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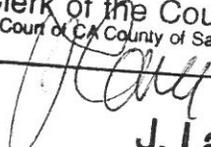
RECEIVED  
TOWN OF LOS GATOS

JUN 14 2017

CLERK DEPARTMENT

**FILED**

JUN 09 2017

Clerk of the Court  
Superior Court of CA County of Santa Clara  
BY  DEPUTY  
J. Lara

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

EDEN HOUSING, INC., SUMMERHILL HOMES, LLC  
and GROSVENOR USA Limited,  
Petitioners,  
vs.  
TOWN OF LOS GATOS,, and DOES 1 to V,  
inclusive,  
Respondents.

Case No. 16CV300733  
DECISION AND JUDGMENT  
GRANTING WRIT OF MANDAMUS

This matter was heard in Department 16 on March 29, 2017. Petitioners, Eden Housing, Inc., Summerhill Homes, LLC and Grosvenor USA Limited, appeared through their attorneys, Arthur J. Friedman, Sheppard, Mullin, Richter & Hampton, LLP, and Andrew L. Faber, Berliner Cohen, LLP. Respondent, Town of Los Gatos, appeared through its attorneys, Robert Schultz, Town Attorney, Town of Los Gatos, and Whitney G. McDonald, Richards, Watson & Gershon, APC.

Hearing was for Petitioners' petition for writ of mandate. Petitioners' opening brief in support of the petition was filed January 13, 2017; Respondent's opposition to Petitioner's opening brief was filed February 24, 2017; and Petitioners' reply brief was filed March 17, 2017.

1 The petition for writ of mandate concerns Town of Los Gatos Resolution 2016-046. The  
2 Resolution, entered by the Town Council on September 6, 2016, denied Petitioners'  
3 applications for approval of proposed Vesting Tentative Map and Architecture and Site. The  
4 Resolution was signed on September 13, 2016<sup>1</sup>, and sets forth findings for the decision.

5 The matter having been submitted, and after consideration of the evidence in the  
6 administrative record, oral and documentary, and application of law, including consideration of  
7 burden of proof and argument of counsel, THE COURT ENTERS THE FOLLOWING DECISION AND  
8 JUDGMENT:

9 Preliminary rulings.

10 The Petition for writ of mandate is filed in the time and manner required by law.

11 Review of the local agency action falls under administrative mandamus under Code of  
12 Civil Procedure §1094.5.

13 Writ of Mandamus.

14 The applications for proposed Tentative Map and Architecture and Site are to allow  
15 Petitioners' proposed subdivision and development of the North 40 site in Los Gatos, CA  
16 ("Project"). The site is identified for development by the Town of Los Gatos ("Town") in its  
17 Housing Element. The Town adopted the North 40 Specific Plan which sets forth objective and  
18 subjective factors and goals for development ("Specific Plan").

19 The principal controverted issues are: (a) whether the Town proceeded as required by  
20 law in applying the correct legal standards and criteria in its decision to deny Petitioners'  
21 applications; (b) whether the findings support the decision; and (c) whether substantial  
22 evidence supports the findings.

23 Standards and criteria to be considered by the local agency. Petitioners contend that  
24 the Town's decision to disapprove the Project violates the Housing Element Law, the Town's  
25 Housing Element, the Housing Accountability Act, and the Density Bonus Law. Petitioners seek  
26 a writ of mandate to set aside the Town's decision and to direct the Town to approve the  
27

28 <sup>1</sup> The official transcript of the hearing of September 6, 2016 indicates the Resolution passed by 3-2 vote of the  
Town Council; however, the written Resolution memorializing the action indicates the Resolution is passed and  
adopted unanimously.

1 Project. Petitioners contend that the provisions of the cited Acts and laws mandate the Town  
2 to approve the Project if it complies with objective criteria of the Town's Housing Element and  
3 objective standards of applicable planning and zoning, unless the Town makes findings  
4 supported by substantial evidence that the Project would cause specific adverse impacts.<sup>2</sup> The  
5 provisions of the Acts and law are intertwined and overlap in their application to the present  
6 matter. The decision and judgment that follows is intended to address the Acts and law  
7 collectively.

8 The pertinent statute of the Housing Accountability Act ("HAA") is Government Code  
9 §65589.5 (j) which states:

10 "(j) When a proposed housing development project complies with applicable, objective  
11 general plan and zoning standards and criteria, including design review standards, in  
12 effect at the time that the housing development project's application is determined to  
13 be complete, but the local agency proposes to disapprove the project or to approve it  
14 upon the condition that the project be developed at a lower density, the local agency  
15 shall base its decision regarding the proposed housing development project upon  
16 written findings supported by substantial evidence on the record that both of the  
17 following conditions exists:

- 18 (1) The housing development project would have a specific, adverse impact upon the  
19 public health and safety unless the project is disapproved or approved upon the  
20 condition that the project be developed at a lower density. As used in this  
21 paragraph, a "specific adverse impact" means a significant, quantifiable, direct, and  
22 unavoidable impact, based on objective, identified written public health or safety  
23 standards, policies or conditions as they existed on the date the application was  
24 deemed complete.
- 25 (2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact  
26 identified pursuant to paragraph (1), other than the disapproval of the housing  
27 development project or the approval of the project upon the condition that it be  
28 developed at a lower density."

23 Under the HAA and Housing Element Law ("HEL"), discretionary determinations of  
24 subjective factors in the General Plan or Specific Plan cannot be the basis for disapproval of a  
25 project. The Legislative purpose of the HAA and HEL (and Density Bonus Law ("DBL")) is to  
26 alleviate housing shortage and prevent denial of housing projects based on discretion,  
27

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28 <sup>2</sup> Government Code §65589.5 (j) of the HAA; the Project is within the statute's definition of a housing development project (Government Code §65589.5 (h)(2)).

1 subjectivity or local opposition. Petitioners contend that “by-right” approval under the HAA  
2 applies to all projects within the Act, including projects that require local agency approval of a  
3 tentative subdivision map and proposed land use.

4 Petitioners maintain that the Town has a mandatory duty to approve the Project  
5 because it is consistent with the objective criteria of the Specific Plan<sup>3</sup>, and because the Town  
6 did not and cannot substantiate a finding by substantial evidence that the Project would have a  
7 specific adverse impact as defined by the statute. The Resolution has no findings of compliance  
8 or lack of compliance with objective standards under the Town’s Housing Element or the HAA,  
9 and recites only findings of subjective criteria. Petitioners assert that the Town abused its  
10 discretion in proceeding in violation of the HAA, HEL and DBL.

11 Review of the Town’s action is complicated by the fact that the applications are  
12 considered and enforced by the Town under Government Code § 66473.5 of the Subdivision  
13 Map Act (“MA”). This code section directs that no local agency shall approve a tentative map  
14 unless it finds that the proposed subdivision, together with its design and improvement, is  
15 consistent with the general plan or any adopted specific plan. A proposed subdivision is  
16 consistent only if the proposed subdivision or land use is compatible with the objectives,  
17 policies, general land uses and programs specified in the general plan or adopted specific plan.<sup>4</sup>  
18 As applied to the proposed Project, the statute directs the Town to consider objective and  
19 subjective factors in the Town’s General Plan or Specific Plan. This includes the exercise of  
20 discretion in determining whether or not the proposed subdivision and land use are consistent  
21 with the policies of the General Plan Housing Element or Specific Plan. Respondent argues that  
22 this state law requires local agencies to exercise discretion in reviewing the Project and  
23 precludes approval “by-right”, notwithstanding the HAA.

24 \_\_\_\_\_  
25 <sup>3</sup> There is substantial evidence in the record to support Petitioners’ contention that the Project is consistent with  
objective standards - had the Town made such a finding.

26 <sup>4</sup> Government Code §66473.5 of the MA provides in pertinent part that “No local agency shall approve a tentative  
27 map ... unless the legislative body finds that the proposed subdivision, together with the provisions for its design  
and improvement, is consistent with the general plan ... or any specific plan adopted.... A proposed subdivision  
28 shall be consistent with a general plan or a specific plan only if the local agency has officially adopted such a plan  
and the proposed division or land use is compatible with the objectives, policies, general land uses, and programs  
specified in such a plan.”

1 Government Code §65589.5 of the HAA and Government Code §66473.5 of the MA  
2 address the same subject - the proposed land use of the Project, and both appear applicable for  
3 a comprehensive approval or denial of the Project. However, the standards and criteria under  
4 each statute are different, and the mandamus petition, in part, seeks a ruling reconciling the  
5 apparent conflict and determining the applicable standards and criteria for the Project.

6 Petitioners contend that the interpretation that is consistent with the Legislative  
7 purposes of the HAA and HEL (and DBL) is to find that the local agency shall enforce objective  
8 criteria of the MA on subdivision issues only, and apply "by right" objective standards of the  
9 HAA and HEL on land use issues. There would be no local agency discretion to consider  
10 subjective criteria in the General Plan or Specific Plan for any project under the HAA,  
11 notwithstanding provisions of the MA that may apply to a project. It is argued that any other  
12 interpretation undermines the purposes of the Legislature in enacting the HAA and HEL (and  
13 DBL) of removing barriers to development and facilitating housing.

14 Respondent cites *Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d  
15 917 wherein the California Supreme Court found that the Legislative history and mandate of  
16 the MA reflects acute awareness that subdivisions which are inconsistent with a locality's  
17 general plan subvert the integrity of the local planning process. Respondent also points out  
18 that not all housing projects under the HAA require subdivision map approval,<sup>5</sup> and approval of  
19 such projects is "by-right" under the HAA and HEL. However, if a project requires a tentative  
20 subdivision map, additional policies and considerations under the Map Act must be enforced by  
21 the local agency and met by the proposed subdivision and land use. Hence, all housing projects  
22 under the HAA must comply with the criteria of the HAA and HEL, and projects that require  
23 subdivision map approval must also comply with the criteria of the MA. Here, the Town  
24 determined that the proposed subdivision map and land use did not meet the criteria of the  
25 MA and denied the applications. The Town contends this is an appropriate discretionary  
26 decision, supported by findings, and the findings are supported by substantial evidence.

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<sup>5</sup> An assertion not challenged by Petitioners.

1           Petitioners argue forcefully that the Town’s position is an affront to State Housing Laws  
2 enacted to prevent local agencies from creating barriers to housing development, and that  
3 effectively, there will be no by-right development of the North 40 site. Petitioners anticipate on  
4 remand that the Town will ignore its responsibilities for housing under the HAA and its Housing  
5 Element, and will succumb to local opposition to development. Petitioners expect the Town  
6 will use the MA to effectively block by-right housing development.

7           The California Supreme Court case *Tuolumne Jobs & Small Business Alliance v. Superior*  
8 *Court* (2014) 59 Cal.4th 1029 is instructive in interpretation of statutes that may be in conflict.  
9 The primary task is determining Legislative intent to give effect to the law’s purpose. Words of  
10 the statute are the most reliable indicator of legislative intent. Courts should harmonize  
11 statutes to the extent possible, and interpretations that lead to absurd results or render words  
12 surplusage are to be avoided. Similarly, an interpretation that renders statutory language a  
13 nullity is to be avoided.

14           Here, there is no reference in either statute to the other, and no indication that the  
15 Legislature intended either statute to control the other in any particular circumstance. As  
16 noted in *Tuolumne Jobs & Small Business Alliance*, the Legislature is presumed to be aware of  
17 all laws in existence when it passes or amends a statute. If the Legislature had intended  
18 Government Code §65589.5 of the HAA to prevail over Government Code §66473.5 of the MA,  
19 it could have stated so, but did not. Although Government Code §65589.5 is the later enacted  
20 statute and contains language more specific to housing development and land use, Petitioners’  
21 reconciliation of the statutes impliedly repeals provisions of GC §66473.5 that require the local  
22 agency to determine if the subdivision is consistent with the general plan or adopted specific  
23 plan.

24           *Tuolumne Jobs & Small Business Alliance* indicates that absent an express declaration of  
25 legislative intent, implied repeal should be found “only when there is no rational basis for  
26 harmonizing the two potentially conflicting statutes, and the statutes are “irreconcilable, clearly  
27 repugnant, and so inconsistent that the two cannot have concurrent operation.” “Implied  
28

1 repeal should not be found unless the later provision gives undebatable evidence of an intent  
2 to supersede the earlier.”<sup>6</sup>

3 The reconciliation of the statutes suggested by the Town gives effect to both statutes  
4 and does not impliedly repeal either. It retains application of “by-right” approval standards of  
5 Government Code §65589.5(j) for all projects under the HAA, and if the project requires  
6 approval of a subdivision map, the Project is also subject to the provisions of the Map Act.<sup>7</sup>  
7 Determination that Government Code §65589.5(j) is not the *exclusive* standard for all projects  
8 under the HAA is not an implied repeal of the section. This constitutes a rational basis of  
9 harmonizing the two potentially conflicting statutes. Notwithstanding Petitioners’ dire  
10 prediction that this will enable the Town to shirk its mandated responsibilities in the face of  
11 local pressure, the statutes are not “clearly repugnant, and so inconsistent that the two cannot  
12 have concurrent operation.” The reconciliation proposed by Respondent is adopted.

13 The concerns of Petitioners warrant consideration, and are addressed to some extent  
14 later in this ruling. However, considering the present status of the statutes, debate appears  
15 best reserved for the legislative branch for legislative action, if any. Here, the Court’s task is to  
16 reconcile the statutes in their present form, pursuant to guidelines under law.

17 Did the Town fail to proceed as required by law? Although the Town was required by  
18 law to apply the criteria under the MA, the MA does not relieve or preclude the Town from the  
19 provisions of Government Code §65589.5(j) of the HAA; specifically, to determine whether or  
20 not the Project complies with applicable, objective general plan and zoning standards and  
21 criteria. The failure to consider the provisions of Government Code §65589.5(j) is a failure to  
22 proceed in the manner required by law.<sup>8</sup> Respondent will therefore be mandated to set aside  
23 its decision.

24  
25  
26 <sup>6</sup> Tuolumne Jobs & Small Business Alliance v. Superior Court (2014) 59 Cal.4th 1029, 1039.

27 <sup>7</sup> The record does not indicate the proportion of projects that require subdivision map approval to those that do  
28 not.

<sup>8</sup> See, *Honchariw v. County of Stanislaus* (2011) 200 CalApp.4th 1066

1 During the course of reconsideration of the applications, if the Town finds that the  
2 Project is in compliance with such objective standards and criteria, and again denies the  
3 Project, the Town must provide written findings supported by substantial evidence that the  
4 project would have a specific, adverse impact upon the public health or safety unless the  
5 project is disapproved, and there is no feasible method to satisfactorily mitigate or avoid the  
6 adverse impact other than the disapproval of the project.<sup>9</sup>

7 Is the Town's decision supported by the findings? The Town's decision fails to  
8 determine whether or not the Project complies with applicable, objective general plan and  
9 zoning standards and criteria , and if determined in compliance, whether the Project is  
10 conditionally approved or denied with written findings supported by substantial evidence under  
11 Government Code § 65589.5(j) of the HAA. The Town's decision is therefore incomplete and  
12 not supported by all necessary findings. Respondent will therefore be mandated to set aside its  
13 decision and issue a decision that includes this determination and if applicable, written findings  
14 pursuant to Government Code §65589.5(j).

15 Are the findings supported by substantial evidence? The Town determined that the  
16 proposed Vesting Tentative Map and Architecture and Site are inconsistent with the Specific  
17 Plan and General Plan based on eight findings. Each finding is set forth below in *italics* and  
18 addressed by the Court as follows:

19 *"a. The proposed project overly concentrates all of the residential units that can be built*  
20 *pursuant to the North 40 Specific Plan and the General Plan Housing Element on the*  
21 *southern portion of the North 40 Specific Plan area and is therefore inconsistent with*  
22 *Specific Plan Section 2.5; Standard 2.7.3; Policy 5.8.2 and Residential Unit Size Mix and*  
*Table set forth on page 6-14. This negatively affects the site layout and*  
*disproportionately hurts the chances of better site design in the future."*

23 The Specific Plan divides the site into three land use districts, the Lark District, the  
24 Transition District and the Northern District. The Specific Plan sets a development capacity for  
25 the North 40 site at 270 residential units.<sup>10</sup> Each district has a distinct character, and specific  
26 uses and development standards. Each district permits residential development. The Specific

27 <sup>9</sup> Government Code §65589.5(j)

28 <sup>10</sup> Plus 50 density bonus units under the Density Bonus Law (49 very low income senior units and 1 moderate income manager unit)

1 Plan contains subjective goals and policies, and objective standards for implementation. The  
2 Lark District is envisioned as a mix of lower intensity residential use and limited retail/office  
3 use, with open space considerations. Envisioned land use includes limited retail, office and  
4 restaurants along Los Gatos Boulevard.

5 The Transition District is located in the central portion of the site as a buffer between  
6 low intensity, primarily residential character of the Lark District and active retail and  
7 entertainment character of the Northern District. The Transition District contemplates a range  
8 of uses, including residential.

9 The Northern District is intended primarily for retail and entertainment uses, but also  
10 envisions residential use.

11 Plaintiffs' proposed Project provides 193 residential units in the Lark District and 127  
12 units in the Transition District. This equates to 60% of the residential units being situated in the  
13 Lark District. The Town finds the allocation excessively disproportionate and inconsistent with  
14 the Specific Plan for lower intensity residential development of this district, but provides no  
15 specifics or guidance. There is no specific allocation requirement in the Specific Plan. This is a  
16 discretionary determination of the Town of a subjective policy.

17 In reviewing factual determinations by the governmental agency, where, as here, a  
18 fundamental or vested right is not involved, the standard of review is whether substantial  
19 evidence supports the finding. The Court must view disputed facts in a light most favorable to  
20 the local agency, giving it every reasonable inference and resolving conflicts in favor of the local  
21 agency.

22 Under this standard of review, the record supports that the discretionary finding of the  
23 Town is based on substantial evidence.

24 *"b. The proposed project is inconsistent with the North 40 Specific Plan Section 2.3.1 and*  
25 *its requirements for lower intensity residential uses in the Lark District."*

26 The finding involves the land use policy for the district and is substantially similar to "a"  
27 above. The finding is a discretionary determination of a subjective policy in the Specific Plan  
28 which is supported by substantial evidence.

1           *“c. The proposed project buildings 18 through 27 are inconsistent with North 40 Specific*  
2           *Plan policy that the Lark District consist of lower intensity residential development with*  
3           *office, retail, personal services, and restaurants along Los Gatos Boulevard.”*

4           The residential uses envisioned for the Lark District set forth in the Specific Plan include  
5           condominium, cottage cluster/garden cluster housing, row houses and townhomes. The  
6           description does not include live-work flats (reserved to the Transition and Northern Districts)  
7           or residential above commercial (reserved to the Northern District). The record indicates that  
8           buildings 18 through 27 are residential above commercial which is technically inconsistent with  
9           the identified uses in the Specific Plan for the Lark District. For purposes of the substantial  
10          evidence standard, the Town’s finding is supported by substantial evidence.

11          The Town also finds that the proposed location of the buildings is inconsistent with the  
12          Specific Plan for location of commercial use buildings on Los Gatos Boulevard closer to the Lark  
13          Avenue intersection. The Specific Plan envisions, but does not require, development of  
14          commercial uses along Los Gatos Boulevard. This is a discretionary determination of  
15          inconsistency with a subjective policy which the record indicates is supported by substantial  
16          evidence.

17          *“d. The proposed project buildings 24 and 25 are inconsistent with North 40 Specific Plan*  
18          *Section 4-2 as it eliminates a “fourth access point off of Los Gatos Boulevard closer to the*  
19          *Lark Avenue intersection; are inconsistent with North 40 Specific Plan page 3-1, Section*  
20          *3.1 Architectural and Site Character Goals and Policies, Policy DG5 Residential Sitting*  
21          *that requires residential development to be located to minimize traffic, noise, and air*  
22          *quality impacts; and are inconsistent with the Commercial Design Guidelines beginning*  
23          *on page 3-2 which guide site plan development.”*

24          The record indicates that the Specific Plan requires three access points on Los Gatos  
25          Boulevard, and states that there is a possible fourth access point. The fourth access point is not  
26          a requirement. The Environmental Impact Report for the Specific Plan considered three access  
27          points along Los Gatos Boulevard. The record does not indicate, and Respondent does not  
28          identify, an objective factor or subjective goal or vision which a fourth access is material.  
29          Rather, the record indicates engineering issues in adding a fourth access point, including  
30          congestion, turn lane access issues and grade differences, and the Town’s planning staff

1 recommended against a fourth access point. It is unclear from the record what information the  
2 Town relied on in support of this finding. The finding is not supported by substantial evidence.

3 *“e. The proposed project is inconsistent with North 40 Specific Plan Policy Section 2.4 and*  
4 *Appendix C of the Specific Plan as it does not address unmet housing needs for seniors*  
5 *and “Gen Y.””*

6 Section 2.4 states in pertinent part that “(R)esidential development is focused on multi-  
7 family housing types and shall be designed to attract the unmet housing needs of the  
8 community.” Appendix C – Young Adult, Senior, and Empty Nester Design Summary describes  
9 what members of “Gen Y” desire in living spaces and neighborhoods and what “Baby Boomers”  
10 want in retirement housing. There is substantial evidence to support Respondent’s finding that  
11 the residential housing component of the proposed plan is inconsistent with the Specific Plan  
12 goals and policies as expressed in section 2.4 and appendix C. This is a discretionary  
13 determination of a subjective policy which the record indicates is supported by substantial  
14 evidence.

15 *“f. the proposed project is inconsistent with the Residential Unit Size Mix and Table set*  
16 *forth on page 6-14 of the Specific Plan and the Residential Unit Size Mix should have*  
17 *smaller units to come closer to the income distribution of affordable housing identified in*  
18 *the Town’s certified General Plan Housing Element for 156 very low, 84 low and 30*  
19 *moderate income units.”*

20 The table is neither a requirement nor objective standard, but rather, an example how  
21 the North 40 site could assist the Town to meet affordable housing needs of the community.  
22 The Town’s Housing Element, Section 2.4 of the North 40 Specific Plan and appendix C add  
23 context to the table. The record identifies North 40 as the largest remaining site in Los Gatos  
24 for development. The record indicates that the Project provides for 49 residential units at very  
25 low income, one unit at moderate income and 270 units at fair market values well above  
26 moderate income.<sup>11</sup>

27 The Town’s General Plan Housing Element suggests that the North 40 site have 156 very  
28 low, 84 low, and 30 moderate income units, a total of 270. The Town determined that the  
Project should have smaller units to increase the number of units that meet these very low, low

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<sup>11</sup> Estimated fair market values of \$900,000 to \$1,500,000.

1 and moderate income levels. The finding provides no guidance or specifics of what mix of  
2 affordable units among income levels is considered consistent. However, under the substantial  
3 evidence standard, the facts in the record are sufficient as substantial evidence to support the  
4 Town's finding.

5 *"g. The proposed project, specifically buildings 18 through 27, would result in an*  
6 *anomaly of residential uses within an existing commercial land use context."*

7 This finding appears to restate the Town's finding in "c" above. Apparently, the  
8 anomaly is that the residential above commercial building is a specified residential use  
9 envisioned for the Northern District in the Specific Plan, but not for the Lark District. While  
10 there is an objective element, it is primarily a subjective policy. There is substantial evidence in  
11 the record to support the finding.

12 *"h. The only promised Below Market Rate housing is 49 units above Market Hall and the*  
13 *remainder would have home values estimated at \$900,000 to \$1,500,000 requiring a 20 percent*  
*down payment and income of approximately \$130,000 to \$200,000 per year."*

14 This finding is substantially the same as the Town's findings in "e" and "f" above.  
15 Respondent adopted its Housing Element in 2015, in part to meet its allocable share of existing  
16 and projected housing needs, including very low, low and moderate income households<sup>12</sup>. The  
17 housing element identifies the North 40 as the primary site for construction of affordable  
18 housing units, with an allocation of 156 units to very low income, 84 units to low income and 30  
19 units to moderate income; a total of 270 units.<sup>13</sup> The record indicates that this is not an  
20 objective requirement, but a subjective goal. Petitioners' Project provides for 49 very low  
21 income residential units, one moderate income unit, and the balance of 270 units above  
22 moderate income level. The 49 very low income units account for a modest percentage of the  
23 affordable units identified in the Housing Element. The record indicates that if the Town is  
24 unable to meet its share of housing need on the sites identified in its Housing Element, the  
25 Town is required to provide proposed actions for additional sites. Because North 40 is the  
26 largest site remaining for development in Los Gatos, the Town contends that approval of the

27 \_\_\_\_\_  
28 <sup>12</sup> 201 very low, 112 low, and 132 moderate income units are allocable to the Town in its housing element.

<sup>13</sup> Table H-2 Summary of Community Strategies.

1 Project with its current allotment of affordable housing will make it difficult to meet the  
2 allocation for low-income housing. This finding is supported by substantial evidence.

3 Accordingly, the Court enters the following decision and judgment:

4 A. A writ of mandamus shall issue directing Respondent, Town of Los Gatos, to:

5 1. Set aside Town of Los Gatos Resolution 2016-046 denying the applications for Vesting  
6 Tentative Map and Architecture and Site;

7 2. Reconsider Petitioners' applications and the Project under the additional provisions  
8 of Government Code §65589.5, and specifically subsection (j);

9 3. If, in the course of reconsideration, Respondent determines to again deny the  
10 applications and Project, Respondent shall determine whether the Project complies with  
11 applicable, objective general plan and zoning standards and criteria.

12 a. If Respondent determines that the Project does not so comply, Respondent  
13 shall specify the applicable, objective criteria which the Project failed to comply.

14 b. If Respondent determines that the Project does so comply, then Respondent  
15 shall make written findings, supported by substantial evidence on the record, that (1)  
16 the project would have a specific, adverse impact upon the public health or safety  
17 unless the project is disapproved, and (2) there is no feasible method to satisfactorily  
18 mitigate or avoid that specifically identified adverse impact other than the disapproval  
19 of Petitioners' applications.

20 B. The Town's findings in "1. a" to "c" and "1. e" to "h" of Resolution 2016-046 are  
21 supported by substantial evidence.<sup>14</sup>

22 C. Approval of the proposed project shall require compliance with the applicable  
23 provisions of the Map Act and Housing Affordability Act.

24  
25 Dated: June 9, 2017

  
26 Hon. Drew C. Takaichi  
27 Judge of the Superior Court

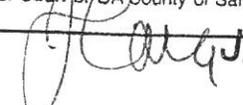
28  
<sup>14</sup> The Town is encouraged to supplement such findings with objective criteria to enable Petitioners to remedy the  
inconsistencies identified in the findings.



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA  
DOWNTOWN COURTHOUSE  
191 NORTH FIRST STREET  
SAN JOSÉ, CALIFORNIA 95113  
CIVIL DIVISION

**FILED**  
JUN 12 2017

June 12, 2017

Clerk of the Court  
Superior Court of CA County of Santa Clara  
BY  DEPUTY  
Julie Lara

RE: Eden housing, Inc., Summerhill homes, LLC vs Town of Los Gatos, and Does 1 to V  
Case Number: 16CV300733

**PROOF OF SERVICE**

**DECISION AND JUDGMENT GRANTING WRIT OF MANDAMUS** was delivered to the parties listed below the above entitled case as set forth in the sworn declaration below.

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If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line (408) 882-2690 or the Voice/TDD California Relay Service (800) 735-2922.

**DECLARATION OF SERVICE BY MAIL:** I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown below, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on June 12, 2017. CLERK OF THE COURT, by Julie Lara, Deputy.

cc: Robert William Schultz, Town Attorney, Town of Los Gatos, Civic Center 110 E. Main St. Los Gatos CA 95030  
Whitney Grace McDonald, Richards Watson & Gershon 847 Monterey St Suite 201 San Luis Obispo CA 93401  
Arthur Jay Friedman, Sheppard Mullin, Richter & Hamilton, LLP 4 Embarcadero Ctr 17<sup>th</sup> Floor San Francisco CA 94111-4106  
Andrew L. Faber, Berliner Cohen, LLP 10 Almaden Blvd, 11<sup>th</sup> Floor San Jose CA 95113