



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/20/2023

ITEM NO: 10

DATE: June 9, 2023
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute a Notice of Completion and Certificate of Acceptance for Specified Improvements Completed by SummerHill N40 LLC for the North 40 Phase 1 Development at Lark Avenue and Los Gatos Boulevard and Authorize the Town Clerk to Submit for Recordation

RECOMMENDATION:

Authorize the Town Manager to execute a Notice of Completion and Certificate of Acceptance (Attachment 1) for specified improvements completed by SummerHill N40 LLC ("SummerHill") for the North 40 Phase 1 Development at Lark Avenue and Los Gatos Boulevard and authorize the Town Clerk to submit for recordation.

BACKGROUND:

On August 1, 2017, the Town Council adopted Resolution 2017-045 approving the construction of a mixed use development consisting of 320 residential units, approximately 66,800 square feet of commercial space, associated off-site improvements, and a vesting tentative map on property zoned as part of North 40 Specific Plan.

On September 7, 2018, the Town Council approved the final map for Tract 10441 – North 40 Phase 1, accepting the dedications, and authorizing the Town Manager to execute a Subdivision Improvement Agreement ("Agreement") (Attachment 2), Landscape Maintenance Agreement, Public Storm Drainage Conveyance Agreement, and Agreement for Private Improvements in the Public Right of Way.

PREPARED BY: James Watson
Senior Engineer

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney Finance Director, and Parks and Public Works Director,

SUBJECT: Authorize the Town Manager to Execute a Notice of Completion and Certificate of Acceptance for Specified Improvements Completed by SummerHill N40 LLC for the North 40 Phase 1 Development at Lark Avenue and Los Gatos Boulevard and Authorize the Town Clerk to Submit for Recordation

DATE: June 9, 2023

BACKGROUND (continued):

On October 4, 2018, the Town executed the Agreement with SummerHill for the construction of certain improvements required by various Conditions of Approval (“Required Improvements”) stipulated in the Architectural and Site Plan Review process. The Agreement stipulated 18 “Plans”, identified as “a” through “r”, to be prepared by SummerHill to complete the Required Improvements, and they complete repaving of certain sections of Lark Avenue and Los Gatos Boulevard.

The Agreement required SummerHill to furnish to the Town security bonds to guarantee their performance in executing the required work. Table 1 defines the plans that have been completed at this time.

Table 1. Bonded Improvements Completed by Summerhill as of May 1, 2023 in Association with the Phase 1 North 40 Project

Plan ID ¹	Description of Improvement	Bond Value
d	Los Gatos North 40 Tract 10441 In tract Rough Grading Plans dated August 14, 2018 by Mackay & Soms	\$6,430,000
e	Los Gatos North 40 Phase 1 Offsite Los Gatos Blvd Phase A Improvement Plans dated July 27, 2018 by Mackay & Soms	\$710,000
f	Los Gatos Blvd & Walker Street Traffic Signal Plan dated August 2018 by Fehr & Peers	
g	Walker Street & Los Gatos Blvd Phase A Signing and Striping Plan dated August 2018 by Fehr & Peers	
m	Los Gatos North 40 Offsite Lark Avenue Caltrans Right of Way Improvement Plans dated March 12, 2018 including plans by Mackay & Soms, Finn Design Group, Van Dorn Abed, Fehr & Peers, and Giacalone	\$799,000
r	Los Gatos North 40 Phase 1 Off Site Storm and Sanitary Sewer Improvement Plans dated September 13, 2017	\$401,000
No ID	North 40 Phase 1 Offsite Lark and Los Gatos Blvd - Pavement Replacement	\$3,262,000

Note: As defined in the Subdivision Improvement Agreement between Town of Los Gatos and Summerhill. Plans a through c, h through l, and n through q are not complete at this time and are not presented in this table.

PAGE 3 OF 4

SUBJECT: Authorize the Town Manager to Execute a Notice of Completion and Certificate of Acceptance for Specified Improvements Completed by SummerHill N40 LLC for the North 40 Phase 1 Development at Lark Avenue and Los Gatos Boulevard and Authorize the Town Clerk to Submit for Recordation

DATE: June 9, 2023

DISCUSSION:

Staff has observed the work associated with the items referenced in Table 1 and has deemed it complete.

At the May 11, 2023 Town Council meeting, there were questions as to why the Town would accept certain improvements, such as the paving of Lark Avenue and Los Gatos Boulevard when construction of site improvements is still ongoing and could damage the new paving.

Following the May Council meeting, SummerHill provided staff two letters supporting their request to release bonds associated with the paving on Lark Avenue and Los Gatos Boulevard. In a letter dated June 30, 2022 (Attachment 3), SummerHill wrote to the Town affirming an agreement between the staff and the developer to complete the final paving in summer 2022 instead of waiting for the completion of the project. Project Condition No. 82 (as documented in December 2, 2020 Modified Conditions of Approval) requires the developer to construct the final roadway paving improvements, "When the Parks and Public Works Director determines that such work is to be complete at their sole discretion."

On July 6, 2022 (Attachment 4), the Interim Parks and Public Work Director confirmed that the paving improvements be completed prior to other Phase 1 work. The letter from the Town stated, "The Town understands that this is not the typical timing for this final pavement overlay work and agrees that the Town will not look to SummerHill to repair any damage done to this section of roadway that is done by anyone other than SummerHill."

Because of these letters, the staff is recommending the acceptance of the work associated with the paving of Los Gatos Boulevard and Lark Avenue, and the release of the associated security bonds.

The requested Council action would initiate a two-year warranty period for the accepted work. SummerHill would provide the Town a two-year Guarantee and Warranty Security Bond in the amount of 10 percent of the original value of the bonds. The Guarantee and Warranty Security Bond will provide for the repair and/or replacement of defective materials and workmanship in the completed improvements. This two-year Guarantee and Warranty Security Bond is required to be submitted prior to the Town's release of the Faithful Performance and Labor and Materials bonds.

PAGE 4 OF 4

SUBJECT: Authorize the Town Manager to Execute a Notice of Completion and Certificate of Acceptance for Specified Improvements Completed by SummerHill N40 LLC for the North 40 Phase 1 Development at Lark Avenue and Los Gatos Boulevard and Authorize the Town Clerk to Submit for Recordation

DATE: June 9, 2023

CONCLUSION:

Staff is recommending that the Town Manager be authorized to execute a Notice of Completion and Certificate of Acceptance for specified improvements completed for the Phase 1 North 40 Project.

FISCAL IMPACT:

The improvements within the public right-of-way are dedicated to and accepted by the Town through the subdivision process and the approval of the final map. These improvements become part of the Town's infrastructure to be maintained after the expiration of the two-year warranty period.

ENVIRONMENTAL ASSESSMENT:

An Environmental Impact Report (EIR) for the project was certified by Town Council on January 20, 2015.

Attachments:

1. Certificate of Acceptance and Notice of Completion
2. Subdivision Improvement Agreement
3. SummerHill Letter dated June 30, 2022
4. Town of Los Gatos Letter dated July 6, 2022