

# GOVERNMENT CODE

## SECTION 65915-65918

65915. (a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant with incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and incentives or concessions, as described in subdivision (d), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development, as defined in Section 4100 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), an applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).

(3) For the purposes of this section, "total units" or "total dwelling units" does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for the award of the density bonus for 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of all for-sale units that qualified the applicant for the award of the density bonus are persons and families of very low, low, or moderate income, as required, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(B) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

(3) (A) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

(i) The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in subdivision (b).

(ii) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(B) For the purposes of this paragraph, "replace" shall mean either of the following:

(i) If any dwelling units described in subparagraph (A) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size or type, or both, to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. For unoccupied dwelling units described in subparagraph (A) in a development with occupied units, the proposed housing development

shall provide units of equivalent size or type, or both, to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category in the same proportion of affordability as the occupied units. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) If all dwelling units described in subparagraph (A) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size or type, or both, as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, then one-half of the required units shall be made available at affordable rent or affordable housing cost to, and occupied by, very low income persons and families and one-half of the required units shall be made available for rent at affordable housing costs to, and occupied by, low-income persons and families. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(C) Paragraph (3) of subdivision (c) does not apply to an applicant seeking a density bonus for a proposed housing development if his or her application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

(2) The applicant shall receive the following number of incentives

or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section.

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the

California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7

13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28

24	29
25	30
26	31
27	32
28	33
29	34
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h) (1) When an applicant proposes to construct a housing

development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(i) "Housing development," as used in this section, means a development project for five or more residential units. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j) (1) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(2) Except as provided in subdivisions (d) and (e), the granting of a density bonus shall not be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to

development standards.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise

be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

(1) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code).

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the general plan, or if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

(p) (1) Except as provided in paragraphs (2) and (3), upon the request of the developer, a city, county, or city and county shall

not require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivisions (b) and (c), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) Notwithstanding paragraph (1), if a development includes the maximum percentage of low- or very low income units provided for in paragraphs (1) and (2) of subdivision (f) and is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 spaces per bedroom. For purposes of this subdivision, a development shall have unobstructed access to a major transit stop if a resident is able to access the major transit stop without encountering natural or constructed impediments.

(3) Notwithstanding paragraph (1), if a development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds the following ratios:

(A) If the development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, the ratio shall not exceed 0.5 spaces per unit.

(B) If the development is a for-rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code, the ratio shall not exceed 0.5 spaces per unit. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(C) If the development is a special needs housing development, as defined in Section 51312 of the Health and Safety Code, the ratio shall not exceed 0.3 spaces per unit. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(4) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide on-site parking through tandem parking or uncovered parking, but not through on-street parking.

(5) This subdivision shall apply to a development that meets the requirements of subdivisions (b) and (c), but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

(6) This subdivision does not preclude a city, county, or city and county from reducing or eliminating a parking requirement for development projects of any type in any location.

(7) Notwithstanding paragraphs (2) and (3), if a city, county,

city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low- and very low income individuals, including seniors and special needs individuals. The city, county, or city and county shall pay the costs of any new study. The city, county, or city and county shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

65915.5. (a) When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium project to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code, or 15 percent of the total units of the proposed condominium project to lower income households as defined in Section 50079.5 of the Health and Safety Code, and agrees to pay for the reasonably necessary administrative costs incurred by a city, county, or city and county pursuant to this section, the city, county, or city and county shall either (1) grant a density bonus or (2) provide other incentives of equivalent financial value. A city, county, or city and county may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.

(b) For purposes of this section, "density bonus" means an increase in units of 25 percent over the number of apartments, to be provided within the existing structure or structures proposed for conversion.

(c) For purposes of this section, "other incentives of equivalent financial value" shall not be construed to require a city, county, or city and county to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements which the city, county, or city and county might otherwise apply as conditions of conversion approval.

(d) An applicant for approval to convert apartments to a condominium project may submit to a city, county, or city and county a preliminary proposal pursuant to this section prior to the submittal of any formal requests for subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the applicant in writing of the manner in which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section.

(e) Nothing in this section shall be construed to require a city, county, or city and county to approve a proposal to convert

apartments to condominiums.

(f) An applicant shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were provided under Section 65915.

(g) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the condominium project is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed condominium project replaces those units, as defined in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65915, and either of the following applies:

(1) The proposed condominium project, inclusive of the units replaced pursuant to subparagraph (B) of paragraph (3) of subdivision (c) of Section 65915, contains affordable units at the percentages set forth in subdivision (a).

(2) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(h) Subdivision (g) does not apply to an applicant seeking a density bonus for a proposed housing development if their application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

65916. Where there is a direct financial contribution to a housing development pursuant to Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the city, county, or city and county shall assure continued availability for low- and moderate-income units for 30 years. When appropriate, the agreement provided for in Section 65915 shall specify the mechanisms and procedures necessary to carry out this section.

65917. In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city, county, or city and county pursuant to this chapter shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments. In the absence of an agreement by a developer in accordance with Section 65915, a locality shall not offer a density bonus or any other incentive that would undermine the intent of this chapter.

65917.5. (a) As used in this section, the following terms shall have the following meanings:

(1) "Child care facility" means a facility installed, operated,

and maintained under this section for the nonresidential care of children as defined under applicable state licensing requirements for the facility.

(2) "Density bonus" means a floor area ratio bonus over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city, including a charter city, city and county, or county of:

(A) A maximum of five square feet of floor area for each one square foot of floor area contained in the child care facility for existing structures.

(B) A maximum of 10 square feet of floor area for each one square foot of floor area contained in the child care facility for new structures.

For purposes of calculating the density bonus under this section, both indoor and outdoor square footage requirements for the child care facility as set forth in applicable state child care licensing requirements shall be included in the floor area of the child care facility.

(3) "Developer" means the owner or other person, including a lessee, having the right under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors to make an application for development approvals for the development or redevelopment of a commercial or industrial project.

(4) "Floor area" means as to a commercial or industrial project, the floor area as calculated under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors and as to a child care facility, the total area contained within the exterior walls of the facility and all outdoor areas devoted to the use of the facility in accordance with applicable state child care licensing requirements.

(b) A city council, including a charter city council, city and county board of supervisors, or county board of supervisors may establish a procedure by ordinance to grant a developer of a commercial or industrial project, containing at least 50,000 square feet of floor area, a density bonus when that developer has set aside at least 2,000 square feet of floor area and 3,000 outdoor square feet to be used for a child care facility. The granting of a bonus shall not preclude a city council, including a charter city council, city and county board of supervisors, or county board of supervisors from imposing necessary conditions on the project or on the additional square footage. Projects constructed under this section shall conform to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other health, safety, and zoning requirements generally applicable to construction in the zone in which the property is located. A consortium with more than one developer may be permitted to achieve the threshold amount for the available density bonus with each developer's density bonus equal to the percentage participation of the developer. This facility may be located on the project site or may be located offsite as agreed upon by the developer and local agency. If the child care facility is not located on the site of the project, the local agency shall determine whether the location of the child care facility is appropriate and whether it conforms with the intent of this section. The child care facility shall be of a size to comply with all state licensing requirements in order to accommodate at least 40 children.

(c) The developer may operate the child care facility itself or may contract with a licensed child care provider to operate the facility. In all cases, the developer shall show ongoing coordination with a local child care resource and referral network or local governmental child care coordinator in order to qualify for the density bonus.

(d) If the developer uses space allocated for child care facility purposes, in accordance with subdivision (b), for purposes other than for a child care facility, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. If the developer fails to have the space allocated for the child care facility within three years, from the date upon which the first temporary certificate of occupancy is granted, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors in accordance with procedures to be developed by the legislative body of the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. A penalty levied against a consortium of developers shall be charged to each developer in an amount equal to the developer's percentage square feet participation. Funds collected pursuant to this subdivision shall be deposited by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors into a special account to be used for child care services or child care facilities.

(e) Once the child care facility has been established, prior to the closure, change in use, or reduction in the physical size of, the facility, the city, city council, including a charter city council, city and county board of supervisors, or county board of supervisors shall be required to make a finding that the need for child care is no longer present, or is not present to the same degree as it was at the time the facility was established.

(f) The requirements of Chapter 5 (commencing with Section 66000) and of the amendments made to Sections 53077, 54997, and 54998 by Chapter 1002 of the Statutes of 1987 shall not apply to actions taken in accordance with this section.

(g) This section shall not apply to a voter-approved ordinance adopted by referendum or initiative.

65918. The provisions of this chapter shall apply to charter cities.

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**ORDINANCE 2209**

**ORDINANCE OF THE TOWN OF LOS GATOS  
ADDING A NEW DIVISION 8 TO CHAPTER 29, ARTICLE I OF THE LOS GATOS  
TOWN CODE ENTITLED "DENSITY BONUS (STATE MANDATED)"**

**WHEREAS**, pursuant to California Government Code Section 65915, the Town is required to adopt a density bonus ordinance that applies to housing developments that provide a specified percentage of housing dedicated to and affordable to very low income, low income, senior housing, and moderate income housing; and

**WHEREAS**, the Density Bonus Program provides incentives and concessions for affordable housing projects to meet State mandated housing goals; and

**WHEREAS**, the Town of Los Gatos Density Bonus Ordinance will meet the requirements under State law.

THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS FOLLOWS:

SECTION I

Chapter 29, Article I, Division 8, entitled "Density Bonus (State Mandated)" is hereby added to the Los Gatos Town Code, and shall read as follows:

CHAPTER 29

ARTICLE I. In General

**Division 8. State Mandated Density Bonus**

**29.10.405 Intent and Authority.**

The density bonus ordinance in this chapter is intended to comply with the State Density Bonus Law codified in California Government Code Section 65915 et seq., which provides that a local government shall grant a density bonus and an additional concession, or financially equivalent incentive(s), to a qualified housing development agreeing to construct a specific percentage of housing for lower income households, very low income households, or senior housing as defined by state law.

Exhibit 18

**29.10.410 Applicability of Regulations.**

- (a) In addition to providing a density bonus and additional concession or equivalent incentives to a qualified housing development for lower income and very low income households or senior housing, it is the intent to apply the state law density bonus to qualified physically handicapped persons. The term “physically handicapped” shall be defined pursuant to California Health and Safety Code Section 50070 and the Density Bonus Program Guidelines initially adopted by Town Council in 2012 and amended from time to time thereafter.
- (b) Applicant who elects to proceed with a housing development using the state law density bonus shall not be eligible for any density increases under the Town’s General Plan Density Bonus Policy or the General Plan Below Market Price (BMP) Program as set forth in the Town’s Housing Element portion of the General Plan.

**29.10.415 General Requirements.**

Applicants who voluntarily agree to develop a housing development project that complies with the affordability requirements referenced in Government Code 65915 et seq. shall conform to the Density Bonus Program Guidelines adopted by Town Council (initial adopted in 2012) and as may be amended from time to time.

**29.10.420 Grounds for Denial of a Project.**

- (a) Nothing in Division 8 of this Chapter 29 limits the Town’s right to deny an affordable housing project electing to proceed under the state law density bonus provisions, if the Council makes written findings, based on substantial evidence, any of the following:
  - 1. The Town has adopted a Housing Element as part of the General Plan, and the Town has met or exceeded its share of the regional housing needs for the income category proposed for the development project;
  - 2. The project as proposed would have a specific, adverse impact upon the public health or safety which cannot be satisfactorily mitigated without rendering it unaffordable to lower-income households;
  - 3. The denial of the project or imposition of conditions is required in order to comply with State or Federal law and there is no feasible method to comply without rendering the development unaffordable to lower-income households;

4. The development project is proposed on land zoned for agriculture or resource preservation which is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, and which does not have adequate water or wastewater facilities to serve the project.

5. The development project is inconsistent with the Town's General Plan land use designation as it existed on the date the application was deemed complete, and the Town has adopted a housing element pursuant to state law.

(b) Nothing in this chapter limits the Town's right to deny a senior housing project if the Town finds, based on substantial evidence, that the project would have a specific, adverse impact upon the public health or safety; and there is no feasible method to satisfactorily mitigate or avoid the adverse impact identified.

**29.10.425 Housing Agreement**

Applicant requesting a state law density bonus on any rental or for sale project shall agree to enter into a density bonus housing agreement with the Town as required under the Density Bonus Program Guidelines. This housing agreement shall be made a condition of the planning permits for all residential developments pursuant to this Division and shall be recorded as a restriction on any parcels on which the density bonus units will be constructed.

**29.10.430 Requirements to Maintain the Affordable Units.**

- (a) All affordable units shall be occupied by the household type specified in the written housing agreement required under this Division. The applicant's obligation to maintain these units as affordable housing shall be evidenced by the housing agreement which shall be recorded as a deed restriction running with the land.
- (b) The Town may establish fees associated with the setting up and monitoring of affordable units.
- (c) The owner shall submit an annual report to the Town, on a form provided by the Town. The report shall include for each affordable unit the rent, income, and family size of the household occupying the unit.
- (d) The owner shall provide to the Town any additional information required by the Town to insure the long-term affordability of the affordable units by eligible households.

**29.10.435 Administrative Fee.**

An administrative fee shall be charged to the applicant for the review of all materials submitted in accordance with this Division and for future monitoring of the affordability of the project. The fee amount shall be established and will be included in the Town's Master Fee Schedule. Fees will be charged for staff and consultant time associated with the development review process, project marketing and leasing, and compliance with the affordability requirements of the project.

**29.10.440 Appeals.**

Any person aggrieved by the denial, conditioning, suspension, or revocation of a density bonus housing development in compliance with the provisions of this Division may appeal such action or determination to the Council in compliance with Chapter 29, Article II (Administration and Enforcement) of the Town Code.

SECTION II

In the event that any part of this ordinance is held to be invalid, the invalid part or parts shall be severed from the remaining portions which shall remain in full force and effect.

SECTION III

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on June 4, 2012, and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on June 18, 2012. This ordinance takes effect 30 days after it is adopted.

COUNCIL MEMBERS:

AYES: Steven Leonardis, Diane McNutt, Joe Pirzynski, Barbara Spector, and Mayor Steve Rice

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

A handwritten signature in black ink, appearing to read "Steve Rice". The signature is written in a cursive style with a large, prominent initial "S".

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

ATTEST: *M Wakharia*

CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

**Exhibit A**  
**TOWN OF LOS GATOS**  
**DENSITY BONUS PROGRAM GUIDELINES**

I. PURPOSE, AUTHORITY, AND DEFINITION

- A. Purpose: The density bonus regulations in these Guidelines are intended to comply with the State Density Bonus Law codified in California Government Code Section 65915 et seq., which provides that a local government shall grant a density bonus and an additional concession, or financially equivalent incentive(s), to a qualified housing development agreeing to construct a specific percentage of affordable housing and senior housing as defined by state law. In enacting these guidelines, it is the intent of the Town of Los Gatos to implement the goals, objectives, and policies of Town of Los Gatos 2020 General Plan and further to implement and be subject to California Government Code Section 65915. In the event that any provision in these Guidelines conflicts with State law, State law shall control.
- B. Enabling Legislation: The Density Bonus Program is governed by Chapter 29, Article I, Division 8 (Section 29.10.400 et seq.) of the Town Code. The Density Bonus Program is administered under these Program Guidelines.
- C. 1. General Plan Density Bonus Policy Action HOU-1.3: Applicant who elects to proceed with a housing development using the state law density bonus shall not be eligible for any density increases under the Town’s General Plan Density Bonus Policy Action HOU-1.3.
2. General Plan Below Market Price (BMP) Program Policy Action HOU- 1.1: Applicant who elects to proceed with a housing development using the state law density bonus shall not be eligible for any density increases under the Town’s General Plan Below Market Price (BMP) Program Policy Action HOU-1.1.
- D. Definitions: The following terms used in these Guidelines shall be defined as follows:
1. **Affordable Housing/Affordable Housing Unit**. A housing unit which is available for sale to moderate income households or for rent to low and/or very low income households, as those terms are defined in this Section.
  2. **Affordable Rent**. Monthly rent charged to low and very low income households for housing units as calculated in accordance with Section 50053 of the Health and Safety Code.
  3. **Child Care Facility**. A child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school age child care centers as defined in California Government Code Section 65915(h)(4).

4. **Density Bonus.** A density increase for residential units over the otherwise allowed residential density under the applicable zoning and land use designation on the date an application is deemed complete.
5. **Density Bonus Housing Agreement.** A legally binding agreement between a developer and the Town that ensures the continued affordability of the affordable housing units required by these Guidelines and to ensure the units are maintained in accordance with these Guidelines.
6. **Density Bonus Units.** Those additional residential units granted pursuant to the provisions of these Guidelines.
7. **Housing Development.** A development project for five or more residential units. Within these Guidelines, it shall also include a subdivision or common interest development, a project which substantially rehabilitates and converts a commercial building to a residential use and a condominium conversion of an existing apartment building as more fully defined in California Government Code Section 65915(i).
8. **Incentives or Concessions.** Regulatory concessions which include, but are not limited to, the reduction of site development standards or zoning code requirements, approval of mixed-use zoning in conjunction with the housing development, or any other regulatory incentive which would result in identifiable, financially sufficient, and actual cost reductions that are offered in addition to a density bonus.
9. **Initial Subsidy.** The fair market value of the home at the time of initial sale minus the initial sale price to the moderate income household, plus the amount of any down payment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value. (e.g., X (fair market value of the home to be purchased) - Y (the price the moderate income family paid for the home) + Z (amount of any down payment assistance) = Initial Subsidy).
10. **Low Income Household.** A household whose income does not exceed 80 percent of the area median income for Santa Clara County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50079.5 of the California Health and Safety Code.
11. **Moderate Income Household.** A household whose gross income does not exceed 120 percent of the area median income for Santa Clara County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Sections 50079.5 and 50052.5 of the California Health and Safety Code.
12. **Physically Handicapped Housing.** A residential development developed, substantially rehabilitated or renovated, and having at least 35 dwelling units designed specifically for a family in which the head of the household suffers from an orthopedic disability impairing personal mobility or has a physical disability that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment or a single person with such a disability, where the family or person requires special care or facilities in the home
13. **Proportionate Share of Appreciation.** The ratio of the local government's initial subsidy as defined above to the fair market value of the home at the time of initial

sale. (e.g., X (initial subsidy) /Y (fair market value) = Proportionate Share of Appreciation).

14. **Senior Citizen Housing Development.** A residential development developed, substantially rehabilitated or renovated, and having at least 35 dwelling units for senior citizens in compliance with the requirements of Section 51.3 and 51.12 of the California Civil Code, or a mobile home park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.
15. **Very Low Income Household.** A household whose income does not exceed 50 percent of the area median income for Santa Clara County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50105 of the California Health and Safety Code.

## II. DENSITY BONUS HOUSING REQUIREMENTS

- A. Eligibility Criteria for Density Bonus: The Town of Los Gatos shall consider a density bonus and incentives or concessions as described in these Guidelines when a developer of a housing development seeks and agrees to construct a housing development that will contain at least one of the following:
  1. Five percent of the total units of a housing development strictly for very low income households as defined herein;
  2. Ten percent of the total units of a housing development strictly for low income households as defined herein;
  3. A senior citizen housing development, as defined herein;
  4. Physically handicap housing development, as defined herein; or
  5. Ten percent of the total dwelling units in a condominium or planned unit development for persons and families of moderate income households as defined herein, provided that all units in the development are offered to the public for purchase.

## III. IMPLEMENTATION

- A. Project Specific Density Bonus: The Town of Los Gatos will allow a housing development a density bonus and concessions or incentives meeting all the applicable eligibility requirements of these Guidelines according to the following density bonus options. In the event that the minimum requirements for granting density bonus units or number of applicable concessions or incentives as set forth in California Government Code Section 65915 is amended or modified after the adoption of these Guidelines by the Town, then the lowest minimum requirements shall apply.

All density bonus calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a General Plan amendment, zoning change, or other discretionary approval.

- Density bonus for very low income households. If a housing developer elects to construct units for very low income households, the development shall be entitled to the following density bonus calculations:

<b>Table A - Provision of Very Low Income Units</b>		
<b>Percentage of Very Low Income Units Affordable</b>	<b>Density Bonus Available</b>	<b>Number of Incentives or Concessions</b>
5%	20%	1
6%	22.5%	1
7%	25%	1
8%	27.5%	1
9%	30%	1
10%	32.5%	2
11%	35%	2
15%	35%	3

- Density bonus for low income households. If a housing developer elects to construct units for low income households, the housing development shall be entitled to the following density bonus calculation:

<b>Table B - Provision of Low Income Units</b>		
<b>Percentage of Low Income Units Affordable</b>	<b>Density Bonus Available</b>	<b>Number of Incentives or Concessions</b>
10%	20%	1
11%	21.5%	1
12%	23%	1
13%	24.5%	1
14%	26%	1
15%	27.5%	1
16%	29%	1

17%	30.5%	1
18%	32%	1
19%	33.5	1
20%	35%	2
30%	35%	3

3. Senior Citizen Housing Development. If a housing developer elects to construct a senior citizen housing development, the density bonus shall be 20 percent of the total number of allowed housing units without the density bonus.
4. Physically Handicap Housing Development. If a housing developer elects to construct a housing development design for and restricted to physically handicap citizens, the density bonus shall be 20 percent of the total number of allowed housing units without the density bonus.
5. Moderate income units in condominiums and planned developments. If a housing developer elects to construct units for sale to moderate income households, the development shall be entitled to the following density bonus calculation:

<b>Table C - Provision of Moderate Income Units</b>		
<b>Percentage of Moderate Income Units Affordable</b>	<b>Density Bonus Available</b>	<b>Number of Incentives or Concessions</b>
10%	5%	1
11%	6%	1
12%	7%	1
13%	8%	1
14%	9%	1
15%	10%	1
16%	11%	1
17%	12%	1
18%	13%	1
19%	14%	1
20%	15%	2
21%	16%	2
22%	17%	2
23%	18%	2
24%	19%	2
25%	20%	2
26%	21%	2
27%	22%	2
28%	23%	2
29%	24%	2
30%	25%	3
31%	26%	3
32%	27%	3
33%	28%	3
34%	29%	3
35%	30%	3
36%	31%	3
37%	32%	3
38%	33%	3
39%	34%	3
40%	35%	3

6. Density bonus for land donation. When an applicant for a tentative map, parcel map, or other residential development approval donates at least one acre of land or enough land to develop 40 units, then the applicant shall be entitled to a 15 percent increase above the otherwise maximum allowable residential density for the entire housing development as follows:

<b>Table D - Land Donation</b>	
<b>Percentage of Very Low Income Units</b>	<b>Percentage Density Bonus</b>
10%	15%
11%	16%
12%	17%
13%	18%
14%	19%
15%	20%
16%	21%
17%	22%
18%	23%
19%	24%
20%	25%
21%	26%
22%	27%
23%	28%
24%	29%
25%	30%
26%	31%
27%	32%
28%	33%
29%	34%
30%	35%

- a) Nothing in this subsection shall be construed to enlarge or diminish the authority of the Town to require a developer to donate land as a condition of development.
- b) The density bonus for land dedication shall be in addition to any density bonus earned pursuant to these Guidelines and up to a maximum combined increase of 35 percent if an applicant seeks an increase pursuant to both this section and Section III.A1.

- c) An applicant with a land donation shall be eligible for the increased density bonus if all of the following conditions are met:
- (i). The applicant donates and transfers the land to the Town no later than the date of approval of the Town of the final subdivision map, parcel map, or housing development application, whichever occurs first, for the proposed housing development seeking the density bonus.
  - (ii). The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed housing development seeking the density bonus.
  - (iii). The land proposed to be donated to the Town meets the following:
    - 1. The transferred land is at least 1 acre in size or of sufficient size to permit development of at least 40 units, has the appropriate General Plan designation and is appropriately zoned for development at the density described in paragraph (3) of subsection (c) of Section 65583.2; and
    - 2. Is or will be served by adequate public facilities and infrastructures; and
    - 3. Is donated no later than the date of approval of the final subdivision map, parcel map or housing development application, seeking a density bonus and has all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land; and
    - 4. Is transferred to the Town or a housing developer approved by the Town by the date established in Section III.A.6 (c)(i); and
    - 5. Shall be within the Town and within the boundary of the proposed development or within one-quarter mile of the boundary of the proposed development; and
    - 6. Must have a proposed source of funding for the very low income units not later than the approval of the final subdivision map, parcel map or housing development application seeking the density bonus.

- d) The transferred land and the affordable housing units shall be subject to a deed restriction, which shall be recorded on the property at the time of the transfer, ensuring continued affordability of units for at least 30 years or longer term under another regulatory agreement from the date of initial occupancy. A longer period of time may be specified if required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program applicable to the housing development.
7. Condominium conversions. When an Applicant's residential development project is the conversion of an existing apartment complex to a condominium complex and the Applicant agrees to make at least thirty-three percent (33%) of the total units of the proposed condominium residential development project affordable to Low or Moderate Income households for thirty years (30), or fifteen percent (15%) of the total units of the proposed condominium residential development project to Lower Income households for thirty years (30), and agrees to pay for the administrative costs incurred by the Town related to process the application and monitor the future status of the Affordable Housing Units, the Town shall either (i) grant a condominium conversion Density Bonus or (ii) provide other incentives of equivalent financial value to be determined by the Town.

B. Density Bonus for Development of Child Care Facility: A housing development meeting the requirements of Section II.A. and including a child care facility that will be located on the premises of, as part of, or adjacent to, such a housing development shall receive either of the following:

1. An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.
2. An additional incentive or concession that contributes significantly to the economic feasibility of the construction of the child care facility.

When a housing development is providing a child care facility consistent with the Guidelines, then the conditions of approval shall require that:

1. The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the affordable units are required to remain affordable; and
2. Of the children who attend the child care facility, the children of very low income households, lower income households, or persons or families of moderate income shall equal a percentage that is equal to or greater than the percentage of affordable units that are required pursuant to Section II.A.

The Town shall not be required to provide a density bonus or incentive or concession for a child care facility if it makes a written finding, based upon substantial evidence, that the Town has adequate child care facilities.

C. Nothing in these Guidelines limits the Town's right to deny an affordable, senior or physically handicap housing project electing to proceed under the state law density bonus provisions, if the Council finds, based on substantial evidence, any of the following:

1. The Town has adopted a housing element, and the Town has met or exceeded its share of the regional housing needs for the income category proposed for the development project;
2. The project as proposed would have a specific, adverse impact upon the public health or safety which cannot be satisfactorily mitigated without rendering it unaffordable to lower-income households;
3. The denial of the project or imposition of conditions is required in order to comply with State or Federal law and there is no feasible method to comply without rendering the development unaffordable to lower-income households;
4. The development project is proposed on land zoned for agriculture or resource preservation which is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, and which does not have adequate water or wastewater facilities to serve the project.
5. The development project is inconsistent with the Town's General Plan land use designation as it existed on the date the application was deemed complete, and the Town has adopted a housing element pursuant to state law.

D. Incentives or Concessions: Applicants who request a density bonus and voluntarily agree to develop a housing development project that complies with the affordability requirements referenced in Government Code 65915 may submit to the Town a proposal for the specific incentive(s) or concession(s) provided by applicable state law. A proposal shall be submitted concurrently with the application for the development and a density bonus. In accordance with Government Code Section 65915(d)(2), the applicant shall receive the number of incentives or concessions that correspond to the percentage of density bonus as outlined in Section III (A) Tables A through C. The Town shall award the incentive(s) or concession(s) requested by the applicant in compliance with state law requirements unless the Town Council adopts a written finding that the incentive or concession is not required to make the units affordable.

The deciding body may deny a request for an incentive or concession if it makes a written finding, based upon substantial evidence, of either of the following:

1. The incentive or concession is not required to provide for affordable rents or affordable ownership costs; or
2. The incentive or concession would have a specific adverse impact upon public health or safety, or the physical environment, or on any real property that is listed in the California Register of Historic Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low, very low and moderate income households. For the purpose of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified,

written public health or safety standards, policies, or conditions, as they existed on the date that the application was deemed complete.

- E. Reduction or Waivers of Development Standards: The Town shall not apply any development standard that would have the effect of precluding the construction of a proposed housing development meeting the requirements of these Guidelines at the densities or with the incentives permitted by these Guidelines. An applicant may submit with its application to the Town a proposal for the waiver or reduction of development standards. A reduction or waiver of development standards, the application of which would physically preclude the development, shall not reduce nor increase the number of incentives or concessions being requested.

Nothing in this subsection, however, shall be interpreted to require the Town to waive or reduce development standards if the waiver or reduction would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5 of the California Government Code, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which the Town determines there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Furthermore, the applicant shall be required to prove that the waiver or modification is necessary to make the affordable units economically feasible. The deciding body may deny a request for waiver if it makes a written finding, based upon substantial evidence, of either of the following:

1. The modification would have a specific adverse impact upon health, safety, or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid specific adverse impact without rendering the development unaffordable to low, very low, and moderate income households. For the purpose of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete; or
2. The modification would have an adverse impact on any real property that is listed in the California Register of Historic Resources; or
3. The incentive or concession would be contrary to State or Federal law

- F. Parking Standard: Upon request by the applicant, the Town shall not require the proposed housing development eligible for a density bonus pursuant to these Guidelines to provide a parking ratio, including physically handicapped and guest parking, which exceeds the following:

- a. Zero to one bedrooms: one onsite parking space.
- b. Two to three bedrooms: two onsite parking spaces.
- c. Four and more bedrooms: two and one-half onsite parking spaces.

If the total number of parking spaces required for the proposed housing development is other than a whole number, the number shall be rounded up to the next whole number.

For purposes of this subsection, a development may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking.

- G. Design, Distribution, and Timing of Affordable Housing Units: Affordable Housing Units must be constructed concurrently with market-rate units. The Affordable Housing Units shall be integrated into the Housing Development Project; be similar in size; and have comparable infrastructure (including sewer, water, and other utilities), construction quality and exterior design to the market-rate units. The applicant may have the option of reducing the interior amenity level, provided that all of the units conform to the requirements of the Town's Building and Housing Codes and the Community Development Director finds that the reduction in the interior amenity level will provide a quality and healthy living environment. The Town strongly encourages the use of green building principles, such as the use of environmentally preferable interior finishes and flooring, as well as the installation of water and energy efficient hardware, wherever feasible.

The Affordable Housing Units must also comply with the following criteria:

1. Rental Residential Development Projects: When Affordable Housing Units are required in rental Residential Development Projects, the units should be integrated with the project as a whole. All Affordable Housing Units shall reflect the range and numbers of bedrooms provided in the project as a whole, and shall not be distinguished by exterior design, construction, or materials. All Affordable Housing Units shall be reasonably dispersed throughout the project.
2. Owner-occupied Residential Development Projects: When Affordable Housing Units are required in owner-occupied Housing Development Projects, the units should be integrated with the project as a whole. Affordable Housing Units may have different interior finishes and features than market-rate units so long as the interior features are durable, of good quality, and consistent with contemporary standards for new housing. All Affordable Housing Units shall reflect the range and numbers of bedrooms provided in the project as a whole, except that if the market-rate units provide more than four bedrooms, the Affordable Housing Units need not provide more than four bedrooms.

No building permits will be issued for market-rate units until permits for all Affordable Housing Units have been obtained, unless Affordable Housing Units are to be constructed in phases pursuant to a plan approved by the Town.

Market-rate units will not be granted final occupancy until all Affordable Housing Units have been granted final occupancy, unless Affordable Housing Units are to be constructed in phases pursuant to a plan approved by the Town.

#### IV. APPLICATION REQUIREMENTS, REVIEW PROCEDURES, AND FINDINGS

- A. Application Requirements: At the time the applicant of a proposed housing development, seeking a density bonus and concessions or incentives under these Guidelines files a

formal application for approval of the proposed development with the Community Development Department, the following information shall be submitted with the fees and required application(s):

1. Identification of the location, acreage, and the maximum number of base units allowed under the zoning and the land use designated under the General Plan without the Density Bonus.
2. Identification of the total number of units proposed, specifically identifying the Density Bonus units and the Affordable Units which will demonstrate eligibility under these guidelines.
3. Identification of the requested concessions or incentives or a list of any alternative concessions or incentives which would provide, in the developer's opinion, an equivalent financial value to the concession or incentive requested. This requirement does not impair the applicant from substituting a new incentive or concession from what is initially proposed; however, the identified incentives or concessions may not be changed once the environmental review for the proposed housing development has commenced. Any change subsequent to the environmental review process may require additional environmental review.
4. For waivers of development standards, evidence demonstrating that the development standard for which the waivers are requested would have the effect of physically precluding the construction of the residential development project at the density.
5. A pro forma demonstrating that any requested incentives and concessions result in identifiable, financially sufficient and actual cost reductions. The pro forma shall include: (a) the actual cost reduction achieved through incentive or concession; and (b) evidence that the cost reduction allows the developer to provide affordable rents or affordable sales prices that could not otherwise be provided. The information shall be sufficiently detailed to enable Town staff to examine the conclusions reached by the developer. The Town may require that any pro forma submitted pursuant to this section include information regarding capital costs, equity investment, debt service, projected revenues, operating expenses, and such other information as is required to evaluate the pro forma, including but not limited to the cost to the Town of hiring a consultant to review the pro forma.
6. Any additional information and materials required with a Planned Development and Architecture and Site Application.
7. Technical studies required by the Town to evaluate the applications.
8. If a density bonus is requested for land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the findings in Government Code Section 65915(h) can be made. If a density bonus or concession is requested for a child care facility, the application shall provide evidence that the findings in Governmental Code Section 69515 (i) can be made.
9. Other pertinent information as the Director of Community Development may require enabling the Town to adequately analyze the identifiable, financially sufficient and actual cost reductions of the proposed housing development with respect to the requested additional concession or incentive and other concessions or incentives which may be made available.

- B. Review Procedures: Any request for a density bonus, incentive, concession, parking reduction, or waiver pursuant to these Guidelines shall be submitted as part of the first approval of any residential development project and shall be processed, reviewed, and approved or denied concurrently with the discretionary applications required for the project.
1. Planning Commission/Town Council. When a proposed housing development needs only Architecture and Site approval, then the Planning Commission will consider and act on the density bonus request when the Architecture and Site application is considered. If the project requires additional entitlements such as a planned development application review, then the Town Council will consider and act on the density bonus request concurrent with the applicable project entitlement/environmental clearance. Following Planning Commission consideration of the application, the Community Development Director and/or the Planning Commission may refer the application for a density bonus and any other entitlements to the Town Council for final consideration and action.
- C. Required Findings: The Town shall grant a request for a density bonus, incentive, concession, parking reduction, or waiver, unless the deciding body can make the following written findings based on substantial evidence, as applicable:
1. The Town has adopted a housing element, and the Town has met or exceeded its share of the regional housing needs for the income category proposed for the development project;
  2. The project as proposed would have a specific, adverse impact upon the public health or safety which cannot be satisfactorily mitigated without rendering it unaffordable to lower-income households;
  3. The denial of the project or imposition of conditions is required in order to comply with State or Federal law and there is no feasible method to comply without rendering the development unaffordable to lower-income households;
  4. The development project is proposed on land zoned for agriculture or resource preservation which is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, and which does not have adequate water or wastewater facilities to serve the project.
  5. The development project is inconsistent with the Town's General Plan land use designation as it existed on the date the application was deemed complete, and the Town has adopted a housing element pursuant to state law.
- D. Application and Administrative Fees: Application and administrative fees shall be charged to the applicant for the review of all materials submitted in accordance with these Guidelines and for future monitoring of the affordability of the project. The fee amount shall be established by Town Council resolution and will be included in the Town's Comprehensive Fee Schedule. Fees will be charged for staff and consultant time associated with the development review process, analysis of all pro formas and financial feasibility documents related to the request for the density bonus, project marketing, and compliance with the affordability requirements of the project.

## V. DENSITY BONUS HOUSING AGREEMENT

- A. Required Density Bonus Agreement and Terms of Agreement: Once the proposed Housing Development has received its approval for the development application and the Density Bonus, as described above, the developer shall file an application, including the payment of any processing fees with the Community Development Department for approval and finalization of the Density Bonus Housing Agreement in compliance with the following requirements:
1. A Density Bonus Housing Agreement must be executed prior to recording any final map for the underlying property or prior to the issuance of any building permit for the housing development, whichever comes first, unless the Community Development Director approves an alternative phasing plan. The Density Bonus Housing Agreement shall be binding on all future owners and successors of interests of the housing development.
  2. The Density Bonus Housing Agreement shall:
    - a) Identify the type, size and location of each Affordable Housing Unit required hereunder;
    - b) Identify the term of the agreement, which would define the term of affordability of the required units;
    - c) Require that the Affordable Housing Units be constructed and completed by the developer as specified in these Guidelines and in accordance with state law;
    - d) Require that each Affordable Housing Unit be kept available only to members of the identified income group at the maximum affordable rent during the term of the agreement.
    - e) Identify the means by which such continued availability shall be secured and enforced and the procedures under which the Affordable Housing Units shall be leased and shall contain such other terms and provisions, the Town may require. The agreement, in its form and manner of execution, shall be in a form able to be recorded with the Santa Clara County Recorder.
    - f) The Density Bonus Housing Agreement shall be reviewed and approved by the Director of Community Development and Town Attorney. The agreement shall also include the procedures for annual submission of information, including any applicable review fees, sufficient to determine continued compliance with the agreement to the Director of Community Development.
  3. Required Terms for the Continued Availability of Affordable Units:
    - a) Low and Very Low Income Households. A housing developer providing Low and Very Low income units in accordance with these Guidelines must continue to restrict those units to Low or Very Low Income households for a minimum of 30 years or longer term under another

regulatory agreement from the date of initial occupancy. A longer period of time may be specified if required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program applicable to the housing development.

- b) Moderate Income Households. In the case of a Housing Development providing Moderate Income units, the initial occupant of the unit must be a person or family of Moderate Income.
  - (i). Upon resale, the seller of the unit shall retain the value of any improvements, the down payment, and the seller's proportionate share of appreciation. The Town shall recapture any Initial Subsidy and its Proportionate Share of Appreciation; which shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

M David Kroot

Lynn Hutchins

Karen M. Tiedemann

Thomas H. Webber

Dianne Jackson McLean

Michelle D. Brewer

Jennifer K. Bell

Robert C. Mills

Isabel L. Brown

James T. Diamond, Jr.

Margaret F. Jung

Heather J. Gould

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Amy DeVaudreuil

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Erica Williams Orcharton

Luis A. Rodriguez

Rafael Yaquián

Celia W. Lee

Dolores Bastian Dalton

Joshua J. Mason

Vincent L. Brown

Hana A. Hardy

Caroline Nasella

Eric S. Phillips

Elizabeth Klueck

Daniel S. Maroon

Justin D. Bigelow

March 10, 2016

Hand-delivered

Laurel Prevetti, Town Manager  
Town of Los Gatos  
110 E. Main Street  
Los Gatos, CA 95030

**Re: Revised Density Bonus Program Application – North Forty**

Dear Town Manager Prevetti:

This letter is written on behalf of the application of Grosvenor Americas for a density bonus and other waivers of development standards as required by California Government Code Section 65915; Sections 29.10.405 – 440 of the Town Code; and the Town of Los Gatos Density Bonus Program Guidelines. The modifications being requested are as follows:

1. A density bonus of 35 percent, increasing the permitted density from 237 units to 320 units.
2. Waivers of the development standards listed below that would physically preclude construction of the development with the density bonus:
  - a. Measurement of building height from finished grade rather than existing grade; and
  - b. Increase in permitted height of the affordable units from 45 feet to 48'8" at the top of the roof ridge and to 53 feet at the elevator enclosure over the stair to the roof.

A description of the development's eligibility for each of these incentives is provided below and summarized in Exhibit A.

This revised application removes the request for reduced on-site parking allowed under Government Code Section 65915(p).

Additionally, a waiver of development standards is not needed to provide all of the affordable units within the proposed senior housing building because the Town's BMP Guidelines allow the BMP units to be clustered in one building where it is not feasible to disperse the housing. As described in detail in our October 14, 2015 letter, federal and state requirements applicable to senior housing do not allow housing intended for seniors

to be dispersed throughout a development or to be integrated into other buildings in the development. In a development that includes both senior and non-senior housing, as is proposed here, the senior units must be clearly separated from non-senior housing in a separate building designed for seniors with separate entrances and facilities. Clearly it is infeasible to disperse senior units throughout the development, and the BMP Guidelines allow the units to be contained in one building where they cannot be feasibly dispersed.

**I. Proposed Density Bonus.**

A Specific Plan-compliant development on the portion of the North Forty being developed would contain a total of 237 dwelling units. Nineteen existing units would remain on properties in the North Forty not included in this application.

Of the total 237 units permitted under the Specific Plan, 49 units (20%) contained in the senior housing development to be built by Eden Housing would be affordable to very low income households, as defined in Section 50105 of the Health & Safety Code. Affordable rent would be as defined in Section 50053 of the Health & Safety Code, and the units would remain affordable for a 55-year period.

Under Government Code Sections 65915(b) and (f)(2) and Section III.A.1 of the Town's Guidelines, any development with at least 11 percent very low income housing is entitled to a 35 percent density bonus. Because the proposed development contains 20 percent very low income housing, it is entitled to a 35 percent bonus, as follows:

Base density: 237 units

35% bonus: 83 units (82.95 units; must be rounded up<sup>1</sup>)

**Total            320 units**

The plans submitted to the Town contain the 320 units permitted by state density bonus law and the Town's Guidelines.

**II. Proposed Waivers of Development Standards.**

Government Code Section 65915(e)(1) and Town Guidelines Section III.E provide that no Town development standard shall be applied that will have the effect of physically precluding the construction of a project at the density permitted. The following two development standards will have the effect of physically precluding the construction of the development with 320 units unless modified as requested.

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<sup>1</sup> Gov't Code Section 65915(f)(5).

a. *Measurement of Building Height from Finished Grade Rather Than Existing Grade.*

The attached Preliminary Finish Grade Exhibit (Exhibit B) shows that the North Forty site will require both cut (red) and fill (green). While there is a ten-foot grade change from Los Gatos Boulevard to the western portion of the property, the interior grade of the site itself is relatively flat, and to achieve proper engineered surface drainage and the following objectives and requirements, the project proposes cuts along the southern portion and fill in the northern portion of Phase I:

1. **ADA Accessibility.** The grading minimizes steep streets and avoids the need for hand rails and landings where feasible to meet ADA requirements and to make the site more accessible.

2. **Stormwater Quality.** Slopes are required to be designed to drain into landscape-based improvements spread throughout the site to meet Low Impact Development requirements per the Town's stormwater permit.

3. **Stormwater Hydromodification.** Slopes are also required to be designed to route the drainage through a hydromodification storage vault to ensure that post-development runoff rates match pre-development conditions per the Town's stormwater permit.

4. **Storm Drain Flood Control.** The finish elevations must provide flood protection from a 100-year storm event by routing drainage to the existing storm drain pipe located at the northeasterly portion of the site, with emergency overland flow release toward the northerly end of the site. This requires that the southern part of the site, where fill is proposed, be higher than the northern part of the site.

5. **Existing Boundary Conditions.** The existing site is substantially lower than Los Gatos Blvd., and existing uses on other properties abutting the site have a variety of grades to account for this. The grading has been designed to conform to permanent existing boundary conditions while minimizing the need for retaining walls and steep slopes, to improve overall site circulation, accessibility, and appearance.

6. **Construction Related Environmental Impacts.** The grading has been designed to minimize the off-haul of dirt and to balance cuts and fills to the extent feasible to minimize construction-related environmental impacts associated with offsite truck trips.

The approximate depth of cut and fill is shown in the spot grades on the Finish Grade Exhibit, ranging from 0.1 foot to nearly five feet of fill, with most residences in the southern part of the site constructed over two to five feet of fill. The proposed design successfully achieves a 20 unit per acre density (required by the Housing Element) and 320 units when measured from finished grade.

However, measuring from existing grade would physically preclude the project from achieving this density. Approximately 75 percent of the proposed residential buildings include a third story. Requiring the height of these buildings to be measured above existing grade would effectively eliminate this third story in all of the fill areas. Three stories, even with lower than usual floor to ceiling heights, can barely be achieved if the Specific Plan's 35-foot height limit is measured above finished grade, as shown on the attached diagram (Exhibit C), and cannot be achieved if the building height must be reduced further. We estimate that 97 units would be lost.

Since measurement from existing grade would physically preclude development of the 320 units allowed with a density bonus, the project is entitled to a waiver of this requirement.

b. Height of the Affordable Units.

The attached Height Exhibit (Exhibit D) reflects the heights of the affordable building. While this building's parapet is lower than 45 feet from finished grade, to add variety, an overall maximum roof height of 48'8" is proposed which includes 8:12 roof pitches. One elevator/staircase enclosure in a limited area of the building is 53 feet above finished grade. Because of building code requirements related to elevator enclosures and the need for an enclosed stairway access to the roof of the building, the additional height for this equipment must be higher than the highest point of the roof. (Note that for buildings outside the Specific Plan area, the Town Code exempts these appurtenant structures from the Town's height limits.)

**III. Consistency of Town Code and Density Bonus Guidelines with State Law.**

Portions of the Town Code and Density Bonus Guidelines are not consistent with State law. In particular, Town Code Section 29.10.420 and Guidelines Sections III.C and IV.C state that the Town may deny a density bonus or waiver if it makes certain findings.

None of these findings are consistent with State law. Government Code Section 65915(b) states that the Town "shall" provide a density bonus for an eligible project, and Section 65915 contains no findings that may be made to deny a density bonus to an eligible project. If a development standard physically precludes the density allowed, a waiver may be denied only if the Town can make one of the findings contained in Section 65915(e)(1) related to environmental impacts and violations of state and federal law.<sup>2</sup> The Environmental Impact Report prepared for the North Forty showed no impacts that would justify denial under those standards, and none of the requested waivers violate state or federal law.

Under State law, the density bonus and reduced parking are mandatory, and waivers must be granted if the Town's development standards would physically preclude development of the project

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<sup>2</sup> Guidelines Section III.E states that an applicant may be required to prove that a waiver is needed to make a development economically feasible. The statute was modified some years ago to remove the economic feasibility requirement. A waiver must be granted if it would physically preclude development of the project with the density bonus to which the project is entitled.

with the density bonus. Any provisions of the Los Gatos Town Code and Guidelines to the contrary are not valid and cannot be used to deny the bonus, reduced parking, or waivers.

\*\*\*\*

The proposed Phase I development on the North Forty would provide the Town with much needed affordable housing and was identified as a site suitable for lower income housing in the Town's Housing Element. The development provides more than enough affordable housing to qualify for the density bonus and waivers requested. Therefore, on behalf of Grosvenor Americas, we respectfully request that the Town approve the above requests.

If you have any questions regarding these requests or if you would like any additional information, please feel free to contact me.

Sincerely,



Barbara E. Kautz  
Partner

[bkautz@goldfarbblipman.com](mailto:bkautz@goldfarbblipman.com)

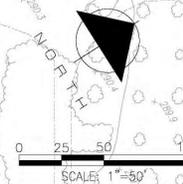
**Exhibits:**

- A. Summary – Density Bonus Program Requests.
- B. Preliminary Finish Grade Exhibit – Cut and Fill Map.
- C. Diagram Demonstrating Height of Three-Story Buildings above Finished Grade.
- D. Height Exhibit – Affordable Housing.

**EXHIBIT A**

<b>Summary North Forty Density Bonus Program Requests</b>		
<b>Standard</b>	<b>Request</b>	<b>Eligibility</b>
<b>Density Bonus</b>		
237 units	35% bonus; 320 units	Development will include more than 11% very low income units, which entitles development to a 35% density bonus.
<b>Waivers</b>		
<b>Standard</b>	<b>Request</b>	<b>Explanation</b>
45-foot height limit for affordable housing	48'8" at the top of the roof ridge and 53 feet over the elevator enclosure and stair to the roof above finish grade	A sloping roof for the affordable housing necessitates a small increase in building height.  Code requirements for the elevator enclosure and stairway to the roof require that they be higher than the rest of the roof.
Building height measured from existing grade	Building height measured from finished grade	To achieve high quality design, minimize environmental impacts, and meet ADA and stormwater requirements, grading is needed that includes both cut and fill. If building height is measured from existing grade in fill areas, buildings will be limited to a height of two stories. Since 75 percent of the proposed units are in three-story buildings, this would physically preclude development of the 320 units with the density bonus, with an estimated loss of 95 units.

**FINISH GRADE MODEL  
DRAFT PROGRESS PRINT  
10.12.2015**



LEGEND:

- (e.g. 2.4) ■ 'FILL' TO FINISH GROUND
- (e.g. 1.6) ■ 'CUT' TO FINISH GROUND

NOTES:

1. FINISH GROUND IMPLIES TOP OF PAVEMENT/CONCRETE WITHIN STREETS, TOP OF HARDSCAPE/SOFTSCAPE WITHIN LANDSCAPE AREAS AND TOP OF FOUNDATION SLABS WITHIN BUILDING FOOTPRINTS (TOP OF GARAGE FOUNDATION SLAB WITHIN PARKING STRUCTURES)
2. FINISH GROUND ELEVATIONS ARE BASED ON CONCEPTUAL GRADING PLAN DATED SEPT 2014 AS REVISED TO RAISE LARK DISTRICT BY 2014.
3. WHERE STRUCTURES ARE PLACED ON FILL, THE DEPTH OF FILL BETWEEN EXISTING GROUND AND FINISH GROUND AT THE FACE OF BUILDING VARIES UP TO A MAXIMUM OF APPROXIMATELY 4 FEET WITH A GENERAL AVERAGE OF 2 TO 3 FEET.



LOS GATOS BLVD

SHEET 1 OF 3

**NORTH 40 - PHASE 1  
PRELIMINARY FINISH GRADE EXHIBIT  
CUT AND FILL MAP**

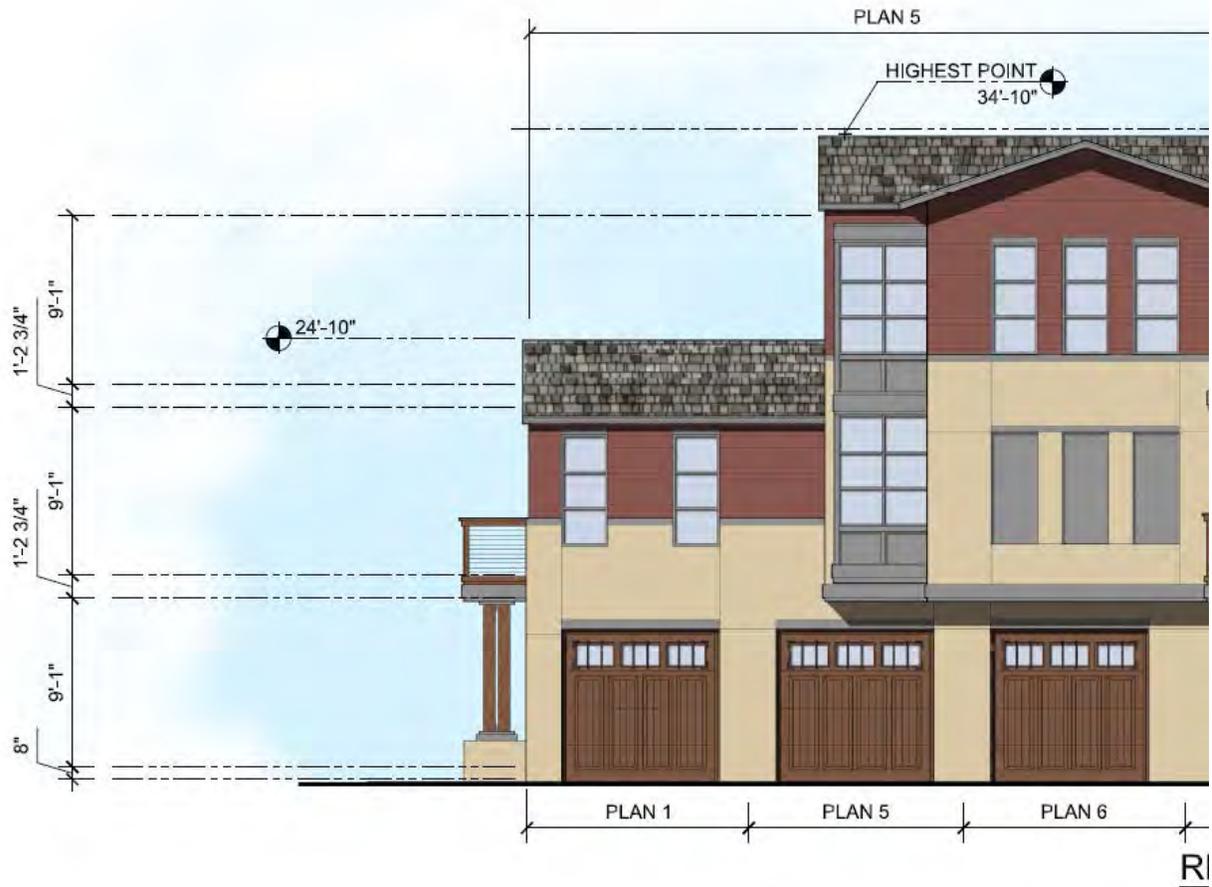
TOWN OF LOS GATOS CALIFORNIA

**MACKAY & SOMPS**  
ENGINEERS PLANNERS SURVEYORS  
51428 FRANKLIN DR., PLEASANTON, CA 94588 (925)225-0890

PLEASANTON OFFICE	SCALE: 1" = 50'	DATE: 10-13-2015	JOB NO.: 19756.000
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### Exhibit C:

## Diagram Demonstrating Height of Three-Story Buildings above Finished Grade



Element permitted to be higher than maximum indicated:  
Roof pitches of 8:12 or greater  
Up to 30% of the length of the parapet on any given facade



**Building B1 - Specialty Market and Senior Affordable Residential  
South Elevation**

## North 40 – Proposed BMP Plan

The Town's Below Market Price (BMP) Program promotes the development of affordable housing units by providing standards and guidelines that require the creation of a certain number of affordable units development project.

For the proposed North 40 Development application, the developers have proposed the following development program:

- Ownership townhomes/garden cluster/courtyard condominiums.: 253 (SummerHill)
- Ownership garden cluster: 7 (Hirschman)
- Live/Work Condominiums: 2 (Grosvenor)
- Rental Apartments: 8 (Grosvenor)
- Affordable rental apartments for seniors: 50 (Eden)

Due to qualifying for the California State Density Bonus, the above numbers include the baseline number of units (237) plus the additional 35% density bonus units (82) for a total proposed program of 320 residential units. The Town's BMP program requirements are calculated using the baseline count (237).

The affordable rental senior apartments are being proposed to satisfy the Town's BMP program, and will offer amenity-rich, high-quality apartment homes for seniors making up to 50% of the Area Median Income. The development team feels that our proposal meets the intent of the Town's BMP program, and helps achieve the following goal from the Town's 2003 Housing Element:

*To improve the choice of housing opportunities for senior citizens, families and singles and for all income groups through a variety of housing types and sizes, including a mixture of ownership and rental housing.*

However, the affordable product as proposed does not meet the exact requirements of the BMP program as written. The following details what is required under the BMP, what the team is proposing, what waivers under the BMP program are required and a justification of this approach.

- **Requirements of the BMP**
- Number of Units

Per the Town's BMP, developments of 101 units or more are required to provide BMP units equal to twenty percent of the number of market rate units, with smaller projects requiring gradually fewer units based on a formula. The number of BMP units required under the Program would be slightly different depending on whether the Town chooses to define the combined application as one project or three:

<b>1) Three separate projects</b>			
			<b>BMP /du required</b>
Grosvenor	10	10%	1
SummerHill (baseline)	220	20%	36.6 (37)
Hirschman	7	10%	1
<b>TOTAL</b>	<b>237</b>		<b>36.8 (37)</b>
		<b>BMP units</b>	<b>39</b>
<b>2) One project</b>			
Grosvenor + SummerHill + Hirschman	237	20%	39.4 (40)
<b>TOTAL</b>	<b>237</b>		<b>39.4 (40)</b>
		<b>BMP units</b>	<b>40</b>

The development team views this proposal as a coordinated approach to create a truly integrated and holistic neighborhood. Therefore we are assuming that for the purposes of BMP calculation, the “project” includes the Phase I North 40 development as a whole. As shown above, this approach also provides the benefit of one additional BMP unit above the number that would be required if the units were calculated separately for the Grosvenor, Hirschman, and SummerHill components.

- Affordability of BMP Units

In addition to the number of units, the BMP Program further requires that the units must be affordable to both Median Income households (those earning between 80% and 100% of the Area Median Income (AMI) and Low Income households (those earning between 50% and 80% AMI). Half of the BMP units are required to be targeted to Low Income households and the other half Median Income households. Given these requirements, the 40 proposed BMP units would roughly be distributed as follows:

- **BMP affordability as Required**

	Very Low Income	Low Income	Median Income	Total
Unit Distribution	0	20	20	40

However, under the model that the development team is proposing, where Eden’s development will be able to leverage additional financing for a stand-alone affordable housing building, the distribution of BMP affordability will be as follows:

- **BMP affordability as Proposed**

	Very Low Income	Low Income	Median Income	Moderate Income	Total
Unit Distribution	49	0	0	1	50

- **What is Being Proposed**

The development team is proposing a 50 unit project consisting of forty-nine (49) one-bedroom units for very low income seniors and one (1) two-bedroom managers unit. While the final targeted income targeting will depend on the financing secured, the unit mix of a 9% tax credit execution would be roughly as follows:

Extremely Low Income Units @ 30% AMI	10
Very Low Income Units @ 45% AMI	9
Very Low Income Units @ 50% AMI	30
Moderate Income Unit @ 80% AMI (Manager's Unit)	1

The affordable housing program will be most successful if fifty units are built, due to economies of scale and more successful management of a building of this size. Because Phase I is not proposing to construct all of the 270 baseline units but is proposing this surplus of BMP units, we request that these additional 10 units count towards any future residential development's BMP requirements on the remainder of the North 40 properties.

The affordable component will help meet the needs of low income seniors in Los Gatos with safe, attractive, and affordable homes and on-site services that will help these individuals thrive.

The project will include high quality amenities available in all Eden developments including a community room, a computer center and library, and landscaped courtyards and furnished lobbies for casual social interaction. The architecture and interiors will be designed in such a way to provide a stimulating, spacious, and inviting environment for the seniors as they age in place. Eden's service provider and affiliate, Eden Housing Resident Services, Inc., will offer resident activities and programs specifically designed for seniors.

- **Waivers Required Under the Current BMP Program**

The Development team is requesting waivers on the following specific requirements:

- **Type of Units, Rental vs For Sale:** The Program requires that the "BMP units within a project of owner-occupied units shall also be designated as units for purchase." In this case, the development team is proposing rental housing to meet the requirements of the market-rate for sale product.
- **Location of units:** The Program requires that the "BMP units shall be dispersed throughout the development, to the extent feasible; in all buildings, on each floor, and in each project phase." In this case, the development team is proposing a singular affordable senior housing component which is located on the air rights above the Market Hall element. This centralized location for these units, as discussed below, is key to the financing, ability to serve Very Low Income seniors and ability to provide on-site supportive services.
- **Size of units:** The Program requires that the "size and design of BMP dwelling units shall be reasonably consistent with the market rate units in the project."
- **Building Exterior:** The Program requires that the "external appearance of BMP units should be indiscernible to that of the market rate units in the project." The Eden affordable component will be a part of the Market Hall and will be high quality architecture consistent with the rest of the development. Eden and Grosvenor are using the same architect and contractor to design and build this building. The affordable housing will not be distinguishable as affordable housing merely by architectural treatments, however as part of a separate building it will have its own style in order to create visual interest and texture to the neighborhood.
- **Interior Finishes:** The Program requires that the "internal finish of BMP units should be identical to that of the market rate units in the project, except that the developer may request Town approval of substitutions for luxury interior finishes, appliances, or fixtures, if such substitutions do not violate any Town code requirement." Eden will have its own interior finish schedule based on its preferred specifications. These materials and appliances will meet all local, state and funding requirements.
- **Project Facilities:** The Program requires that "all project facilities and amenities, including parking, must be available on the same basis to the BMP units as to the

market rate units in the project, to the extent feasible.” As proposed, the affordable component will have its own facilities and amenities – many of which will be above and beyond what is provided in the market-rate components. For example, the affordable senior community will include the following amenities: a community room, a computer center and a library or exercise room. However, the parking ratio assumed for the senior affordable is lower (.5 per unit) based on data which shows that low income seniors own fewer cars.

- **Justification for Waivers Requested**

- **Deeper affordability.**

Proceeding with the development as proposed will allow the development team to provide up to 49 units targeted to Very Low Income seniors, and will help the Town show production of these units in the Regional Housing Needs Allocation (RHNA) process.

As shown in the Town’s recent history of affordable housing development, these Very Low Income units are the hardest to produce. The Eden affordable senior component will provide 49 units targeted to Very Low Income and Extremely Low Income Seniors, along with one Moderate Income managers unit.

- **Amenity-rich and service-enhanced housing for Low Income Seniors**

In addition to making deeper affordability financially feasible, providing all of the affordable units in one central building allows Eden to provide supportive services on-site. These services provide wrap-around services that help lower income residents thrive – and are not available in a typical disbursed BMP implementation.

For this development, Eden Housing Resident Services, Inc. (EHRSI) will provide resident services programming ranging from information and referrals via regularly updated resident services guides to comprehensive programming. EHRSI’s Resident Services staff is available to offer important information and referral services and to develop key partnerships in our communities. We work one-on-one with residents, coordinate and facilitate group educational programming, develop community building activities and bring in outside speakers to present on topics of relevance and interest to our residents.

Eden has extensive experience working with a senior population. The primary goal of our senior resident services is to allow our seniors to ‘age in place’ and live independently in a dignified, healthy and productive way. To meet this goal, we provide a range of programming tailored to each individual resident. The overall intention of services programming for our senior and special needs residents is to:

- Reduce isolation by providing on-site programs and encouraging resident-led programs
- Provide residents with access to resources via information and referral
- Provide programming designed to enhance the quality of life of our residents
- Address health and wellness issues faced by our diverse communities including depression, physical fitness, assistive technology, nutrition/diet and personal safety
- Monitor the ability of our residents to continue to live independently and safely in our housing community
- Build strong communities by facilitating community events, collaborating with resident associations and encouraging volunteerism in the community (internally/externally)

As a testament to our ability to provide housing and services allowing our residents to age in place successfully, nearly one quarter of our residents in senior developments are over the age of 80 – with three residents over 100.

- **High quality design**

Eden is recognized in the industry for its creative development approach that includes collaborating with local governments and development partners to create well-designed properties that meet the needs of the residents and tailoring projects to suit the locale. In the recent past, Eden has completed entitlements for projects in Palo Alto, Lafayette, Dublin, Novato, Orinda, and Fremont -- all of which required excellent design as well as the development and execution of thoughtful and comprehensive community outreach strategies.

In addition, Eden places a high value on design through the work of talented designers, builders and other professionals and is committed to crafting high-quality developments that give careful attention to the needs of residents and the surrounding neighborhood. Indeed, Eden has won more than 60 awards for its work, including the recent recognition of Foss Creek Court in Healdsburg, which in 2011 has received the prestigious national Charles L. Edson Award for Tax Credit Excellence, a Gold Nugget Award of Merit from the Pacific Coast Builders' Conference, and won the Affordable Housing Finance Magazine Readers' Choice Award for the best Rural project in the country.

Eden will bring this same commitment to excellence, along with the rest of the development team to deliver a high-quality, vibrant neighborhood that offers a variety of housing types and sizes for a range of incomes – all of which will be places that people are excited and proud to call home.



**ORDINANCE 2181**

**AN ORDINANCE OF THE TOWN OF LOS GATOS  
AMENDING DIVISION 6 OF THE ZONING ORDINANCE OF THE TOWN CODE  
TITLED HOUSING ASSISTANCE (BELOW MARKET PRICE) PROGRAM**

THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS  
FOLLOWS:

**SECTION I**

Town Code Chapter 29, Division 6 (Sections 29.10.3000 through 29.10.3040,  
Housing Assistance Program) is deleted in its entirety.

**SECTION II**

Town Code Chapter 29, is hereby amended to read as follows:

**ZONING REGULATIONS**

**Article I. In General**

**DIVISION 6. HOUSING ASSISTANCE PROGRAM**

Sec. 29.10.3000. Intent.

Sec. 29.10.3005. Below market price program - Established.

Sec. 29.10.3010. Same - Intent.

Sec. 29.10.3015. Application.

Sec. 29.10.3020. Definitions.

Sec. 29.10.3025 Scope.

Sec. 29.10.3030. Price.

Sec. 29.10.3035. Project denial.

Sec. 29.10.3040. Administration.

**SECTION III**

Town Code Chapter 29, Division 6 is replaced as follows:

**EXHIBIT 2 0**

## HOUSING ASSISTANCE PROGRAM

### **Sec. 29.10.3000. Intent.**

This division is adopted to meet housing needs shown in the housing element of the general plan.

(Ord. No. 1316, § 3.90.010, 6-7-76; Ord. No. 1430, 6-4-79)

### **Sec. 29.10.3005. Below market price program--Established.**

This division establishes the below market price program (BMP).

(Ord. No. 1316, § 3.90.100, 6-7-76; Ord. No. 1430, 6-4-79)

### **Sec. 29.10.3010. Same--Intent.**

The below market price (BMP) program requires the provision of dwellings that persons and families of moderate income can afford to buy or rent, and assures to the extent possible that the resale prices of those dwellings, and rents if they are rented, will be within the means of persons and families of moderate income.

(Ord. No. 1316, § 3.90.105, 6-7-76; Ord. No. 1430, 6-4-79; Ord. No. 1685, 6-2-86)

### **Sec. 29.10.3015. Application.**

This division shall apply to all multiple-family dwelling projects, residential condominium projects, condominium conversions, and to all residential planned development projects (division 2 of article VIII of this chapter) either approved after July 4, 1979, or whose approval includes a condition requiring the provision of BMP dwellings. Projects in the R-1 and HR zones are excepted from BMP participation. The exception does not apply if the project is built under the rules of an overlay zone unless the rules of the overlay zone provide otherwise.

(Ord. No. 1316, § 3.90.110, 6-7-76; Ord. No. 1430, 6-4-79; Ord. No. 1685, 6-2-86)

### **Sec. 29.10.3020. Definitions.**

For the purposes of this division the following definitions shall apply:

*BMP dwelling* means any residential dwelling unit designated for very low, low, and moderate income under the rules of this section.

*Person of moderate income* means one whose income falls within the range specified by the Town Council in the resolution authorized by section 29.10.3040.

(Ord. No. 1316, § 3.90.115, 6-7-76; Ord. No. 1430, 6-4-79; Ord. No. 1685, 6-2-86; Ord. No. 2115, § II, 9-15-03)

### **Sec. 29.10.3025. Scope.**

The Below Market Price Program requirements shall apply to all residential development projects that include five (5) or more residential units or parcels which involve:

1. New construction of ownership or rental housing units, including mixed use developments and addition of units to existing projects, or
2. Subdivision of property for single family or duplex housing development, or
3. Conversion of rental apartments to condominiums or other common interest ownership, or
4. Conversion of non-residential use to residential use.

Planned development with an underlying zone of HR shall only be required to pay an in-lieu fee as established by a separate resolution.

The residential developments consisting of five or more units are required to provide the following number of BMP units:

(1) Projects containing five (5) or more but less than twenty (20) market rate units must provide a number of BMP units equal to ten (10) percent of the number of market rate units.

(2) Projects with from twenty (20) to one hundred (100) market rate units must provide BMP units as determined by the following formula:

$$\text{Number of BMP units} = .225 (\text{total \# of } \underline{\text{market rate}} \text{ units}) - 2.5$$

(3) All projects in excess of one hundred (100) market rate units must provide a number of BMP units equal to twenty (20) percent of the market rate units.

(4) Whenever the calculations of BMP units result in a fraction of one-half or more, the number of units to be reserved is increased to the next whole number.

(5) The Town, at its sole discretion, may consider an in-lieu payment alternative to the required BMP unit in the case of Planned Unit development with an underlying zone of HR. The required in-lieu fee is as established by a separate resolution and is to be paid to the Town prior to issuance of the certificate of occupancy for the market rate residential unit that triggered the BMP requirement. The provision for a BMP unit applies if the project is built under the rules of an overlay zone unless the rules of the overlay zone provide otherwise.

BMP units shall be constructed and Certificate of Occupancies secured concurrently with or prior to the construction of the market-rate units. The BMP requirement will be calculated on the basis of the whole development. The Town Council may grant an exception to the phasing requirements during the project approval process.

(Ord. No. 1316, § 3.90.120, 6-7-76; Ord. No. 1430, 6-4-79; Ord. No. 1685, 6-2-86; Ord. No. 1687, 8-4-86; Ord. No. 1838, § I, 11-5-90)

**Sec. 29.10.3030. Price.**

The price of BMP units is controlled for the first buyer and for future buyers by the BMP Guidelines as adopted and amended from time to time by Council resolution and as follows:

- (1) The initial price is limited to direct construction cost and a proportionate share of the costs of preparing working drawings and specifications and providing on-site and off-site improvements, determined according to rules set by the Council.
  - (2) The initial price does not include the cost of land, profit, or marketing costs.
  - (3) Each BMP unit will be subjected to recorded title restrictions concerning manner of future sales, occupancy and leasing.
  - (4) Each buyer of a BMP unit must agree to sell the unit to a moderate income buyer designated by the Town. The Town will designate moderate income persons according to rules adopted by the Council in effect at the time the seller purchased the unit.
  - (5) The resale price cannot exceed the original selling price plus the value at the time of sale of improvements added by the owner, and plus an amount equal to the increase in cost of living or housing during the owner's tenure. The index or method to be used in calculating the increase is established by the Council.
  - (6) If a BMP unit to be resold has not been properly maintained or for any other reason is in poor condition and in need of cleaning or repair, the Town may elect to do the work or have it done and recover the cost from the sale price limited as provided in subsection (5).
  - (7) The regulations will specify the period for controlled resales. The time period will be in perpetuity or for as long as is practical.
- (Ord. No. 1316, § 3.90.125, 6-7-76; Ord. No. 1430, 6-4-79)

**Sec. 29.10.3035. Project denial.**

If an applicant for zoning approval declines to provide BMP units required by ordinance, the zoning approval shall be denied.

(Ord. No. 1316, § 3.90.130, 6-7-76; Ord. No. 1430, 6-4-79)

**Sec. 29.10.3040. Administration.**

The Council shall adopt by resolution regulations concerning all aspects of the BMP program, including the elements of location of the units, price, buyer eligibility standards, rent, the length of the period during which a unit will be subject to BMP restrictions, the form of recorded instruments and any other matter consistent with the provisions of this section.

(Ord. No. 1316, § 3.90.135, 6-7-76; Ord. No. 1430, 6-4-79; Ord. No. 1685, 6-2-86)

SECTION IV

If any of the provisions of this ordinance or the application thereof to any person or property is held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION V

Any judicial review of this ordinance shall be by writ of mandate, under Code of Civil Procedure 1085. Any action or proceedings seeking to attack, review, set aside, void or annul this ordinance shall be commenced within 90 days after adoption of this ordinance.

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on October 5, 2009, and adopted by the following vote as an ordinance of the Town of Los Gatos at a meeting of the Town Council of the Town of Los Gatos on October 19, 2009. This ordinance takes effect 30 days after it is adopted.

COUNCIL MEMBERS:

AYES: Joe Pirzynski, Steve Rice, and Mayor Mike Wasserman

NAYS: Diane McNutt and Barbara Spector

ABSENT: None

ABSTAIN: None

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

ATTEST:

CLERK ADMIONISTRATOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

**RESOLUTION 2009 -108**

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS  
ADOPTING REVISED BELOW MARKET PRICE HOUSING GUIDELINES AND  
REPEALING RESOLUTION 2008-121**

**WHEREAS**, the Town of Los Gatos Zoning Ordinance Sections 29.10.3000 through 29.10.2040 establishes a Below Market Price (BMP) Housing Program to assist low and moderate income Los Gatos citizens purchase homes at prices below market value; and

**WHEREAS**, the Program requires construction of dwellings that persons and families of low and moderate income can afford to rent or buy, and assures to the extent possible that the resale prices of those dwellings units and rents, if they are rented, will be within the means of persons and families of low and moderate income; and

**WHEREAS**, the Program helps the Town meet State mandated housing goals; and

**WHEREAS**, this resolution revises the Town of Los Gatos Below Market Price Housing Program Guidelines.

**NOW, THEREFORE, BE IT RESOLVED**, that Town Council of the Town of Los Gatos (1) repeals Resolution 2008-121; and (2) adopts the Town of Los Gatos Below Market Price Housing Program Guidelines attached as Exhibit A.

**PASSED AND ADOPTED** at a regular meeting of the Town Council held on the 5<sup>th</sup> day of  
October, 2009, by the following vote:

**COUNCIL MEMBERS:**

**AYES:** Joe Pirzynski, Steve Rice, Mayor Mike Wasserman

**NAYS:** Diane McNutt and Barbara Spector

**ABSENT:** None

**ABSTAIN:** None

**SIGNED:** /s/ Mike Wasserman  
MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

**ATTEST:** /s/ Jackie Rose  
CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

## Exhibit A

### TOWN OF LOS GATOS BELOW MARKET PRICE HOUSING PROGRAM GUIDELINES

#### I. Purpose

- A. Purpose: The overall purpose of the Below Market Price (BMP) Housing Program is to provide the Town of Los Gatos with a supply of affordable housing. While the program is available to all qualified applicants, the general intent of the program is to provide affordable housing for households who work or currently live in Los Gatos. The main goal is to increase the housing supply for households that have median and low incomes compared to the median income for Santa Clara County and meet the housing needs identified in the Town's General Plan Housing Element. The Program further intends to ensure, to the greatest extent possible, that rent and re-sale of these housing units will remain affordable to median and low income levels in perpetuity. Although the Town has a fee-in-lieu of constructing actual units option for defined circumstances, the primary objective of the BMP Program is to obtain actual "rental" or "for sale" housing units rather than equivalent funds. All off-site BMP units shall be constructed within the Town of Los Gatos. The construction and occupancy of the BMP unit is determined according to these Town Council established guidelines and Ordinance No. 2009-\_\_\_\_\_.
- B. Enabling Legislation: The Below Market Price Program is governed by Division 6 of the Town Code. The BMP Program is administered under these Below Market Price Housing Program Guidelines.

#### II. Below Market Price Housing Requirements – General

- A. Applicability: The BMP Program requirements shall apply to all residential development projects that include five (5) or more residential units or parcels which involve:
1. New construction of ownership or rental housing units, including mixed use developments and addition of units to existing projects, or
  2. Subdivision of property for single family or duplex housing development, or
  3. Conversion of rental apartments to condominiums or other common interest ownership, or
  4. Conversion of non-residential use to residential use.
- B. Number of BMP Units: All residential developments consisting of five (5) or more units are required to participate in the BMP Program. The requirements for participation increase by development size as shown below:

1. Five (5) to Nineteen 19 market rate units: The developer shall provide a minimum number of BMP units equal to ten (10) percent of the number of market rate units.

2. Twenty (20) to one hundred (100) market rates units: The developer shall provide a minimum of BMP units as determined by the following formula:

Number of BMP units = (.225 x total # of market rate units) - 2.5

This formula acts to increase the number of BMP units required, as a percentage of market-rate units, from 10% to 20% over the range of 20 to 100 market rate units.

3. One hundred and one (101) units or more: The developer shall provide a minimum number of BMP units equal to twenty (20) percent of the number of market rate units.

BMP dwellings within a project of rental units shall also be rental units. BMP units within a project of owner-occupied units shall also be designated as units for purchase. BMP units within a project that contains both rental and owner-occupied units shall also be designated as both rental and as units for purchase, in a ratio similar to that of the market rate units.

The Town and developer may negotiate to provide more BMP units than required by the rules listed in these guidelines to fulfill a development's Community Benefit requirements.

C. Fraction of a BMP Housing Units: In determining the number of BMP units required, any decimal fraction of .5 or above shall be rounded up to the nearest whole number.

D. Residential In-Lieu Payments: The general intent of the BMP Program is to provide the Town of Los Gatos with a supply of affordable housing for households who work or currently live in Los Gatos. However, there may be circumstances when the construction of the BMP unit is impractical or there are unusual circumstances that make the construction of the unit inconsistent with Town policy. The Town, at its sole discretion, may consider an in-lieu payment alternative to the required BMP unit in the case of Planned Unit development with an underlying zone of HR or a residential developments with five (5) to nine (9) units. Prior to approving the in-lieu fee alternative, the applicant must demonstrate to the satisfaction of the Town why a BMP unit cannot be (1) developed on the same site as the market rate units, and if it cannot be provided on the same site then, (2) develop at an appropriate off-site location within the Town limits. If the developer provides sufficient justification that both of these alternatives are not viable, then a fee in-lieu option may be considered. The required in-lieu fee is as established by a separate resolution and is to be paid to the Town prior to issuance of the certificate of occupancy for the market rate

residential unit that triggered the BMP requirement. The provision for a BMP unit applies if the project is built under the rules of an overlay zone unless the rules of the overlay zone provide otherwise.

The in-lieu fee shall be equal to the amount of six (6) percent of the building permit valuation for the entire project. The total building permit valuation shall be determined by the Town Building Official.

Fees shall be paid prior to or at time of final occupancy as follows:

1. Multi-Family Owner Occupied Developments: Prior to occupancy of each phase, a proportional amount of fees shall be paid, as determined during the Planning approval process.
2. Multi-Family Renter Occupied Developments: Prior to occupancy of each phase, a proportional amount of fees shall be paid, as determined during the Planning approval process.
3. Single-Family Planned Developments: At time of final occupancy for each unit.

E. Housing Fund: In-lieu fees will be deposited into the Town's Affordable Housing Fund. Applications and or recommendations for use of remaining funds will be reviewed as received. Possible use of the funds include, but is not limited to, the following:

1. Subsidizing the cost of owner occupied units to make them affordable to low/moderate income households
2. Purchasing rental units to make them affordable to low/moderate income households
3. Purchasing land for the future development of affordable housing
4. Developing affordable housing
5. Supplementing of affordable housing projects developed through the Los Gatos Redevelopment Agency
6. Funding administration of the program, as approved by the Town Council in its annual budget process

F. Off-Site Construction: The Town Council may consider off-site construction of BMP units for continuum care facilities and for Hillside Residential (HR) Zone District and residential developments with five (5) to nine (9) units projects that have provided sufficient justification to the Town that an on-site BMP unit is not viable.

G. Phasing of the Construction of On- and Off-Site BMP Units: On- and off-site BMP units shall be constructed and Certificate of Occupancies secured concurrently with or prior to the construction of the market-rate units. The BMP requirement will be calculated on the basis of the whole development. The Town Council may grant an exception to these phasing requirements during the Planned

Development project approval process for condominium conversion developments.

- H. Affordability Agreement: The developer of “for sale” BMP units shall enter into an affordability agreement with the Town. The agreement will ensure that the BMP units are sold to qualified buyers and will be released by the Town through the escrow process once the BMP is sold to a qualified buyer.

### III. Characteristics of BMP Units

- A. Size of units: The size and design of BMP dwelling units shall be reasonably consistent with the market rate units in the project. The Town and developer may negotiate regarding the size of units if more units than required are to be provided under the Community Benefit requirements. BMP units should be provided proportionately in the same unit type mix (number of bedrooms) as the market rate units. In consideration of the household size of the households on the current program interest list, the Town and developer may negotiate to provide a greater proportion of a particular unit type. There shall not be significant identifiable difference between the BMP and market-rate units visible from the exterior. The size and design of the BMP units must be reasonably consistent with the market-rate units in the development.
- B. Location of units: BMP units shall be dispersed throughout the development, to the extent feasible; in all buildings, on each floor, and in each project phase. A concentration of BMP units in one location is not desirable and will generally not be allowed.
- C. Finish of units: The external appearance of BMP units should be indiscernible to that of the market rate units in the project. The internal finish of BMP units should be identical to that of the market rate units in the project, except that the developer may request Town approval of substitutions for luxury interior finishes, appliances, or fixtures, if such substitutions do not violate any Town code requirement.
- D. Project Facilities: All project facilities and amenities, including parking, must be available on the same basis to the BMP units as to the market rate units in the project, to the extent feasible.

### IV. The BMP Unit Purchase Process; Buyer Selection, and BMP Unit Sale and Resale Procedures.

- A. Owner Occupied Units
  - 1. Applicant Eligibility

- a. **Household Income:** In order to be eligible to purchase an owner-occupied BMP unit, an applicant's annual household income must be no greater than 100% of the Median Family Income (MFI), adjusted for household size, as defined by the United States Department of Housing and Urban Development (HUD) for the San Jose, CA Primary Metropolitan Statistical Area (PMSA). Household assets, such as real property, may also be considered in determining eligibility.
  - b. **Housing Costs:** In order to be eligible to purchase an owner-occupied BMP unit, an applicant must also demonstrate the ability to pay monthly housing costs. The monthly housing cost shall include the following factors:
    1. unit price
    2. current lending rates
    3. estimated property taxes
    4. estimated homeowner's insurance costs  
homeowners' association fees, if applicable
    5. other expenses as determined necessary by the lender
  - c. All persons must qualify for their own mortgage without assistance from the Town. Qualifications must include the ability to pay taxes, insurance, closing costs and any homeowner association fees in addition to the mortgage.
2. **First Time Home Buyers:** The Below Market Price (BMP) Program is for First Time Home Buyers. A First Time Home Buyer, by definition, is an applicant whose name has not appeared on a residential title in the counties covered by the Association of Bay Area Governments (ABAG) or Association of Monterey Bay Governments (AMBAG) which are Alameda, Contra Costa, Marin, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano and Sonoma for at least three (3) years prior to application. Exception is made for people who were homeowners prior to a divorce settlement and tenants residing in a rental apartment proposed to be converted to a condominium or other common interest ownership prior to a Notice of Intent to Convert the development to an ownership residential unit.
- B. **Buyer Selection:** A point system is used to establish a ranking of applicants for the purchase of an available unit. Applicants will be ranked according to total points and must have at least one point to be eligible to purchase a unit. In addition, applicant households must contain at least the same number of persons as the number of bedrooms in a unit, at the time of application, in order to be eligible to purchase that unit, if the unit contains three bedrooms or more.

All points are calculated per household, not for each individual within the household. For example, a household in which two members are senior citizens would receive six points for senior citizen status, not twelve points for two members having senior citizen status. Points are awarded as follows:

1. **Six points:**

- a. Senior citizens who reside in the Town at the time of application and have lived in the Town for at least the prior two years. A senior citizen is defined as any person 62 years of age or older at time of application or married couples living together when at least one spouse is 62 years of age or older at time of application.
- b. Senior Citizens who have lived in the Town for at least two years and have moved out of the Town within the last five years prior to the time of application.
- c. Disabled persons who reside in the Town at the time of application and who have lived in the Town for at least the prior two years. The definition of "disabled" for the purpose of assigning points under this section shall be that used by the U.S. Social Security Administration for the purpose of determining eligibility for Social Security disability benefits.
- d. Households required to relocate their residence as a result of Council action or mobile home park closure.
- e. Regular Full-Time and Regular Part-Time Town employees as defined in the Town's Personnel Rules, who have been employed by the Town for a period of no less than 12 months prior to the time of application.
- f. Single heads of household with dependent children who reside in the Town at the time of application and have lived in the Town for at least the prior two years.

2. **Four points:**

- a. Persons who live in the Town of Los Gatos at time of application and who have lived in the Town at least the prior two years.
- b. Persons who work in the Town of Los Gatos at time of application and have worked in the Town for at least the prior two years.

3. **Two points:**

- a. Households who have lived in the Town for at least 10 years and have moved out within the last ten years prior to the time of application.
  - b. Household size is worth two points per person.
4. **One point:**
- a. Households who live or work within Santa Clara County at the time of application.
  - b. Households with an annual household income at or below 60% of the Median Family Income (MFI), adjusted for household size, as defined by the United States Department of Housing and Urban Development (HUD) for the San Jose, CA Primary Metropolitan Statistical Area (PMSA).
5. A lottery will be used to rank each qualified applicant in the case of a tie.
6. Applicants are provided the opportunity to purchase available units in order of point ranking, from most points to least points. An applicant has two opportunities to refuse to purchase a unit before being removed from the current applicant pool.
7. Applicants who do not qualify for a particular project or who are not provided the opportunity to purchase a unit in a particular project shall retain their eligibility to apply for future projects.
8. An applicant must obtain pre-approval for a mortgage loan within one week after notification of eligibility to purchase a unit. The applicant must submit documentation of loan approval within three weeks of notification of eligibility to purchase a unit.
9. Exception to the Buyer Selection Process: An exception to the Buyer Selection Process may be granted to a resident of a rental apartment that is proposed to be converted to an "owner occupied" condominium or other common interest ownership development. In order to qualify for the exception, the resident must have resided in the rental apartment prior to the issuance of the Notice of Intent to Convert the development to an ownership project and shall meet the financial eligibility requirements to qualify for a BMP unit. The resident shall be provided first right of refusal, regardless of point ranking, for units in the following order:
- a. The unit they reside in if it is designated as a BMP unit.
  - b. Any other available BMP unit.

C. Determination of Initial Selling Price: BMP units shall be priced to be affordable to households in two income categories: Median Income Households (those whose income is above 80%, but no greater than 100%, of the County Median Income); and Low Income Households (those whose income is above 50%, but no greater than 80%, of the County Median Income).

1. Fifty percent (50%) of the units in a project shall be priced to be affordable to Median Income Households; fifty percent (50%) shall be priced to be affordable to Low Income Households. Whenever the calculations result in fractional units, then the number of units priced to be affordable to Low Income Households shall be rounded up to the next whole number, and the number of units priced to be affordable to Median Income Households shall be rounded down to the next whole number, including zero (0). The following table applies this formula to projects with 1, 2, and 3 units:

Total Number of BMP Units in Project	Units Priced for Low Income Households	Units Priced for Median Income Households
1	1	0
2	1	1
3	2	1

The Town and developer may negotiate regarding the affordability mix of units, to fulfill a development’s Community Benefit requirements.

The affordability level of a unit shall be for the purpose of setting the initial selling price only, and do not prevent its sale to any household eligible to purchase an owner-occupied BMP unit, as set forth in these Guidelines.

2. Annually, the Town shall set the initial unit sales price for each unit type (number of bedrooms), for each of the two income categories. These initial sales prices shall be set using the most recent Median Family Income (MFI) figures from the United States Department of Housing and Urban Development (HUD) for the San Jose, CA Primary Metropolitan Statistical Area (PMSA), and through the following calculations:
  - a. For units to be priced to be affordable to Median Income Households: the average of the 100% MFI annual income and the 80% MFI annual income (assuming household size appropriate to size of unit) x Multiplier = Initial Sales Price.

1. Assumptions of household size by size of unit are as follows:

	Household Size
Studio	1
1 Bedroom	1
2 Bedroom	2
3 Bedroom	3
4 Bedroom	4

These assumptions of household size by size of unit shall be for the purpose of setting the initial sales price only, and do not prevent the sale of any unit to any household eligible to purchase an owner-occupied BMP unit, as set forth in these Guidelines.

- b. For units to be priced to be affordable to Low Income Households: the average of the 80% MFI annual income and the 50% annual income (assuming household size appropriate to size of unit) x Multiplier = Initial Sales Price.
- c. Calculation of Multiplier. A Multiplier shall be calculated, based on reasonable assumptions about unit sales prices, based on the most recent comparable sales of BMP units; current lending rates, as determined by the most recent Primary Mortgage Market Survey (PMMS) conducted by the Federal Home Loan Mortgage Corporation (Freddie Mac); and related costs; and using the following formula:
  1. Determination of Total Housing Cost: Sample sales price - 10% down payment = mortgage. Annual debt service on mortgage + annual property taxes + annual homeowners fees + annual private mortgage insurance (PMI) = Total Annual Housing Cost.
  2. Determination of Minimum Household Income: Assuming one-third of household income goes for housing expenses, Total Annual Housing Cost x 3 = Minimum Annual Household Income.
  3. Determination of Multiplier: Sample Sales Price/Minimum Annual Household Income = Multiplier.

Copies of the initial sales prices, and the calculations made, shall be available on request from the Town's Community Development Department.

D. Deed Restrictions: Council approved Deed Restrictions shall be recorded with each Below Market Price dwelling unit.

E. Resale of Units:

1. If the owner elects to sell his/her unit, the Town must be notified in writing by the owner.
2. When a Below Market Price dwelling unit becomes available for resale, the Town shall set the resale price and make the unit available for purchase through the BMP process.
3. The Town determines the resale price in accordance with the deed restriction recorded on the property.

F. Occupancy of Units:

Consistent with the deed restriction that will be recorded on the subject property, the household purchasing a BMP unit must occupy the unit as his or her primary residence during his or her ownership of said unit.

## V. **Requirements for BMP Rental Development**

A. Administration: The program shall be administered by the Town or its designee.

B. Applicant Eligibility

1. Household Income: In order to be eligible to rent a BMP rental unit, a household's annual income must be no greater than 80% of the Median Family Income (MFI), adjusted for household size, as defined by the United States Department of Housing and Urban Development (HUD) for the San Jose, CA Primary Metropolitan Statistical Area (PMSA). Priority will be given to those households whose income is less than 50% of the MFI. Household assets may also be considered in determining eligibility.
2. Ability to Pay Rent: A tenant's ability to pay monthly rent will also be considered in determining tenant eligibility.

C. Tenant Selection: The property owner or manager of the development shall market the BMP unit(s), and solicit rental applications. Applications from tenants selected by property owner or manager will be forwarded to Town or designee for verification of income eligibility.

D. Management

1. BMP rental units shall be managed by the property owner or manager in the same manner as other units in the development.
2. Tenants of BMP rental units are eligible to receive conciliation and mediation services provided through the Town's Rental Dispute Resolution Program except as they regard rent increases.

E. Unit Rents: Rents may not exceed 80% of the most current Fair Market Rents as determined by the Santa Clara County Housing Authority.

F. Annual Review: If a tenant's income increases so that it falls between 80 and 100 percent of MFI, then the rent may be increased in accordance with the Town's Rental Dispute Ordinance; and the unit shall still be considered a BMP Rental Unit. However, if a tenant's income exceeds 100 percent of MFI, the rent may be increased to the average rent of similar units in the complex; in this latter case, the unit will no longer be a BMP unit and the next available unit that is comparable in size shall be designated as a BMP unit in its place, and must be rented to an eligible household so that the number of BMP units within the project remains the same.

G. Deed Restrictions: Council approved Deed Restrictions shall be recorded for each Below Market Price rental dwelling unit.

VI. RENTAL UNITS - NEW SECOND DWELLING UNITS

A. Administration: The program shall be administered by the Town or its designee.

B. Second Unit Incentive Program: 29.10.310 of the Town Code, may choose to participate in the Second Unit Incentive Program (SUIP) as referenced in Section 29.10.320(a) of the Town Code and as set forth below.

1. The SUIP consists of a no interest construction loan to a property owner who intends to develop a new second unit. The loan amount shall be determined based on the square foot construction cost as set forth in the current version Uniform Building Code as adopted by the Town for new construction and remodels. The loan amount will be calculated at 100% of the construction cost if the unit is income and rent restricted to serve households with incomes below 50% of the Median Family Income (MFI), adjusted for household size, as defined by the United States Department of Housing and Urban Development (HUD) for the San Jose, CA Primary Metropolitan Statistical Area (PMSA), or 80% of the construction cost if the unit is income and rent restricted to serve households with incomes below 80% of MFI.

2. When a property owner participates in the SUIP, a deed restriction shall be recorded on the property. The deed restriction shall stipulate the rental rate, tenant income level, duration of affordability and loan repayment requirement as well as any other criteria as determined appropriate by the Town.
3. A SUIP loan to construct a second unit within the Central Los Gatos Redevelopment Project area shall be funded using Redevelopment Affordable Housing Funds and shall remain affordable for 55 years. A SUIP loan to construct a second unit outside the Central Los Gatos Redevelopment Project area shall be funded using BMP Program Funds and shall remain affordable for 30 years. The SUIP affordability restrictions as set forth in this section may only be amended by action of the Town Council.
4. A tenant's ability to pay monthly rent will also be considered in determining tenant eligibility. Applications from tenants selected by the property owner or manager will be forwarded to the Town or its agent for verification of income eligibility. Rental agreements shall be submitted to the Town or its agent to verify compliance with the provisions of this section. Tenants are eligible to receive conciliation and mediation services provided through the Town's Rental Dispute Resolution Program except as they regard rent increases.
5. Units targeted to households with incomes up to 80% of the Median Family Income (MFI) shall have rents restricted to 80% of Fair Market Rents as determined by the Santa Clara County Housing Authority. Units targeted to households with incomes up to 50% of CMI shall have rents restricted to 50% of Fair Market Rents as determined by the Santa Clara County Housing Authority. Tenant rents and incomes will be monitored annually.

(Adopted by Resolution 2009- September , 2009)

NADEVUOEL\ORDINANCE AMENDMENTS\BMP Program Guidelines Final.doc

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**From:** Angelia Doerner [mailto:saveourhood@yahoo.com]  
**Sent:** Wednesday, March 02, 2016 12:52 PM  
**To:** Council; BSpector; Marico Sayoc; Marcia Jensen; Steven Leonardis; Rob Rennie  
**Cc:** Laurel Prevetti; Matt Morley; Planning  
**Subject:** Last Night - Agenda Item 11 - Rule 20A Credits

Just a quick thank-you to Marcia for clarifying the expected timeline and process associated with this project. I had researched Rule 20A Credits a while back when I kept seeing the unused credit amount in the financials growing. My understanding of the process and potential timeline (many, many moons forward) was consistent with Marcia's comments. However, the timeline expressed by Staff was 1.5 years "admin" + 2 years design - then the project taking 3 years. Thinking linear continuity of the process, it sounded to me like the project would commence 3.5 years from now. Hence, my question.

Notwithstanding this, with our thinking-caps on for three years from now, its likely some level of construction will have commenced at the North 40 by then - and that the first steps will be to place the utility infrastructure. Are there any preliminary utility plans for the project indicating how/where they will be "connecting to" the existing PGE network. Would they be "feeding into or out of" the transformers referred to at Chirco? Maybe there as well as others? Given that the developers will be working with mostly "virgin land", I would imagine they would be undergrounding all utilities.

Maybe this is already in process - but just some thoughts. Is it possible, if the Town is a driving factor and active participant, that the objectives of the Rule 20A District could be achieved (and possibly accelerated) by piggy-backing the developers' initiatives and not having to utilize some (or any) of our existing credits? Might it be worthwhile to gain a thorough understanding of North 40 utility plans as to **where they "cross the borders"** into the Town's existing utility network and conceptualize how we may integrate utility upgrades, etc., to coincide with such efforts - thereby piggy-backing developers' costs and benefiting the Town at lower cost, if any?

The Town/Planning Commission addresses traffic mitigation efforts - do they do the same with other "infrastructure" matters, e.g. utilities, sewers, storm drains? Maybe not in the past (?) - but this is not just a new animal for the Town - its a Beast! How do we, or to what extent CAN we, ensure that developers' responsibilities include upgrades/mitigations/etc., addressing **capacity issues** of the Town's existing infrastructure "just down the road" from wherever the North 40 "hooks in"?

Thanks for reading/listening. Also, please include this communication in Public Comments for the March 23 '16 PC meeting. Thanks!

Angelia Doerner  
**Live Simply, Laugh Often**

**EXHIBIT 2 1**

March 17, 2016

RECEIVED

MAR 18 2016

TOWN OF LOS GATOS  
PLANNING DIVISION

Los Gatos Town Planning Commission  
110 E. Main Street  
Los Gatos, CA 95030

Re: March 23, 2016 Agenda Item – North 40 Project

I am writing to voice my concern about the proposed Phase I North 40 project. The introduction on the Town's web page says the town is "dedicated to providing an exceptional quality of life and preserving the character of the town." The 320 homes proposed are way too dense to fulfill that promise.

We all know the North 40 development will go forward. We also know the negative impact it is going to have on traffic, schools, and quality of life. I applaud the inclusion of 50 residences for seniors. However, our only hope for maintaining any "town character" is to reduce the density and include more open space around the other 270 homes.

I would also like to hear an update on what the developers have done to help the school district. This was something that was included in the Council's approval of the specific plan.

I have been a resident of Los Gatos for a long time and in my current home for 25 years. I have twice viewed the Phase I model on display. It is frightening. In recent meetings the Commission has denied applications for residential development citing, in part, concerns over the density of the projects. Please consider that perspective when deciding on this application.

Thank you,



Pat Sharp  
320 Harding Avenue  
Los Gatos, CA 95030

**From:** Pat Blair [<mailto:patrblair@msn.com>]  
**Sent:** Saturday, March 19, 2016 8:15 AM  
**To:** Joel Paulson  
**Subject:** North 40

Look at the fight down in Morgan Hill to save PRECIOUS farmland and green space. I am appalled at what we are doing here in Los Gatos. We do NOT need more business. We do NOT need more traffic We DO need some truly affordable housing and we DO need to have thought outside the box (Yes I did write in early on in this process) to preserve MUCH more green space and orchards. I was truly heartsick to view he plan. Shame on us!!

Pat Blair  
101 Lorain Pl.  
Los Gatos

## Marni Moseley

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**From:** Jennifer Riano <jennifer.riano@gmail.com>  
**Sent:** Monday, March 21, 2016 7:29 PM  
**To:** Marni Moseley  
**Subject:** Deny North 40

I'm writing regarding the proposed North 40 plans. Please deny them ALL. My family and I have lived here for 6 years and love the town & the small population that comes with the town. We have negatively been impacted by the growing medical facilities that we encounter on our daily commutes (National/Carlton/Lark/Los Gatos Blvd).

Adding more homes and stores to that area will further clog the traffic arteries, especially during beach traffic (Friday's through Sunday's March-November). We are still suffering from the current challenges.

Listen to your tax paying constituents & keep Los Gatos a town; don't turn it into a city. No on North 40.

Jennifer Riano  
100 Escobar Ave

## Marni Moseley

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**From:** TRICIA L. CAPRI <tricia\_capri@yahoo.com>  
**Sent:** Tuesday, March 22, 2016 4:41 PM  
**To:** Marni Moseley  
**Cc:** TRICIA L. CAPRI  
**Subject:** Opposition to North 40

Marni,

I'm writing to voice my opposition to the North 40 plan that is currently in place. I'm not sure if I can attend the meeting on Weds, March 30th therefore I want to be sure my sentiments are documented and recorded.

I saw the model downtown and I was appalled to see how many units are crammed together, with very little open space. I also don't see any "charm" to this model -- this is not representative of the TOWN of Los Gatos.

This is crazy .... we need more infrastructure for that many new homes --- there will be too many kids and way too many cars!!

Why not make it all low income SENIOR housing ?? NO KIDS, no additional burden on already crowded schools?

I'm very concerned at the number of homes and the fact that MANY will have children which will add to the crowding of our schools.

When our school system starts to erode, that is a direct link to the value of my home. I have huge concerns that the TOWN is not looking out for the interest of the taxpayers it is paid to represent.

Where is the open space? Where are the trees? Each development seems to take away from the aesthetics of a beautiful town -- one that we all moved here for. We are quickly losing the quaint, rustic feel of our town.

Where is the adherence to the PLAN that was approved for our town?

This plan seems awfully greedy to me. There seems to be no valid reason for the development to be so crowded.

Also, for a TOWN the size of Los Gatos, it seems to me that an \$8.5 million police station with no parking was too much. I still don't understand why we don't have combined services to reduce overhead costs. Again - INFRASTRUCTURE (traffic, schools, police, fire, etc.) will all be negatively impacted and I haven't seen any plans to reduce these burdens. What is being done to offset these issues?

We cannot let this happen.

Tricia Capri

Homeowner and resident of Los Gatos since January 1989

255 Los Gatos Blvd.  
Los Gatos, CA 95030

RECEIVED

MAR 23 2016

TOWN OF LOS GATOS  
PLANNING DIVISION

March 21, 2016

To: Marni Moseley  
Community Development Department  
110 E. Main Street  
Los Gatos, CA 95030

Regarding: North 40 Plan, traffic revision regarding Bennett Way left turn

Dear Ms. Moseley:

We are the owners for the individual condominium units for the buildings 15055 and 15075 Los Gatos Boulevard. We and our Condominium Association collectively oppose the Town's proposal to revise traffic flow to and from Bennett Way and Los Gatos Boulevard. The remedy we seek is for a finding or determination to be made to allow left turning vehicles into and out of Bennett Way. In short, the Town should make no restrictions to the existing traffic pattern on Los Gatos Boulevard at Bennett.

It has come to our attention that a traffic revision is under consideration by the Town of Los Gatos, the effect of which is to not allow a left turn from Los Gatos Boulevard onto Bennett Way, and to not allow a left turn from Bennett Way onto Los Gatos Boulevard. Both would be changes to the existing pattern. We believe that such a revision would unnecessarily restrict traffic flow to and from our buildings with no demonstrable benefit.

Bennet Way is an access road running northwest from Los Gatos Boulevard. It currently serves our two buildings and several private residences. Traffic can currently turn left or right from Los Gatos Boulevard onto Bennett Way, and traffic from Bennett Way can turn left or right onto Los Gatos Boulevard. The North 40 plan does not link our parking lot or Bennett to any new development. In fact less traffic would take Bennett Way after the North 40 completion, because all the private residences are proposed to be cordoned off from Bennett Way and obtain access through the main development.

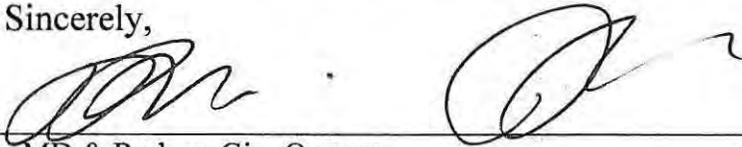
If restrictions are implemented, left-turning traffic coming to our businesses would have to go to intersections that are already congested. Traffic coming north (either from Los Gatos or having come off Highway 17 at the Lark Avenue ramp) will need to bypass our building and travel .4 miles to the next legal U-turn at Samaritan Drive, past the proposed entrance to the North 40 development. Then

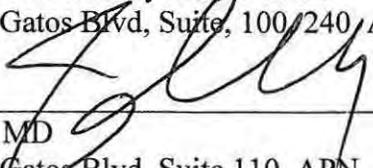
this traffic would travel back for a right turn onto Bennett. The effect would be to increase traffic pressure at the Los Gatos / Samaritan Drive intersection, which can be very heavy at peak hours and midday. It would also force traffic to drive twice past the proposed intersection between the North 40 and Los Gatos Boulevard and then queue up with other traffic turning right onto Lark.

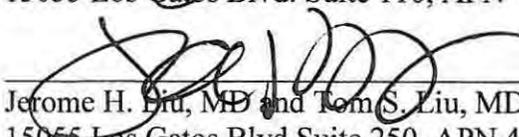
In contrast, the current traffic flows smoothly. Left-turning traffic does not obstruct flow from southbound Los Gatos Boulevard onto Lark. When traffic is light heading toward Lark, there is little problem turning left across those lanes. When traffic is heavy and backs up at Lark, the left turn is also not a problem or impediment because vehicles backed up with no immediate place to go simply leave a gap for left turning traffic across those lanes. At some point after the completion of our buildings, the Town realized this and required that barriers to left turns in and out of Bennett be removed. Traffic has been moving well without left turn restrictions since our buildings were divided into commercial condominiums.

Imposing new restrictions is not in keeping with the spirit of the Town. Last year the Town Council addressed an issue that arose about potentially restricting existing uses of our property (as medical offices) or imposing stricter height requirements. We believe their unanimous vote in favor of continued use --no new restrictions-- was supported by a sentiment that existing uses should not be changed or restricted without good reason. There is no reason to believe that public traffic accessing our buildings will unduly impede others. To the contrary, failing to allow for left turns will divert traffic further and create more problems. In summary, the Town should not impose new left turn restrictions at Bennett Way.

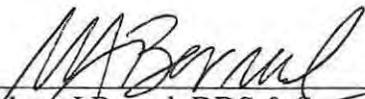
Sincerely,

  
\_\_\_\_\_  
Iris Gin, MD & Rodney Gin, Owners  
15055 Los Gatos Blvd, Suite, 100/240 APNs: 424-07-102, 424-07-105

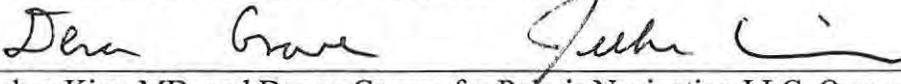
  
\_\_\_\_\_  
John Diep, MD  
15055 Los Gatos Blvd. Suite 110, APN 424-07-103

  
\_\_\_\_\_  
Jerome H. Liu, MD and Tom S. Liu, MD; LG Boulevard Holdings LLC, owner  
15055 Los Gatos Blvd Suite 250, APN 424-07-106

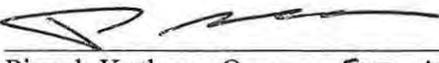


  
Matthew J Bernal, DDS & Susan E Bernal, for Bernal Family 1997 Trust, owner  
15055 Los Gatos Blvd Suite 200, APN 424-07-104

  
William Hirschman for Owner  
15055 Los Gatos Blvd., Suite 310, APN 424-07-108

  
Jeehee Kim, MD, and Devon Groves for Polaris Navigation LLC, Owner  
15055 Los Gatos Blvd Suites 300, 320, APN 424-07-107

  
Maye Lazaar, DDS & Sam Lazaar, Owners  
15055 Los Gatos Blvd. Suite 350, APN 424-07-109

  
Piyush Kothary, ~~Owner~~ For the Kothary Family TRUST  
15075 Los Gatos Blvd. Suite 100, 125, 150 APNs 424-07-110, 424-07-111, 424-07-112

Los Gatos Gateway  
Business Center Association  
15055 Los Gatos Blvd. #300  
Los Gatos, CA 95032

22 March 2016

Marni Moseley, Associate Planner  
Community Development Department  
110 East Main Street  
Los Gatos, CA 95030

**RECEIVED**

**MAR 23 2016**

**TOWN OF LOS GATOS  
PLANNING DIVISION**

Re: North 40, Phase 1

Dear Ms. Moseley, Town Planning Commission and Town Council,

I expect each of you has seen the North 40 Phase 1 “story poles” as viewed from southbound Highway 17. Never has the requirement for “story poles” been more soundly vindicated; and never has the use of “story poles” presented a more graphic portrayal of appalling and unacceptable density.

Cramming 320 residential units into the Southern Section of this development must be rejected on multiple grounds:

- It has been reasonably expected that many of these units would be placed in the Middle Section and especially the Northern Section of the North 40.
- The sheer density and mass of the current proposal is completely out of step with the stated goal of preserving the rural character of the Town.
- This over-weighted Southern Section would create intolerable traffic no matter what alleged mitigation measures are planned.
- The number of residential units will put an unfair and unequal burden on the Los Gatos schools.

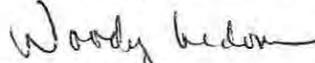
Let us not forget that, during the lengthy process of developing the North 40 Specific Plan, there was a debate as to whether any housing ought to be included. It was decided that, rather than create a commercial-only, nocturnal “ghost town”, limited housing would be appropriate, to wit, only housing to meet the Town’s “unmet needs”. The “unmet needs” were defined as: senior housing, housing for millennials, and housing for “empty-nesters”. These categories were chosen specifically so as to limit the impact on Los Gatos schools.

We now learn that of the 320 residential units proposed in Phase 1, there are to be 135 with 2 bedrooms and 54 with 3 bedrooms. (I do not know the bedroom count of the 10 rental units). I submit that to some extent 2 bedroom condos, and positively 3 bedroom units, violate the intent of the Council in approving housing and will, in fact, act as magnets for families with children. The developer’s rationale for 2 and 3 bedroom units, to wit, that, based upon focus group comments, 1 bedroom units may be harder to sell is hard to credit, especially in this market and is, in all honesty, irrelevant.

After years of hard work by residents, governing bodies and the current Town staff to “get this right” it feels as though we have slipped back to 2012 when the developer

presented to a joint meeting of the Planning Commission and Town Council a bloated proposal that bore scant resemblance to the character of our town. While that plan was summarily rejected and followed by years of honing a vision, the current proposal also needs critical analysis and corrective surgery so that it will conform to that vision.

Respectfully submitted,

A handwritten signature in cursive script that reads "Woody Nedom".

Woody Nedom  
16280 Azalea Way  
Los Gatos, CA 95032

[Bronco60@comcast.net](mailto:Bronco60@comcast.net)  
408 356-7956

## **Marni Moseley**

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**From:** Judy Rucker <1judyrucker@gmail.com>  
**Sent:** Wednesday, March 23, 2016 11:49 AM  
**To:** Marni Moseley  
**Subject:** North 40 development

Dear Ms. Moseley,

I wish to go on record as opposing the North 40 development as proposed at this time. My objection is mainly due to the increased traffic that this development will cause, especially on Lark Avenue, which is currently practically unnavigable at certain times of the day. As a resident on Arroyo Grande Way, I have no outlet EXCEPT Lark Avenue and I've seen traffic increase exponentially due to other development in the area. I would hate to see Lark Avenue turned into an El Camino Real-type road, with multiple lanes and stop lights at every corner.

I know the downtown area residents are concerned about the traffic from the freeway driving through their neighborhoods when Highway 17 is crowded. Our neighborhood is just as concerned about the impact of traffic in our area due to the high density nightmare that would be the North 40.

Sincerely,

(Mrs.) Judy Rucker

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Sent from Gmail Mobile

## **Marni Moseley**

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**From:** Lael.Sigal@ch2m.com  
**Sent:** Wednesday, March 23, 2016 6:12 PM  
**To:** Marni Moseley  
**Subject:** Open Space, Height Restrictions and More trees - Developer Application

The proposed application does not keep with the feel of Los Gatos. There is not enough open space. 360 housing units in that amount of space without an open area.

Also I feel very strongly that the height restrictions are not low enough and there are not enough trees. Just blocks up we have wonderful sight lines of parks and green trees. This plan does not meeting these needs.

Los Gatos property owner.

Lael Sigal

## **Marni Moseley**

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**From:** Carmen Villanueva <carmenv356@gmail.com>  
**Sent:** Wednesday, March 23, 2016 7:59 PM  
**To:** Marni Moseley  
**Subject:** Town not a City

I have been a resident in Los Gatos for nearly 20 years. The development that is proposed for the North 40 is going to destroy the quality of life in our town and destroy our public schools. Why are council members hell bent on developing every square inch of land in Los Gatos? The answer is simple...greed. Isn't it interesting that most of the homes will be built in Los Gatos School District? I wonder what kind of back-room deals happened to make this come about. The town council should be ashamed of itself.

Sincerely,  
Carmen Villanueva

## Marni Moseley

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**From:** Cathleen Bannon <cathleenbannon@gmail.com>  
**Sent:** Wednesday, March 23, 2016 8:33 PM  
**To:** Marni Moseley  
**Cc:** Grant Bannon  
**Subject:** North 40 proposal

Dear Ms Moseley and Town Council- As a resident of Los Gatos, I want to voice our family's concerns regarding the current proposal for phase 1 of the North 40 development.

The current proposal does not meet the approved specific plan in several areas.

1- The plan does not look and feel like Los Gatos. Any proposed development needs to focus on charm, green space, walkable neighborhoods, be set back from street, include dense large trees. The proposed plan is modeled after urban developments with dense housing, tall buildings, narrow walkways, mass amount of retail. This intense number of homes will generate so many cars that no one will feel safe to walk with their families in this area. The homes along Los Gatos Blvd should be low larger homes, set back from the road (just as with the south side of the Blvd) to keep the town's charm and look. There should be green belts surrounding all perimeters so when driving on 17 or down Lark you see trees not concrete from a massive development that is do out of character for the town.

2- the proposed plan does not meet the specific plan's requirement of not impacting traffic and schools. Densely packed 320 homes on the south side next to the Lark 17 entrance will create a tremendous traffic bottle neck that the town will not recover from. These homes could account for another 640 cars on our town streets. Unthinkable, especially on LG Blvd which already sees tremendous traffic- can take 30 mins to get kids to school in the morning...such traffic quickly changes a town to an urban city. This is NOT in keeping with the look and feel of LG. Secondly, LG schools are already over impact by upwards of 500 kids. We do not have the infrastructure to bring in another 300-900 kids from a new development. Let's not kid ourselves, parents are so desperate to get into our district, they will put a family of 4 in a 1 bedroom. This is TOO many homes, the school system can not handle it and our top ratings will fall. Additionally, there should be NO reason that ALL homes in the development be placed on the land in the LG school district. That is the greed of the developers to sell the homes with that distinction. If the Campbell district is not impacted then the homes should be on that land. At the bare minimum, it should be shared with only 1/2 the homes in LG district.

### Recommendations

- less homes...reduce by 1/2 to 160 homes in total with no more than 80 of those in LG school district.
- change the look from urban, dense, vertical living to small town vintage and varied homes, set back from street, wide, child friendly walkways, less cars.
- more green space, green belt around perimeters so you see trees not stucco.

Thank you for listening to your town, we are counting on you to stand up for us to keep the look and feel of LG, and save our schools.

Cathleen & Grant Bannon  
16828 Kennedy Rd  
Los a Gatos, Ca 95032

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## Marni Moseley

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**From:** Linda Frolich <lindafrulich@gmail.com>  
**Sent:** Wednesday, March 23, 2016 11:05 PM  
**To:** Marni Moseley  
**Subject:** North 40 Resident comments

Hi there,

I'm a resident and homeowner in the neighborhood off of Garden Hill/Lark Ave. I'm hoping to attend the meeting on March 30th, but I wanted to submit some comments and concerns directly.

1) I'm concerned about the major traffic impact this project will have in our part of town. I'm sure you are well aware of the daily, heavy traffic congestion that occurs along Lark Ave. I can barely leave my home without dreading which way will be bad or worse. I missed half of my son's first baseball game because I got stuck on Lark in ridiculously slow/standstill traffic. And now, with the new Netflix buildings (and the new traffic coming with them), traffic is already starting to grow worse on that end of Lark. I know there has been money set aside for traffic mitigation, but the problem is already bad. It should be fixed to handle current traffic issues before drawing in additional traffic to be sure their plan can truly work.

2) The story poles - I'm sick to my stomach when I realize that we'll be looking at walls of buildings instead of trees. I can't believe that something more sensible can't be put in on Lark. I get it that we need to address a housing issue, but there is more than one way to do it. Perhaps the high density housing should go over next to hwy 85 so that existing residents don't have to look at it. How about single family homes (single story with basements) at the south end of the North 40, commercial property located more centrally (so those of us who live nearby can walk to and enjoy the offerings (which we thought could be pretty neat until we found out that they'll be the furthest away from us), and then higher density housing at the north end of the property? Or, maybe just not 300+ homes in a tiny area.

3) I'm also concerned that all of the high density housing has been placed in the LGUSD boundaries. Really? I can't begin to understand this decision. Couldn't it be split between us and Union or Cambrian districts? We have to take it all? And I know this is supposed to be millennial housing, but I think we all know that is simply not how this will really shake out. We work so hard to raise money in an effort to maintain our school services and now this extra burden will be placed on top of that? It seems terribly short sighted. And the children in this town will suffer because of it.

Who is really supposed to benefit from this project? I believe in the rights of property owners, but the transformation of one piece of property, no matter how big or small, doesn't have the right to change the existing culture of the surrounding community, does it?

I'm positive that I'm not the only tax paying resident of this town that feels this way. And, did you know there are still many residents of Los Gatos that are not aware of this project or the scope of it? I don't believe due diligence has been done to educate the greater community about this project. In fact, the only place I have seen anything publicly listed has been on Facebook. Not everyone uses Facebook, and even those who do, still might not see these posts. I consider this laziness on the part of those who are supporting this project. And them offering to meet for coffee at Starbucks during hours when many of us work is simply not enough.

These are my honest feelings and I feel powerless to make a difference. Please know that the residents that are aware of the project really don't feel there is anything that can be done. Is there? Thank you for your consideration of my comments and concerns, and I hope to be at the meeting next Wednesday.

Linda Frolich

173 Ivy Hill Way  
Los Gatos, CA 95032  
(408) 655-9675

Sent from my iPad

March 24, 2016

Planning Commission  
110 E. Main Street  
Los Gatos, CA 95030

**SUBJECT: CONCERNS ABOUT PHASE 1 OF THE NORTH 40 DEVELOPMENT**

Dear Members of the Planning Commission:

I have a number of concerns about the proposal for Phase 1 of the North 40 development. I hope you will take these comments into consideration and ask the developer for major modifications to its proposed development.

**Residences should be spread throughout the 44 acres of the North 40 and not concentrated in the first 20 acres.** The Specific Plan permits a maximum of 270 residential units plus 50 senior units and allows for residential building through the 44 acres of the North 40. The developer has chosen to build ALL the residential units on the first 20 acres of Phase 1. This has resulted in excessive density and an environment that does not look and feel like Los Gatos (thus violating Guiding Principle 1 from the Specific Plan: "The North 40 will look and feel like Los Gatos.") The number of residences in Phase 1 should be reduced at least by half so that residences can be spread throughout the development.

**At least half the residences should be moved to later phases (and across the school boundary line) to avoid impacting the schools.** Although the developer claims that the residential units are aimed at millennials and seniors, there are likely to be many families with children that will move into them. As a result, the developer is violating guiding principle 4 from the Specific Plan: "The North 40 will minimize or mitigate impacts on town infrastructure, schools, and other community services."

**In general, the buildings in Phase 1 should be more spread out.** The view of the story poles from Highway 17 and the model indicate a too-heavy concentration of structures. In addition, the Specific Plan, on p. 2-3 calls for "lower intensity residential" in this area. I believe that the original idea for the North 40 was to have lower intensity building in the Lark area, with increasing intensity as the development headed toward the 85 interchange. The idea here, I believe, was to discourage traffic in the Lark area, with more of the traffic impact resulting from building in the northern area.

**Senior housing should be integrated through the development and not just put all together over the Marketplace.** This may be a minority view, but I'm a senior and I would not like to live in a tight cluster with other seniors over a market. I don't feel the rooftop open space "Senior Court" compensates for the lack of green space for these units.

**Buildings should mesh with structures in the surrounding areas.** The developer appears to be maximizing its use of the space by making almost all the residences 35 feet high. This conforms to the Specific Plan, but it creates housing that does not fit in with the buildings in nearby neighborhoods. The Highland Oaks neighborhood, for example, consists of one-story ranch homes that are less than half the height of the projected residences. The developer should reduce the height of the residences to better conform to the neighborhood; a height of no more than 25 feet seems more appropriate than 35 feet.

**Buildings make it impossible to see the hills.** Following up on the previous note, the massing of the 35-ft-tall units makes it impossible to see the hills from inside the development. This is another reason why the height and massing of the buildings should be reduced. Furthermore, the height and massing of the buildings violates guiding principle 3 from the Specific Plan: “The North 40 will embrace hillside views, trees, and open space.”

**The buildings should “celebrate our history” and “agricultural heritage,” but many fail to do so. Many buildings are massive and boxy.** The architect seems to have aimed at an urban loft look rather than an “agricultural heritage” look. See the illustrations of residences on pp. 72, 73, 133, and 170 as examples. The residences on p. 73 look like they belong in an office complex. The flat facades and window treatments lack charm. Housing that “celebrates our history” should look more welcoming and might include porches and more interesting window, roof, and surface treatments. I know this is subjective, but I find the general architectural approach very uninspired.

**The “Garden Cluster” residences were promoted as “cottage clusters.” The term “cottage” suggests charm and coziness. The “Garden Cluster” residences, far from being charming and cozy, are heavy looking, 2- and 3-story structures.** I feel I was sold a bill of goods here. The Garden Clusters look nothing like the idyllic homes shown in Table 2-7 (page 2-27) as “Cottage Cluster (Detached Product/Garden Cluster (Attached Product) Lark District” in the Specific Plan. Furthermore, the Specific Plan on p. 2-3 describes cottage cluster housing as being “characterized by detached cottages oriented onto common greens.” This is not what we see in the “Garden Clusters.” Is it possible to have the developer come back with true “cottages”—residences that are lower, cozier, and more charming and that are actually “clustered around a common green”?

**There are inadequate setbacks for the residences.** The garden cluster homes, rowhomes, and condominium cluster seem to have inadequate setbacks, much like we saw with the “Il Vicinato” proposal. The front doors appear very close to the sidewalk with very little green space separating the buildings from the sidewalk. This gives the development a more city-like feeling than seems appropriate.

**The community park seems too small.** When I looked at the model, the community park did not feel adequate in relation to the many residences in the area. The view on page 191 confirms to me that this park is insufficient. In addition, it is almost all hardscape. The park should be larger and contain more green areas.

**The community garden also seems too small.** There are supposedly 38 plots in this garden, but it does not seem like community members could plant much of anything in the proposed garden. The community garden should occupy a larger space.

**The amount of green space does not seem adequate.** I’m guessing that the developer has somehow met the 30% open space, 20% green space requirement, but the model shows little green space at all. I’m guessing that the 20% green space requirement is met through bits and pieces of green added together to reach the 20%. Instead of this, we need actual concentrated swaths of green space within this Phase 1 area.

**There should be more of a setback for the buildings along Lark.** As I looked at the story poles while driving along Lark before the Highway 85 entrance, I felt that the buildings were excessively close to the roadway.

**Is it necessary to design on a grid pattern?** The design of streets on a grid gives the development a city-like feeling. Is it possible to ask for streets/alleys that curve or loop in some places?

**Can we move forward without knowing if the school will need 2.5 acres of the site for a new school?**

**Can we move forward without knowing what the historical preservation element will be?**

Thank you for your hard work on this very difficult decision. After so many years of working on a solution to the North 40, I hope that you will take the time and continue your efforts to get the development right.

Sincerely,

Barbara Dodson  
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