriate aesthetic appearance on both sides. Such review shall be on an advisory basis (not appealable to the Town Council), and the Applicant shall reasonably consider any recommendations from the Commission.”
- 11) Condition 107. OK.
- 12) Condition 108. OK.
- 13) Condition 115. OK.
- 14) Condition 139. OK.
- 15) Condition 148. For clarity, we would like to add to the words “the entire Specific Plan Area” the words “based on the current Specific Plan,” since the requirements of the Specific Plan may change in the future.
- 16) Condition 149. OK.
- 17) Condition 153. OK.
- 18) Condition 158. OK.
- 19) Condition 161. OK.
- 20) VTM Condition 2. Our agreement to include the modifications of Attachment 13, as well as any possible future commitment regarding buildings 24, 25, 26, or 27, are contingent upon such modifications being performed ministerially at the staff level, without further discretionary review by the Town Council (see Applicant letter of July 21, 2017). Thus we would agree with the proposed language if it were modified to read as follows: “The plan modifications illustrated in Attachment 13 (Exhibits B-G) and any modifications for Buildings 24, 25, 26 or 27 shall be incorporated into the Vesting Tentative Map prior to

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recording of the final map by ministerial action by Town Staff, requiring no further discretionary review by any Commission or the Town Council.

21) VTM Condition 7. We think monthly reporting is excessive, but would agree to: "A quarterly tree preservation report during construction of the Project shall be submitted to the Town. A final tree preservation report shall be provided to the Town illustrating compliance."

22) VTM Condition 22(f). OK.

Finally, we are concerned that additional conditions may be proposed after the public hearing has been closed. As we previously stated in our letter to the Town Council dated August 9, 2016, adding new conditions to the Project after the public hearing is closed would violate the Applicants' right to due process. See *Clark v. City of Hermosa Beach* (1996) 48 Cal. App. 4th 1152, 1173.)

Very truly yours,

BERLINER COHEN, LLP



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ALF  
Cc: Marico Sayoc, Mayor  
Members of the Town Council  
Town Clerk  
Town Attorney  
Clients

**From:** David Weissman [<mailto:gryllus@gmail.com>]  
**Sent:** Tuesday, August 01, 2017 10:45 AM  
**To:** Council  
**Subject:** Fwd: North 40

Given the staff report for tomorrow's North 40 meeting, I am not optimistic about what will happen tomorrow night. So I have some suggestions for trying to improve things. Basically, they all have to do with new "Conditions of Approval" items that will hold the developers to minimum safety standards.

1. Please see the Conditions of Approval list submitted 7/27/2017, by Bob and Susan Buxton - it is page 241 in Attachment 16 of the staff report for this TC meeting. I support these items.

2. A Subsequent EIR, as opposed to a Supplemental EIR, should be required since Council needs an adequate air quality study, especially for levels of PM2.5, to make informed decisions. PM2.5, also called "fine particulates," consists of particles with diameters that are less than or equal to 2.5 microns in size. PM2.5 is a more serious health concern than PM10, since smaller particles can travel more deeply into our lungs and cause more harmful effects. Actual on-site monitoring, especially on a summer weekend beach day, should be part of this study (the present numbers used in the consultant's modeling are from a source over 7 miles away in a residential area of Cupertino). Alternatively, actual values, more representative of the North 40 site, could be used from the CA Air Resources Board San Jose - Knox monitoring station, near the intersection of Highways 101 and 280. Prospective home buyers have the right to know about this potentially dangerous situation of living near a freeway. Then they can make a more objective decision.

The consultant's DEIR report, Appendix D, (<http://www.losgatosca.gov/DocumentCenter/View/8894>, page 31) says: "The site layout ***shall*** locate sensitive receptors [the report's euphemism for (quote) "children under 14, the elderly over 65, and people with cardiovascular and chronic respiratory diseases"] as far as possible from Highway 17 traffic lanes...". All recommendations of Illingworth & Rodkin, in Appendix D, should be required.

3. Where ***measured*** PM2.5, on-site levels exceed national 24-hour PM2.5 standards, then all housing shall be located greater than 500 feet from SR 17.

4. Pequire the use of only the highest quality air filters, rated MERV 16, and their replacement 2-4 times a year. Air circulation systems should run 24/7/365 to insure maximum filtration. In any case, the costs of such filters should be paid for by the builder or lessee, and not the owner or renter, to ensure that they are replaced on schedule. And what about making the extra electricity costs of running such HVAC systems 24/7, be covered by the builder?

5. All windows in residential structures facing Highway 17 shall be non-opening.

6. To try and save the Town from legal liability, all potential home buyers shall be notified that under California Proposition 65, they will be exposed to at least 5 State certified, cancer causing sources (diesel and automotive engine exhausts, benzene, formaldehyde, and carbon black).

And, lastly, I would like to correct what the applicant's attorney, Andrew Faber, said so glibly and inaccurately (page 243, Attachment 16 in staff's report) in his 7/27/2017 letter to Mr. Paulson and Council: Dr. Marland's letter of 7/24/2017 states that the CA Air Resources Board took the stand that no new housing should be closer than 500 feet to a freeway. There is a big difference between taking a stand, based on the science, and imposing a requirement, since the latter has major political consequences. And certainly the information contained in the 6/29/2017 article of the New England Journal of Medicine, is "new" information, because if it wasn't new information, then the authors wouldn't be able to get it published in such a prestigious journal. And as I discuss above under #2, the consultant's analysis of PM2.5 risks is suspect at best, and useless at worse. Garbage in results in garbage out. Do you really want to ignore the latest science when people's lives and health are at stake?

Dave

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