



August 9, 2016

Hon. Barbara Spector and Members of the Town Council
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

RE: North Forty Phase 1 ("Project")
Architecture and Site Application S-13-090
Vesting Tentative Map Application M-13-014
Special Town Council Meeting August 9, 2016

Dear Mayor Spector, Vice Mayor Sayoc and Members of Los Gatos Town Council:

We have reviewed the Staff Report dated August 4, 2016 and wish to respond to certain statements and analyses contained in that Report and expressed by some members of the public in letters attached to the Staff Report. Preliminarily, we note that although the official recommendation on page one of the Staff Report is to deny the Project, the rest of the Staff Report contains no support for denial. Thus we assume that the official recommendation is in line with Town practice that the staff recommendation will be to uphold the Planning Commission's action, but that this recommendation does not reflect staff's professional judgment which in all prior staff reports to has been to approve the Project.

The Staff Report (page 14) suggests that the Council can consider whether the "number and distribution of units" are consistent with the Specific Plan and possibly suggest changes. A desire to decrease the number and change the distribution of units is also expressed by some members of the public in letters attached to the Staff Report. We disagree that this is an option. The proposed Project is fully consistent with the objective standards of the Specific Plan, as the Staff Report confirms. There is no other application in front of the Town, so any idea that some units could be redistributed elsewhere in the North Forty Plan Area is pure speculation at this time.

The density proposed in our application is based on rights afforded to us by state law.

More particularly:

ATTACHMENT 21



1. The Density Bonus Law entitles the Project to 320 units. If there is a development standard that precludes the Project from achieving the 320 units, it must be waived by the Town pursuant to the Density Bonus Law.
2. Under the Housing Accountability Act, the Project cannot be denied and the density cannot be reduced unless the Project does not conform to some objective standard; and/or there is a “specific health or safety impact.” However, the state Density Bonus Law also provides that the Town must waive any development standard that precludes 320 units.

These rights provided by state law are in addition to rights afforded to us by Town policy. More particularly:

1. Under the Town’s Housing Element and the Housing Element statute, the approval is “by right” and must achieve development at a minimum of 20 units per acre.
2. The Town’s own North Forty EIR stated that the Project has no impact on parks or open space, and the Town has not adopted a State Quimby Act-compliant subdivision ordinance, so no additional open space can be required to be dedicated to the Town or for public access. Nonetheless, the Project exceeds all the standards for private open space in the Specific Plan *and* voluntarily offers to allow public access to the vast majority of the open space in the Project.

Town of Los Gatos General Plan

Not only is the right to build at this density (or higher) afforded to us by State and local law but we believe this density or intensity is what is, in fact, envisioned by Town policy.

The Housing Element of the General Plan was adopted following the certification of the Environmental Impact Report (EIR) for the North Forty Specific Plan. The Housing Element was approved by this Town Council on May 5, 2015. At that time, the minimum density of 20 units per acre to be required on the North Forty was made clear as was the required ‘by-right’ nature of approvals for housing. ‘By-right’ is defined as “not requiring a conditional use permit or other discretionary approval; however, design review according to the objective standards contained in the Specific Plan can occur (see Action HOU- 2.4).” In addition, the Housing Element states that “it is anticipated that by-right, multiple-family development at a minimum of 20 units to the acre will occur as a single use development as permitted by the zoning.” The Project is consistent with this and other applicable policies and actions specified in the General Plan and Housing Element as shown in attached Tables A and B.

The Specific Plan reference to “lower intensity residential” in the Lark District is a statement that the planned uses in the Lark District are lower intensity uses than those in the Transition and



Northern Districts due to its primarily residential character versus the other districts (which include higher intensity mixed-use, commercial, hospitality and entertainment uses). Section 2.3.2 of the Specific Plan makes this distinction vis-à-vis the Transition District as it states:

“Located in the central portion of the Specific Plan Area, the Transition District provides a transition and buffer between the lower intensity, primarily residential, character of the Lark District and the active retail and entertainment emphasis of the Northern District. The Transition District will accommodate a range of uses including neighborhood-serving stores, specialty market and mixed-use housing with residential units above commercial. A hotel or hospitality use could also be part of the land use mix.”

In alignment with the Town’s Housing Element policies, the North Forty Specific Plan makes it more difficult for lower density residential to be approved by making multifamily housing its focus (Section 2.4 page 2-6) and making the non-multifamily residential type, cottage clusters, only allowable with a Conditional Use Permit (Table 2-1). Thus, the Specific Plan is in conformance with the General Plan Housing Element Policy HOU 2.4 and the intensity of housing proposed is in line with these policies.

The Housing Element

Related to this, members of the public have expressed concern that the Town will be required to find another site to meet its RHNA requirements if the Project is built as proposed. The Project proposes 50 units of affordable, income-restricted housing and 270 units of market-rate housing (with a density bonus), all at a density of 20 units per acre. This more than meets the Town’s obligation to allow development of 270 units on the North Forty at 20 units per acre, and no additional rezoning will be needed to meet the Town’s Housing Element obligations. If a Project application, such as the one before you, is approved at a density of less than 20 units per acre or denied, additional rezoning would be required to meet the Town’s obligations under state Housing Element law. Please see attached e-mail correspondence from Glen Campora, Assistant Deputy Director, Housing Policy Division, California Department of Housing and Community Development, which is attached as Exhibit A.

Open Space and Quimby Act

Finally, reducing or redistributing units from the area covered by the Project application is being suggested in order to create more open space. As has been already noted, the Specific Plan requires 30 percent open space (more than any other Project in Los Gatos that we have observed in the eight years we have been active on the North Forty), and our application exceeds this



requirement by providing 39 percent open space, of which at least 85 percent is open to the public.

A requirement for provision of public access to open space (including on the 30 percent already required by the Specific Plan) cannot be justified unless it is needed to mitigate the impacts of private development. The standard of the Nollan, Dolan, and Ehrlich cases requires that there be an essential nexus to the impacts of the Project, and that the requirement be roughly proportional to those impacts.

However, this nexus requirement is not satisfied in the North Forty Specific Plan. There is no impact on public open space due to the passage of the North Forty Specific Plan or the planned development of the Plan Area. The EIR for the Specific Plan identifies no such impact, and the Town has no ordinance consistent with the Quimby Act requiring public open space in new developments, since there is already abundant public open space in the Town, including open space close to the Plan Area. The EIR determined based on the buildout of the 2020 General Plan EIR (which included up to 750 residential units on the North 40) that there is adequate public open space nearby to serve the Project (p. 3-187).

Despite this finding, we have designed an open space program that is the centerpiece of a model agrarian neighborhood. The open space program will feature 2.7 acres devoted to agricultural uses which will produce an estimated 14.5 tons of fruits and vegetables per year. These will be grown in community gardens, commercial gardens and on producing (not ornamental) orchard trees. We also feature eight public parks and plazas that are connected by 25' to 35' wide landscaped paseos, shaded sidewalks and a multi-modal pathway system. These parks include a community park that is comparable in size and scale to Town Plaza Park and two passive use neighborhood parks that are similar in size and scale to other neighborhood parks in Los Gatos. Finally, buoyed by the Town's aspiration for amenities for pedestrians and bicycles and in addition to the multi-modal pathway system, we are voluntarily proposing to connect the North Forty to the Los Gatos Creek Trail via dedicated bicycle lanes on both sides of Lark Avenue.

Reduction of Unit Sizes

In addition to the desire to reduce or redistribute units in order to create more open space, another common complaint is that the units are too large and should be reduced in size. We would emphasize that there is absolutely no objective standard in the Specific Plan that would support any such reduction. The only specification of unit sizes contained in the Specific Plan is on page 6-14, and the sizes listed there are on average considerably larger than those proposed. In fact, if one takes the maximum residential square footage allowed (700,000 sf) and divides by



the 270 baseline (365 density bonus) allowable units, the resulting maximum size per unit is 2,592 square feet (1,917 square feet if density bonus is used) which is approximately 1,199 (524) square feet larger than proposed.

Any requirement to reduce unit size would in effect be a denial of this Project, since it would require complete redesign of the buildings and site layout, in violation of the Housing Element “by right” requirement, the Density Bonus Law, and the Housing Accountability Act. In addition, it renders the Project infeasible economically.

After the Planning Commission’s request to consider smaller unit sizes, we commissioned John Burns Real Estate Consultants to determine the feasibility of this from a marketability perspective. Their consumer analysis summarizes how the reduction of the average market rate for-sale housing square footage by over 33% (from 1567 to 1000 square feet) is not supported by the market. Based on their research, the size of units proposed is far smaller than the existing newer multi-family for-sale housing stock in the Town. The report states: “Of newer townhomes in Los Gatos, the median unit size is over 1,900 SF, including three bedrooms and 2 ½ bathrooms. When assessing only townhomes built in the last 10 years, the median unit size is even larger, at +/- 2,100 SF. At a weighted average size of 1,561 SF, the current product array at the Subject Property is substantially smaller than the recently constructed housing inventory of Los Gatos.” This report is attached as Exhibit B to this letter.

Finally, the Staff Report references that the Planning Commission statement that “(t)he project does not incorporate views adequately in the layouts as called out in Open Space Policy 01 View Preservation and does not comply with Design Guideline 3.2.1.d *Site Planning and Design*, and Section 3.2.6.e.i. *Building Elements and Articulation* which states “Special care shall be taken to avoid obstructing views to the surrounding hills.”” However, Section 3.2.6.e.i. more specifically states in Section e) that “Projects located on corner parcels at signalized intersections along Lark Avenue and Los Gatos Boulevard should incorporate major design features on the intersection corner,” and in Section I) that “Buildings located at these corner locations are strongly encouraged to frame and front onto intersections. Special care shall be taken to avoid to avoid obstructing views to the surrounding hills.”

This portion of the Specific Plan only relates to the corner buildings at signalized intersections. For this application, this applies only to Lark and Los Gatos Boulevard and Los Gatos Boulevard and the new Neighborhood Street. The application does not include the land area located at the corner of Lark Avenue and Los Gatos Boulevard (gas station location). At Los Gatos Boulevard and the new Neighborhood Street entrance, the two buildings proposed both frame and front onto this intersection. The Specific Plan requirement for a 30’ orchard setback along Los Gatos



Boulevard and a 25' height restriction from Los Gatos Boulevard for the first 50' from the property line have been also been satisfied. Therefore, the reference to this portion of the Specific Plan as a broader policy is not appropriate, and the application in fact satisfies the objective standards for this portion of the site plan.

The above represents our responses to the Staff Report dated August 4, 2016 and expressed by some members of the public in letters attached to the Staff Report. We appreciate your consideration of our responses.

Sincerely,

A handwritten signature in blue ink that reads "A. Don Capobres".

A. Don Capobres
Principal
Harmonie Park Development
Representing Grosvenor

A handwritten signature in blue ink that reads "Linda Mandolini".

Linda Mandolini
President
Eden Housing

A handwritten signature in blue ink that reads "Wendi E. Baker".

Wendi Baker
Vice President of Development
SummerHill Homes



TABLE A: Conformance with General Plan

Policy or Action	Project Conformance
<p>Goal LU-4 To provide for well-planned, careful growth that reflects the Town’s existing character and infrastructure.</p>	
<p>Goal LU-11 To Plan for development of a variety of uses in the North Forty area in a coordinated and comprehensive way.</p>	
<p>Policy LU-11.1 Zoning shall be changed as part of the development applications to provide consistency with the Vasona Light Rail Element and other elements of this General Plan and with any future specific plan prepared for this area.</p>	<p>On June 17, 2015 the Town Council adopted Resolutions Nos. 2015-055 and 2015-056 adopting the North Forty Specific Plan and adopting amendments to the Land Use Element of the Los Gatos General Plan for the North Forty Specific Plan area. Those resolutions found that the Specific Plan was consistent with the General Plan and amended the Land Use Element to incorporate the major policies of the Specific Plan. In particular, the Land Use Element was modified to incorporate the Vision Statement contained on page 1-1 of the Specific Plan, the general guidelines contained on pages 1-6 and 1-7 of the Specific Plan, and the maximum development capacity contained in Table 2-2 of the Specific Plan. The Specific Plan also determined that its policies, standards, and guidelines were consistent with the overarching goals of the General Plan.</p> <p>Therefore, given that the vision, guidelines, and development capacity contained in the General Plan are identical to those in the Specific Plan, and that the Specific Plan was adopted to determine those development standards consistent with the vision, guidelines, and development capacity contained in both the General Plan and the Specific Plan, the determination that the Project is consistent with the Specific Plan conclusively determines that the Project is also consistent with those provisions of the General Plan applicable to the North Forty.</p>
<p>Policy LU-11.2 The Town shall encourage uses that serve Town residents. These include, but are not limited to open space, playfields, office, retail, and other commercial uses. Residential uses may be permitted as part of mixed-use development and only with acceptable mitigation of adverse noise, air quality, and other environmental hazards.</p>	<p>The North Forty Specific Plan requires a minimum of 30% open space. The Project application proposes 39% open space. The Project application also proposes 66,000 square feet of neighborhood serving commercial space as part of a mixed-use development that also</p>



Policy or Action	Project Conformance
	<p>includes residential housing that meet the objective criteria of the North Forty Specific Plan which were established to respond to unmet residential needs of the Town of Los Gatos.</p> <p>Impacts of noise, air quality, and other environmental hazards were studied in the Environmental Impact Report (EIR) for the North Forty Specific Plan. This EIR was certified by the Town Council on January 20, 2015 by Resolution No. 2015-002. In evaluating the environmental impacts of the Specific Plan, the EIR comprehensively reviewed all of the policies of the General Plan applicable in any way to the North Forty and found that the North Forty Specific Plan was consistent with the applicable General Plan policies. The conclusions of the EIR regarding the Project’s conformance with the General Plan are hereby incorporated by reference into these findings.</p>
<p>Policy LU-11.3 Provide coordinated infrastructure in the North Forty area.</p>	<p>The North Forty Specific Plan requires that all infrastructure necessary to support the development shall be constructed in capacity that allows for current and future phases, subject to approval of the town engineer. All infrastructures stubbed for future use, including utilities and roadways, shall be constructed so as not to appear unfinished. The Project application complies. The infrastructure in the Project application is designed to stand alone and not be dependent on improvement required in future phases. See Tentative Map Sheet 1.3 Dimensional Plan, Grading Plans Sheet 1.6-1.14 and Preliminary Utility Plan sheet 1.16 for future site connection edge conditions.</p> <p>The infrastructure in the Project application sizes utilities for future site connection and edge conditions. See Preliminary Utility Plan sheet 1.16.</p>
<p>Policy LU-11.4 Include a variety of commercial uses reflective of Town Council’s Vision and Guiding Principles for the North Forty. Land uses shall follow a logical land use</p>	<p>The North Forty Specific Plan states in Section 2.4 “In general, lower intensity shops, offices, and residential land uses are envisioned in the southern portion of the Specific Plan Area.</p>



Policy or Action	Project Conformance
<p>pattern that takes advantage of the site opportunities while protecting adjacent uses.</p>	<p>Moving northward, potential land uses transition to mixed-use residential and potentially hospitality uses to provide a buffer between the primarily residential uses in the southern portion of the Specific Plan Area and the entertainment, restaurant, and shopping uses envisioned in the northern portion of the Specific Plan Area.”</p> <p>The Project application conforms to the Specific Plan as non-vertical-mixed use residential is planned in the southern Lark District and retail and mixed-use residential is proposed in the Transition District (which is north of the Lark District). The residential use in the Lark District is compatible with the Highland Oaks residential neighborhood which is located directly south of the Lark District.</p>
<p>Policy LU-11.5 Avoid negative effects on the long-term development potential of the area surrounding the North Forty area.</p>	<p>The infrastructure in the Project application is designed to stand alone and not be dependent on improvement required in future phases. It also, however, sizes utilities for future site connection and edge conditions.</p> <p>Proposed roadway and traffic improvements for this Project application are also designed to mitigate impacts of automobile trips caused by potential future development in the North Forty Specific Plan Area that are not a part of the Project application. Internal roadways are also designed for future connections and edge conditions.</p>
<p>Policy LU-11.6 Incorporate multimodal links from the North Forty area to the Vasona Light Rail station into the North Forty Specific Plan.</p>	<p>Section 4.9, 4.10, 4.11 and 4.12 outline multimodal links from the North Forty Specific Plan Area to other parts of the Town and region. On bicycle travel, the Project application complies with the Specific Plan and also voluntarily proposes to connect its internal multimodal path to the Los Gatos Creek Trail system by providing dedicated bike lands from the Project area west along Lark Avenue.</p> <p>As part of the draft Conditions of Approval, The Applicant shall prepare a Transportation Demand Management (TDM) Plan for Town of Los Gatos approval prior to the issuance of a building</p>



Policy or Action	Project Conformance
	<p>permit. The TDM shall include a minimum of those measures identified in the Specific Plan such as:</p> <ul style="list-style-type: none"> a. Bicycle facility provisions b. Transit passes and subsidies c. Carpool incentive d. Reserved car share parking e. Electrical car charging stations f. Coordination with the Santa Clara Valley Transportation Authority (VTA) to decrease headway times to connect to regional destinations, etc. The TDM shall include a TDM coordinator who will submit a TDM effectiveness report to the Town annually. <p>In addition, the applicants have been actively working with the Valley Transit Authority, CalTrans, Silicon Valley Bicycle Coalition, Town Staff, the school districts and Town commissions including Bicycle and Pedestrian Advisory Commission on specific congestion management programs.</p>
<p>Goal VLR-3 To encourage mixed-use developments that coordinate housing in proximity to either neighborhood commercial uses or employment centers.</p>	
<p>Policy VLR-3.4 Encourage mixed-use development of commercial, office, and medium-high residential uses in the North Forty area and along East Los Gatos Boulevard, north of Lark Avenue.</p>	<p>Section 2.4 of the Specific Plan states that “the Specific Plan land uses help to create a pedestrian-oriented and interactive environment that is compatible with surrounding neighborhoods as well as provides for on-site uses that are compatible with each other. The Specific Plan specifies the desired mix, as well as the location of land uses. In general, lower intensity shops, offices, and residential land uses are envisioned in the southern portion of the Specific Plan Area. Moving northward, potential land uses transition to mixed-use residential and potential hospitality uses to provide a buffer between primarily residential uses in the southern portion of the Specific Plan Area and the entertainment, restaurant, and shopping uses”</p>



Policy or Action	Project Conformance
	The Project application proposes residential uses that are consistent with this General Plan Policy in addition the Town’s Housing Element.
<p>Goal VLR-9 To reduce traffic impacts of residential development within the Vasona Light Rail area by taking advantage of mass transit opportunities.</p>	
<p>Policy VLR-9.5 Promote the development of mass transit links between Los Gatos Boulevard, particularly any development on the North Forty site, and the planned Vasona Light Rail station.</p>	<p>As a condition of approval, the applicant is required to coordinate with the Santa Clara Valley Transportation Authority (VTA), plan for, and provide an enhanced bus stop at the location of the existing stop along southbound Los Gatos Boulevard between Neighborhood Street and Bennett Way. The improvements shall be in compliance with VTA standards and must be completed and accepted by the Town of Los Gatos before a Certificate of Occupancy for any new building can be issued.</p>
<p>Goal CD-1 Preserve and enhance Los Gatos’ character through exceptional community design.</p>	
<p>Policy CD-1.6 Town staff shall review properties next to community entry points when they are developed or redeveloped to reflect the gateway concept.</p>	<p>The Project application has been reviewed by Town Staff and the Town’s consulting architect and has met the requirements of the Town’s consulting architect.</p>



TABLE B: Conformance with Housing Element

Policy or Action	Project Conformance
<p>Action HOU-1.1: Below Market Price (BMP) Program: Continue to implement the BMP Program in order to increase the number of affordable units in the community.</p>	<p>The Project provides over 20% very low income units, exceeding the BMP program requirement for 20% moderate-income units. See Exhibit 19 of Attachment 1 to staff report.</p>
<p>Action HOU-1.7: North Forty Specific Plan Area Rezoning: the Town will rezone 13.5 acres within the North Forty Specific Plan area within three years of Housing Element adoption at minimum a density of 20 dwelling units per acre to facilitate affordable housing production. After rezoning, owner occupied or multiple family development will be by-right as defined by not requiring a conditional use permit or other discretionary approval; however, design review according to the objective standards contained in the Specific Plan can occur (see Action HOU- 2.4). In addition, it is anticipated that by-right, multiple-family development at a minimum of 20 units to the acre will occur as a single use development as permitted by the zoning. If housing affordable to very low and low income households is part of a mixed use development, it will occupy at least 50 percent of the total floor area of a mixed use Project.</p>	<p>The Town completed the rezoning of the North Forty to permit housing at 20 units per acre on a minimum of 13.5 acres within the North Forty Specific Plan area. The zoning permits housing by right as defined in State Law, with design review permitted based on the objective standards in the Specific Plan. The senior affordable housing occupies at least 50 percent of the floor area of the mixed use building it occupies.</p>
<p>Action HOU-2.4: By Right Findings: For multiple family residential development within the North Forty and the Southbay AHOZ site subject to by right development, the Town will amend the Town Code to add by right development findings that, among other items, state that if a Project meets the objective review criteria contained in the AHOZ Design Guidelines or North Forty Specific Plan design guidelines (available on the Town’s website) the deciding body will approve the affordable housing proposal.</p>	<p>Although the Town has not adopted these provisions to the Town code, the Town is reviewing the Project application based on objective review criteria contained in the North Forty Specific Plan design guidelines.</p>
<p>Goal HOU-5: Retain and expand affordable housing opportunities for seniors.</p>	<p>The Project includes 49 units of housing affordable to very low income seniors.</p>

Exhibit A

Barbara Kautz

From: Campora, Glen@HCD <Glen.Campora@hcd.ca.gov>
Sent: Thursday, July 28, 2016 12:55 PM
To: Barbara Kautz
Subject: HCD clarification of RHNA and Housing Element requirements

Ms. Kautz:

I'm replying to your request for HCD to clarify State Housing Law and Departmental administration in determining local government compliance regarding Regional Housing Need Allocation (RHNA) and Housing Element requirements. You indicate clarity is desired concerning RHNA credit for residential units approved, permitted, and/or built since the start of the RHNA projection period and before and after adoption of an housing element determined to comply with statutory requirements. From our conversation (July 13, 2016) and emails (July 22 and 28), I am in agreement with the positions you summarized. Following are additional clarifications.

RHNA is a housing need "capacity" *planning* requirement (sites, zoning, and densities) to accommodate and facilitate housing development, among four income categories, by private sector housing developers; RHNA is not a "production" requirement. Government Code 65583(b)(2) expressly states "*It is recognized that the total housing needs ... may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements*"

Once the adopted housing element satisfactorily identifies and establishes housing sites (zoning, densities, and program actions) for all income category RHNA, the local government is responsible to maintain equivalent "established" capacity in the event the local government makes subsequent changes (zoning and densities) to established sites before development is proposed. For 'by right' sites, the local government is further responsible to ensure the site is developed at the minimum density required by State law. After a Developer has acquired an established site, the Developer can choose to propose a housing project with a different configuration of unit rent or sale levels for different income categories resulting in some or all of the development not satisfying the RHNA income category *goals* applicable to a particular site. In such situations, the local government is not responsible to establish additional comparable sites for any remaining (unmet) income category RHNA.

During the housing element update process until adoption of a compliant housing element, RHNA credit for units approved, permitted, or built (since the start of the RHNA projection period) is allowed to enable the local government to plan and update the housing element for fewer units (reduction in RHNA after RHNA credit). RHNA credit is allowed since the start of the RHNA projection period which generally precedes the Housing Element planning period and adoption due date by at least two years in allowing one year for the regional planning agency to plan and distribute RHNA shares to each local government and one year for local governments to update and adopt the housing element. RHNA credit can be taken for each income category upon the local government demonstrating unit credit for a particular income category was taken based on:

- subsidies, financing or other mechanisms that ensure affordability (e.g., MHP, HOME, or LIHTC financed projects, inclusionary units or other requirements); or

- actual rents or sale prices.
more information is available at: http://www.hcd.ca.gov/housing-policy-development/housing-element/hn_phn_regional.php

Glen A. Campora

Assistant Deputy Director, Housing Policy Division (HPD), Suite 500
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Barbara Kautz

From: Barbara Kautz <bkautz@goldfarblipman.com>
Sent: Wednesday, July 27, 2016 7:48 PM
To: Campora, Glen@HCD
Subject: Requirements for Development on Site Appropriate for Lower Income Housing
Attachments: Los Gatos Adopted Housing Element 2015.PDF

Glen –

Our clients Grosvenor Americas and SummerHill Homes have proposed a project on a site designated in the Town of Los Gatos Housing Element as appropriate for 240 units of lower income housing and 30 units of moderate income housing. (Table H-2, page 21; Housing Element attached.) The Town promised to rezone 13.5 acres of the site to permit 270 units at a density of 20 units per acre. (Action HOU-1.7, page 27.) It has adopted a specific plan that has rezoned the site as promised.

The project proposed on the site by Grosvenor and SummerHill would contain 50 senior affordable units (49 very low income units, and 1 moderate-income manager's unit) and 270 market-rate units, for a total of 320 units, including an 83-unit density bonus. All of the units are being developed at a density of 20 units per acre. This proposal exceeds the number of units (270) shown on the site in the Housing Element.

Members of the public are concerned that, because only 50 units are affordable, the Town will be required to zone another site at 20 units per acre to accommodate 220 units (the required 270 units minus 50 units).

It is our understanding that the only requirement now imposed by Section 65863 is to ensure that the number of units shown in the Housing Element is not reduced. There is no requirement that units actually be affordable. The current proposal by Grosvenor and SummerHill exceeds the number of units shown in the Housing Element. Therefore, approval of the current application will not create any new obligations for the Town of Los Gatos to rezone other sites.

Can you please confirm that our understanding is correct? Thanks for your help.

Barbara E. Kautz

bkautz@goldfarblipman.com

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Barbara Kautz

From: Barbara Kautz <bkautz@goldfarbblipman.com>
Sent: Thursday, July 21, 2016 5:58 PM
To: Campora, Glen@HCD
Subject: "RHNA Credit" for Housing Construction

Glen –

Thanks for the discussion last week about "RHNA Credit" issues. As I mentioned, this is one of the most frequent questions we are asked by clients, usually either: "Does the city/county get RHNA credit if it approves this affordable housing project" or "Does the city/county lose RHNA credit if it approves this project?"

Below is my understanding of the "RHNA Credit" issue. Please let us know if this is correct! Thanks for your help.

Before Housing Element Adopted

Before a city's or county's housing element is adopted, the city or county can reduce its share of the regional housing need (i.e., receive RHNA 'credit') for any units built between the start of the 'projection period' (the period in which housing need was determined) and the date the housing element was due. (Gov't Code Section 65583.1(d).) For instance, in the ABAG area, the 'projection period' started on January 1, 2014, but housing elements were not due until January 2015, so cities and counties could receive a credit for any units built between January 1, 2014 and the housing element due date.

To receive this RHNA credit for lower income units, any units built must *actually* be affordable based on actual or projected rents and sales prices. For instance, if a 100-unit project with 20 low-income units and 80 market-rate units had been built in a city in the ABAG area between January 1, 2014 and the housing element due date, the city could have reduced its RHNA by 20 low-income units and 80 above moderate-income units.

After Housing Element Adopted

After the Housing Element is adopted, cities and counties are required to implement the policies adopted in the Housing Element. The RHNA is no longer reduced by the number of units built.

In preparing their housing elements, cities and counties need to demonstrate that they have adequate sites to accommodate their RHNA at each income level. To accommodate their RHNA for lower income households, they need to zone enough sites at appropriate densities (usually 20 to 30 units per acre) to accommodate the need. (Gov't Code Sections 65583(c), (c)(1); 65583.2(c).)

For instance, if a community's lower income RHNA is 300 units, and the sites must be zoned at 20 units per acre, the community must zone at least 15 acres at 20 units per acre. State law regards any land zoned at the appropriate density or higher densities as being appropriate for affordable housing and therefore meeting the Housing Element's requirement that the community make enough land available at appropriate densities to meet its share of regional housing needs.

There is not a requirement that all of the housing constructed on sites suitable for lower income housing actually be affordable. If non-affordable housing is built on a site suitable for lower income housing, the city or county is not required to find another site suitable for lower income housing. However, the number of units shown on the site in the Housing Element cannot be reduced unless consistent with the housing element and unless there are other sites zoned at the same density adequate to accommodate the lost RHNA. (Gov't Code Section 65863.)

For instance, if a city designates a site as suitable for lower income housing and states that it can accommodate 300 units at 20 units per acre, the city must ensure that any approved development includes at least 300 units at 20 units per acre. However, the housing developed on the site is not required to be affordable. The density cannot be reduced below 300 units unless another site is zoned at 20 units per acre to make up the shortfall. (Other statutes, such as density bonus law and the Housing Accountability Act, may not allow the city to reduce the proposed density even if the city finds another site.)

Construction of affordable housing in one planning period does not reduce a city or county's RHNA in the next planning period. For instance, if affordable housing is constructed in 2016 in the ABAG area, that would not reduce a community's RHNA for the next housing element due in 2023. Constructing market rate housing on a site suitable for lower income housing, but with the specified density and number of units, also does not increase a community's RHNA for the next housing element.

Summary

To summarize:

1. Before a housing element is adopted, communities may reduce their RHNA by the number of housing units actually constructed at each income level between the start of the 'projection period' and the housing element due date.
2. After the housing element is adopted, the RHNA can no longer be reduced. Communities must ensure that the *number* and *density* of units constructed on designated housing element sites is consistent with what is shown in the housing element, but they are not required to limit construction to lower income housing on sites that are suitable for lower income housing.

Barbara E. Kautz

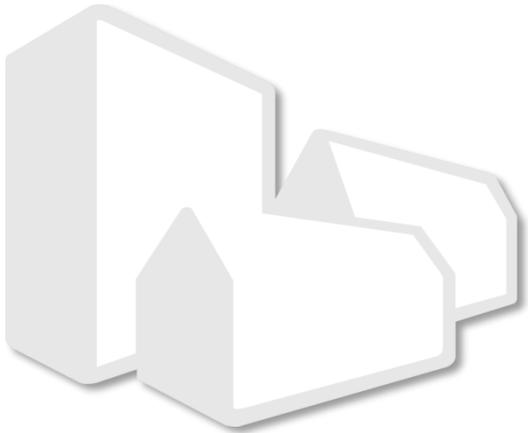
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Exhibit B



North 40

SummerHill Homes

Consumer Analysis

Los Gatos, California

Background and Objective

BACKGROUND:

SummerHill Homes (“Client”) has commissioned John Burns Real Estate Consulting (“JBREC”) to perform this consumer and financial analysis of a market opportunity relating to the development of the North 40 project (“Subject” or “LGN40”) in Los Gatos, CA. North 40 will consist of 260 market-rate condominiums (253 will be built by SummerHill Homes), in addition to 10 market-rate apartments (built by Grosvenor) and 50 senior affordable apartments (built by Eden Housing). This report will focus primarily on the SummerHill Homes’ market-rate condominium homes. Current plans call for a variety of product types including attached cluster condominiums, row townhomes, and garden cluster lofts. Planned unit sizes as currently configured range from approximately 900 – 2,000 square feet (SF), averaging 1,567 SF among the for-sale product types (1,393 SF average community-wide), and feature one to three bedrooms. The Town of Los Gatos Planning Commission has recommended the Client reconfigure the current plans to a smaller average unit size of 1,000 SF or less. Client has asked JBREC to evaluate the Town of Los Gatos’ request in terms of a market acceptance and consumer preference perspective.

OBJECTIVE:

The objective of this assignment is to provide a brief overview in the potential market acceptance of and consumer preferences toward the Subject as envisioned by the Town (in terms of a less than 1,000 SF average unit size parameter).

CONTACT INFORMATION:

This analysis was prepared by John Burns Real Estate Consulting.

Dean Wehrli, Senior Vice President, served as Project Manager and Aaron Stubblefield, Consultant, gathered data and provided analysis. Follow-up questions should be directed to us at:

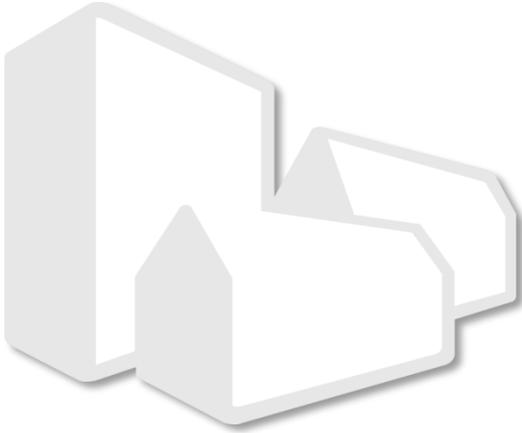
Dean Wehrli: dean@jbrec.com

SummerHill Product Array

This table details the current product mix to be constructed by SummerHill Homes at the Subject. The 253 units will all be attached, multi-story, for-sale product with an average of 1.94 bedrooms per unit.

		Gross Area	Net area	Coverd Parking provided	# of plans	Total Gross Area *	# of Bedrooms	Total Bedrooms
Garden Cluster								
Building type area range 918 sq. ft. - 1998 sq. ft.	Plan 1	1214	1119	1	9	10926	1	9
	Plan 1x	1687	1546	2	4	6748	2	8
	Plan 2	1416	1305	2	9	12744	2	18
	Plan 2x	918	839	1	11	10098	1	11
	Plan 3	1722	1610	2	7	12054	2 + den	14
	Plan 4	1442	1351	1	9	12978	1 + den	9
	Plan 5	1418	1323	1	9	12762	1	9
	Plan 6	1945	1779	2	9	17505	3	27
	Plan 7	1998	1789	2	9	17982	3 + den	27
Garden Cluster Total					76	113797		132
Condominium Cluster								
Building type area range 996 sq. ft. - 1999 sq. ft.	Plan 1	996	940	2	20	19920	2	40
	Plan 2	1255	1176	1	10	12550	1 + den	10
	Plan 3	1570	1415	1	10	15700	1 + den	10
	Plan 4	1608	1477	1	10	16080	1 + den	10
	Plan 5	1832	1696	2	10	18320	2 + den	20
	Plan 6	1942	1731	2	10	19420	2 + den	20
	Plan 7	1999	1867	2	10	19990	3	30
Condominium Cluster Total					80	121980		140
Rowhomes								
Building type area range 1500 sq. ft. - 1944 sq. ft.	Plan 1	1628	1455	2	36	58608	2 + den	72
	Plan 2	1500	1393	2	37	55500	2	74
	Plan 3	1944	1742	2	24	46656	3	72
Rowhomes Total					97	160764		218
TOTALS					253	396541		490
Average sq. ft. (Gross)						1567		
Average bedroom count								1.94

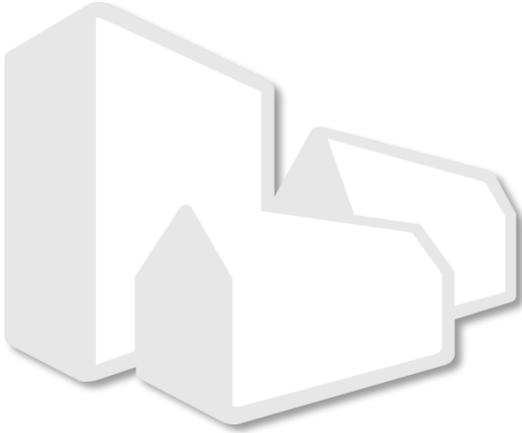
Source: SummerHill Homes



Executive Summary and Key Conclusions

Executive Summary of Findings

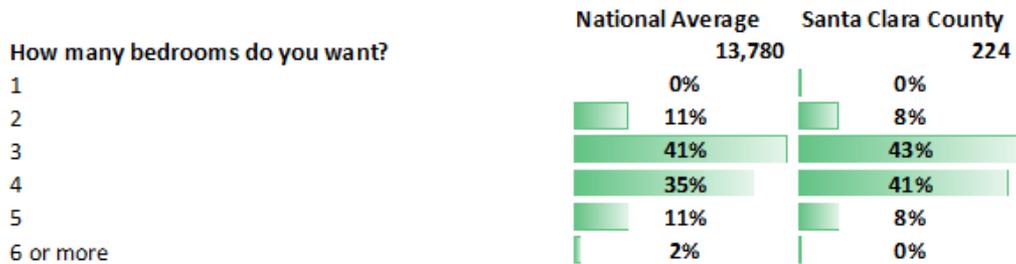
- **Our consumer preference survey shows that home shoppers in Santa Clara County and the nation prefer home sizes significantly larger than the +/- 1,000 SF or smaller units as envisioned by the Town.** Prospective home buyers typically are looking for three to four bedrooms and homes ranging from 1,500 to 2,500 SF. Based on this survey, few are searching for a home under 1,500 SF and virtually no home buyers would be satisfied with a home under 1,000 SF. Though Santa Clara County home shoppers are slightly more accepting of smaller homes than the national sample, the trends are very similar and clearly indicate a lack of market acceptance of very small homes in the for-sale market.
- **Attached townhomes built over the last 10 and 25 years in Los Gatos and a slightly larger Competitive Market Area (CMA) of like communities near Los Gatos are universally larger than 1,000 SF.** Townhomes – that is, attached multi-level floorplans like that to be built at the Subject – average about 1,500+ SF across the CMA and 1,900 to over 2,000 SF in Los Gatos. There have been no transactions over the last three years for townhomes under about 1,100 SF. That is, the shape of the existing market in Los Gatos and the CMA strongly implies there would be limited, if any, market acceptance of very small townhome units. In truth, plans at about 1,000 SF or smaller are far more suited to the apartment market. This is a very different user than most for-sale home shoppers, particularly in a highly upscale, older skewing community like Los Gatos.
- Los Gatos is a very affluent community even by Bay Area standards, with a median household income of over \$126,000. The city's **address cachet allows it to support very strong home pricing** with even attached product typically selling for well over \$1 million. There is currently unmet demand for more for-sale, entry-level homes in Los Gatos, which the current product array of the Subject will help satisfy while remaining appropriate for the market and location.
- Residents of Los Gatos skew older, with a median age of 46, indicative of a **large proportion of DINKS (dual-income, no kids), empty nesters, and some retirees.** While these life stages don't require large homes (as they don't have to accommodate children), they typically have the desire and means to live in a more conventional sized residence.
- **In sum, from a consumer, market, and demographic perspective, our analysis indicates that very small units are poorly suited for the Subject, would diminish if not erase its marketability and financing opportunities, and would limit its value.**



Consumer Preference and Market Summary

JBREC Product and Consumer Insights Survey

John Burns Real Estate Consulting conducts an annual nationwide product and consumer survey among new home shoppers that have registered interest with new home builders online or in their sales office. The questions are primarily focused on future home preferences. We have extracted respondents located within Santa Clara County in order to refine the results more closely to Los Gatos consumer preferences. The table below shows the results of preferred future home sizes at both a National and Santa Clara County level. There is a **clear illustration of preference towards more conventional homes sizes**. The overwhelming majority (83%) of new home buyers in Santa Clara County are seeking a 3 or 4 bedroom home, while less than 0.5% favor a single bedroom. In terms of unit size, Santa Clara County does prefer smaller homes relative to that of the National Average, however, they primarily prefer homes in the range of 1,500 – 2,500 SF. Though 6.7% of buyers in Santa Clara County are in the market for a home sized 1,000 – 1,499 SF, less than 0.5% would be interested in a home of under 1,000 SF. Based on these results, an alteration of the average unit size at the Subject development to 1,000 SF or less would limit demand to an extraordinary small niche within this submarket.



National Sample
21,848
Santa Clara County
389



100+
questions



Current Housing Inventory of Los Gatos

- Currently, the active new home projects in Los Gatos are targeted toward a very wealthy niche market buyer. Sorellas (SummerHill Homes) and The Highlands of Los Gatos (Davidon Homes) both offer luxury single family homes with substantial lots, often highlighted by spectacular views. Unit sizes at these projects are very large, typically over 4,000 SF, touting three – seven bedrooms and prices ranging from \$4 million.
- The table below displays median statistics for recent (last three year) townhouse sale transactions within Los Gatos, as well as the wider CMA defined as the combined cities of Los Gatos, Saratoga, Cupertino, Los Altos, and Palo Alto. Whereas product in this market tends to be substantially older, we restricted our assessment to include only townhomes constructed in 1990 and newer, as well as 2005 and newer in order to better represent housing inventory competitive with new homes.
- Of newer townhomes in Los Gatos, the median unit size is over 1,900 SF. including three bedrooms and 2½ bathrooms. When assessing only townhomes built in the last ten years, the median unit size is even larger at +/- 2,100 SF. At a weighted average size of 1,393 SF, the current product array at the Subject is substantially smaller than the recently constructed townhome inventory of Los Gatos, and the wider CMA. In fact, the smallest townhome in the CMA is just under 1,100 SF.



The Highlands of Los Gatos

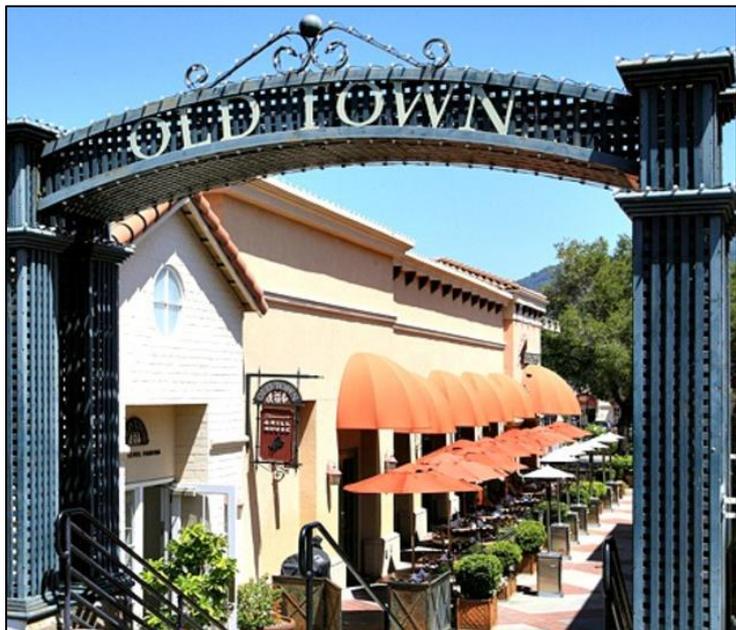


Townhome inventory example in Los Gatos

8/1/2013 to 8/1/2016 Townhome Sales

Median Statistics	Los Gatos		Competitive Market Area	
	Townhomes 1990+	Townhomes 2005+	Townhomes 1990+	Townhomes 2005+
Unit Size	1,935	2,116	1,589	1,519
Bed Count	3.0	3.0	3.0	3.0
Bath Count	2.5	2.8	2.5	2.5
Year Built	1997	2016	2008	2009
Price	\$1,290,000	\$1,875,000	\$1,425,000	\$1,450,000
\$/SF	\$823	\$887	\$878	\$889
Days on Market	15	4	10	10

Source: Multiple Listing Service (MLS)



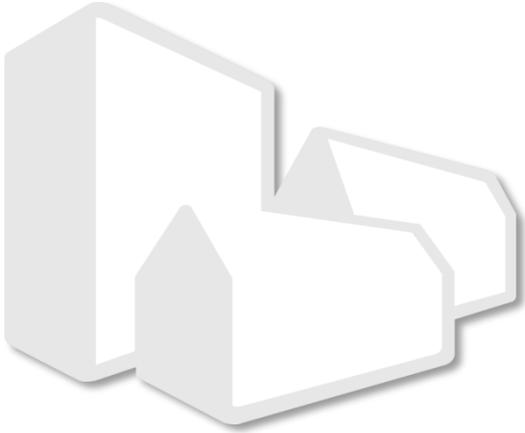
- Los Gatos is situated along the foothills of the Santa Cruz Mountains, just southwest of San Jose. The Town offers a historically less dense residential profile than other core Bay Area cities, while still providing a quick commute to the vast employment of the Silicon Valley.
- The Town is markedly older than the wider Bay Area region with a median age of 46 years. This is indicative of more “Move-Up” households, with approximately 32% of residents aged between 45 – 64 (compared to the nationwide average of 26%).
- Household sizes are slightly smaller than the national average, with a median of 2.4 residents per household. Though there are families in Los Gatos, the city has many DINKS (dual-income, no kids), empty nesters (adult children that have left the household), and retirees.
- Los Gatos is a very affluent town even relative to Bay Area standards. The city has a median income of \$126,000 per household (over twice the national average), average net worth of \$1.7 million (three times the national average), and a median home value of \$1,000,000 (five times the national average). According to Bloomberg Businessweek, Los Gatos is the 33rd wealthiest city in the United States.

Los Gatos (2016 Statistics)

Population	30,919	Median Household Income	\$126,008
Households	12,818	Median Home Value	\$1,000,001
Avg. Household Size	2.39	Average Net Worth	\$1,708,677
Median Age	46.0	Edu. Attainment (Bachelors or Higher)	69%

Source: ESRI

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Limiting Conditions

Limiting Conditions

The conclusions and recommendations presented in this report are based on our analysis of the information available to us from our own research and from the client as of the date of this report. We assume that the information is correct and reliable and that we have been informed about any issues that would affect project marketability or success potential.

Our conclusions and recommendations are based on current and expected performance of the national, and/or local economy and real estate market. Given that economic conditions can change and real estate markets are cyclical, it is critical to monitor the economy and real estate market continuously, and to revisit key project assumptions periodically to ensure that they are still justified.

We have no responsibility to update our product analysis for events and circumstances occurring after the date of our report.

Depth and Breadth of Experience

Established in 2001, JBREC performs 600+ market studies annually.

CONSULTING

- Strategic Direction & Planning
- Home Builder Operations Assessment
- Demand Analysis
- Consumer Research & Focus Groups
- Economic Analysis & Forecasting
- Litigation Support & Expert Witness
- Financial Modeling
- Project & Product Positioning

RESEARCH

- Exclusive Access to our Research & Consulting Executives
- Metro Analysis & Forecast
- Regional Analysis & Forecast
- Home Builder Analysis & Forecast
- Apartment Analysis & Forecast
- Exclusive Client Events
- Public Builder Call Summaries
- Weekly Insight
- Presentations & Webinars
- Consumer Research
- Proprietary Surveys

