



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 01/13/2026

ITEM NO: 1

DATE: January 8, 2026

TO: Mayor and Town Council

FROM: Chris Constantin, Town Manager

SUBJECT: **Consider a Recommendation by the Planning Commission and Adopt a Resolution to Approve Architecture and Site and Subdivision Applications to Construct a Mixed-Use Residential Development (450 Units), a Vesting Tentative Map, Site Improvements Requiring a Grading Permit, and Removal of Large Protected Trees Under Senate Bill 330 (SB 330) on Property Zoned North Forty Specific Plan: Housing Element Overlay Zone. Located at 14859, 14917, 14925, and 16392 Los Gatos Boulevard; 16250, 16260, and 16270 Burton Road; and Assessor Parcel Number 424-07-116. APNs 424-07-009, -052, -053, -081, -094, -095, -115, and -116. Architecture and Site Application S-23-031 and Subdivision Application M-23-005. An Initial Study was Prepared and No Additional Environmental Review is Necessary Pursuant to CEQA Guidelines Section 15183: Streamlining Process, Since the Proposed Project's Environmental Impacts were Adequately Addressed in the 2040 General Plan EIR. Property Owner: Yuki Farms LLC. Applicant: Grosvenor Property Americas c/o Steve Buster. Project Planner: Jocelyn Shoopman.**

RECOMMENDATION: Staff recommends that the Town Council consider the Planning Commission's recommendation and adopt a Resolution to approve the Architecture and Site and Subdivision applications to construct a mixed-use residential development (450 units), a vesting tentative map, site improvements requiring a Grading Permit, and removal of large protected trees under Senate Bill 330 (SB 330) on property zoned North Forty Specific Plan (NF-SP): Housing Element Overlay Zone (HEOZ), located at 14859, 14917, 14925, and 16392 Los Gatos Boulevard; 16250, 16260, and 16270 Burton Road; and Assessor Parcel Number 424-07-116.

PREPARED BY: Jocelyn Shoopman
Senior Planner

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Community Development Director

PAGE 2 OF 18

SUBJECT: 14859, 14917, 14925, and 16392 Los Gatos Boulevard; 16250, 16260, and 16270
Burton Road; and Assessor Parcel Number 424-07-116/S-23-031 and M-23-005

DATE: January 8, 2026

FISCAL IMPACT:

Approving the Architecture and Site and Subdivision applications does not impact the Town's budget.

STRATEGIC PRIORITY:

The proposed project aligns with the adopted Core Goal of **Community Character** and the Strategic Priority to preserve the Town's small-town charm and provide a range of housing opportunities, while diligently maintaining and implementing the Housing Element.

BACKGROUND:

The applicant proposes construction of a mixed-use residential development consisting of 450 units distributed amongst 19 separate buildings (Attachment 3, Exhibits 1 through 16). The applicant submitted a revised Letter of Justification discussing the project (Attachment 8, Exhibit 24). New private roadways would provide circulation throughout the site, with Street C1 and Street C5 taking access from Los Gatos Boulevard, in addition to an extension of N. Turner Street running horizontally through the project site, connecting the property to Phase I of the NF-SP. Of the 450 proposed units, 77 units (17 percent of the total units) would be designated as BMP units.

The full discussion and analysis of the project is provided in the April 30, 2025, Planning Commission Staff Report, included as Attachments 3 through 6, and the October 29, 2025, Planning Commission Staff Report, included as Attachments 8 through 11.

On April 30, 2025, the Planning Commission held a special meeting to consider the request, take public comment, and discuss the project. The Planning Commission continued the item to a date uncertain, pending completion of the environmental analysis.

On October 29, 2025, the Planning Commission reviewed the project and voted five to two to forward a recommendation to the Council to approve the project with modified conditions of approval. Additional details on the Planning Commission review and recommendation are provided below.

This applicant is utilizing the state density bonus law. The planning application is also subject to the state Housing Accountability Act. In addition, the state's "no net loss" law applies. Each of these statutory schemes is discussed on the following pages.

A. State Density Bonus Law

The applicant is seeking to use the state density bonus law ("SDBL"), which is codified in Government Code Sections 65915 through 65918. The intent of SDBL is to encourage

SUBJECT: 14859, 14917, 14925, and 16392 Los Gatos Boulevard; 16250, 16260, and 16270
Burton Road; and Assessor Parcel Number 424-07-116/S-23-031 and M-23-005

DATE: January 8, 2026

builders and local governments to include low- and moderate-income housing units in proposed developments. Under the statutes, the local authority must grant a density bonus or other specified incentives or concessions to a developer who “seeks and agrees” to build affordable housing.

Concessions and Incentives

So long as the required percentage of affordable housing is provided, a developer may opt to request “concessions and incentives” without seeking the density bonus. A local agency may decline to grant the concessions or incentives only under certain limited circumstances set forth in Government Code Section 65915 (d). Those circumstances are:

- 1) The concession or incentive does not result in identifiable and actual cost reductions to provide for affordable housing;
- 2) The concession or incentive would result in a “specific adverse impact . . . upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources,” which cannot be feasibly mitigated without rendering the development unaffordable to low-income and moderate-income households; or
- 3) The concession or incentive would be contrary to state or federal law. [Gov. Code Section 65915 (d)(1)(A)-(C)].

Concessions and incentives include the following:

- 1) Reduction in site development standards;
- 2) Modifications of zoning or architectural design requirements that exceed state standards;
- 3) Approval of mixed-use zoning in conjunction with the project if commercial, office, industrial, or other land uses, will reduce the cost of, and are compatible with, the development; and
- 4) Any other regulatory incentive or concession proposed by either party that results in “identifiable and actual cost reductions to provide for affordable housing costs” or to provide for affordable rents [Gov. Code Section 65915 (k)].

Under the statute, two incentives or concessions are granted for projects that include at least 17 percent of the total units for lower income households. This applicant is proposing a project with 17 percent of the residential units affordable for lower income households and is therefore entitled to two incentives or concessions. This applicant is seeking two incentives or concessions.

The first request is to eliminate the requirement for commercial uses on the ground floor of the townhomes and affordable multi-family apartment building (Attachment 8, Exhibit 24). The applicant states that this will result in a cost reduction in that although portions of the

SUBJECT: 14859, 14917, 14925, and 16392 Los Gatos Boulevard; 16250, 16260, and 16270
Burton Road; and Assessor Parcel Number 424-07-116/S-23-031 and M-23-005
DATE: January 8, 2026

Project incorporate commercial elements, it is not financially feasible to develop commercial spaces on the ground floor of all the buildings on the Project site. Therefore, eliminating this development standard will result in cost savings to help provide the level of affordability proposed.

The second request is to deviate from the Town's Below Market Rate Program Guidelines. The Town's Below Market Rate Program Guidelines provide that affordable units are to be provided concurrently with market rate units:

"Phasing of the Construction of On- and Off-Site BMP Units: On- and off-site BMP units shall be constructed, and Certificates of Occupancies secured concurrently with or prior to the construction of the market-rate units. The BMP requirement will be calculated on the basis of the whole development. The Town Council may grant an exception to these phasing requirements during the Planned Development approval process." The applicant is asking to build 127 market-rate townhomes before constructing any affordable units. The applicant states that this will provide for a "cost reduction" in that the applicant will receive cash for the sale of the townhome parcel, which can be used to fund the project infrastructure and will reduce the need for financing and the associated interest payments. In staff's view, this explanation satisfies the legal standard for establishing a cost reduction. If the Town disagrees, the burden is on the Town to produce evidence that there is no cost reduction associated with the requested incentive or concession.

However, SDBL only applies if an applicant is "seeking and agreeing" to build affordable housing. In this application, the applicant is proposing to build affordable housing, but is not committing to do so itself. Instead, the applicant will transfer one of the parcels to Eden Housing for the construction of a building to contain 67 affordable units. At the time of the Planning Commission hearing, staff was concerned that this proposed transfer did not constitute a commitment to construct the required affordable units. As a result, staff recommended that the Planning Commission impose a condition of approval requiring that 17 percent of the 450 units be affordable throughout the course of construction. After discussion with the applicant and staff, the Planning Commission recommended that the Town Council adopt staff's recommendation to impose a condition of approval requiring the same ratio (17 percent) of affordable units to market rate units be provided throughout construction (Attachment 12). The conditions of approval, as recommended by the Planning Commission are provided in italics in Attachment 2, Exhibit A.

The applicant's team proposed an alternative condition of approval which would allow 127 market rate townhomes to be built first with a requirement that if the 255-unit multi-family apartment building is built before the 100 percent affordable housing project, the 67 affordable units would be included in the 255-unit multi-family building in addition to the ten affordable units already proposed (Attachment 8, Exhibit 24).

SUBJECT: 14859, 14917, 14925, and 16392 Los Gatos Boulevard; 16250, 16260, and 16270
Burton Road; and Assessor Parcel Number 424-07-116/S-23-031 and M-23-005

DATE: January 8, 2026

In discussions with the applicant prior to the Planning Commission meeting, the following additional proposed conditions of approval were proposed, but the applicant declined to agree to them:

- 1) Include a deadline for development of either the 100 percent affordable housing building or the multi-family apartment building.
- 2) Limit the number of building permits issued for the townhomes until building permits are pulled for the affordable units.
- 3) Make a deposit to be used toward the development of affordable housing if the affordable housing units are not constructed within a specified period of time.
- 4) Pay a penalty for each affordable unit that has not been constructed within three years of pulling the first townhome building permit.

In Phase 1 of the project, the BMP condition of approval read as follows:

“BMP Units. BMP applicants shall be qualified by the Santa Clara Housing Authority. The affordable units shall be required to be maintained for the term required under SDBL or for the life of the buildings, whichever is longer. The developer shall enter into an Affordable Housing Agreement with the Town prior to issuance of building permits. The proposed BMP units must be available and/or occupied prior to final occupancy issuance for the 187th market rate unit.”

Waivers of Development Standards

Applicants are eligible for unlimited waivers of development standards when they “seek and agree” to provide affordable housing. This applicant is also requesting waivers from the Town’s development standards. A local agency may not apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria for density bonuses set forth in Government Code Section 65915(b) or with the concessions or incentives permitted by Government Code Section 65915.

One waiver that this applicant is seeking is a waiver of the Town’s setback requirement in the North 40 Specific Plan. Section 2.5.7 of the North 40 Specific Plan, “Perimeter Overlay Zone,” requires that “buildings or portions of buildings located within 50 feet of Los Gatos Boulevard shall be restricted to a maximum building height of 25 feet.” The applicant is proposing a 100-foot building to be located 20 feet from Los Gatos Boulevard.

B. BMP Unit Phasing

The applicant has proposed that the 127 market rate townhomes be constructed first. The applicant’s stated rationale is that the profits from the sale of the townhome parcel are needed in order to fund the required project infrastructure, which will reduce the cost of project financing.

SUBJECT: 14859, 14917, 14925, and 16392 Los Gatos Boulevard; 16250, 16260, and 16270
Burton Road; and Assessor Parcel Number 424-07-116/S-23-031 and M-23-005
DATE: January 8, 2026

The applicant anticipates that the 100 percent affordable housing project will be built by Eden Housing after construction of the townhomes. In the event that the 100 percent affordable housing project has not begun construction when the townhomes have been finished, the applicant will include all of the required affordable units in the multi-family apartment building, with the ability to transfer the affordability restrictions to the 100 percent affordable housing project in the future. The applicant's proposal does not include a timeline by which the affordable housing units will be built.

Over many months, Town staff and the applicant discussed a wide variety of options to guarantee that construction of the affordable units would start by a specified date. The options discussed included:

- 1) Requiring that affordable units be constructed along with market-rate units, such that 17 percent of the constructed units are affordable at all times during construction.
- 2) Requiring that construction on the affordable units begin after a specified number of townhomes, but not all 127 townhomes, have been built.
- 3) Imposing a monetary penalty if the affordable units have not been built by a specified date.
- 4) Requiring a deposit that will be forfeited if the affordable units have not been built by a specified date.

The applicant was not amenable to these proposals. Based on verbal guidance from HCD, Town staff is now recommending that the Town impose the condition proposed by the applicant in connection with the recordation of deed restrictions against the remaining parcels, stating that, if the affordable units are not built on the parcel that was transferred to Eden Housing, the affordable units must be built on other parcels. The reason for this revised recommendation is that, after the Planning Commission meeting, the applicant contacted HCD to request a meeting to discuss what it means to "seek and agree" to construct affordable housing. HCD shares the applicant's opinion that applying for approval to construct affordable housing units constitutes "seeking and agreeing" to construct affordable housing. To date, HCD has not provided a written official opinion.

The project is required to include 77 units affordable to low-income households. The applicant proposes to provide 67 low-income units on a parcel to be developed by Eden housing and 10 low-income units in the multi-family building. To make it clear that, even if the Eden Housing project or the multi-family building is not developed, the project is conditioned as a whole to provide 77 low-income units, staff is recommending that paragraph four of Condition #6 (Attachment 2, Exhibit A) be modified to remove the requirement that the BMP Units shall be constructed, and building permits and Certificates of Occupancy secured, so that at all times at least 17 percent of the residential units with building permits and Certificates of Occupancy are lower income BMP Units.

SUBJECT: 14859, 14917, 14925, and 16392 Los Gatos Boulevard; 16250, 16260, and 16270
Burton Road; and Assessor Parcel Number 424-07-116/S-23-031 and M-23-005

DATE: January 8, 2026

Staff is now recommending that a new condition of approval be added to Attachment 2, Exhibit A that requires recordation of a deed restriction against all of the parcels that comprise the project. The deed restriction will state that the parcels, taken together, must comply with the Town's BMP requirement. This will document the fact that 77 low-income units need to be provided as part of the project. The deed restriction will be recorded and will run with the land, covering any future buyers of the properties. A comprehensive list of recommended modifications to the conditions of approval by staff since the October 29, 2025, Planning Commission meeting are provided in the ~~strikeout~~ and underlined text in the Recommendations section of the report.

C. Housing Accountability Act

The Housing Accountability Act ("HAA") is codified at Government Code Section 65589.5. Pursuant to the HAA, a local agency may not deny or reduce the density of housing development projects that are affordable to low- or moderate-income households and are consistent with local objective development standards.

In addition, the Town cannot impose objective development standards that would render a housing development project "infeasible" – or incapable of being completed.

In order for a development to qualify for the protections under the HAA, it must meet the definition of a "housing development project." Furthermore, for a project to qualify for the affordable housing protections, it must also meet the definition of "housing for very low-, low-, or moderate-income households."

1) What is an eligible housing development project?

Pursuant to Government Code Section 65589.5(h)(2), a "housing development project" is a use consisting of residential units only; mixed use developments consisting of residential and non-residential uses with at least two-thirds of the square footage designated for residential use; or transitional or supportive housing. Because the term "units" is plural, a development must consist of more than one unit to qualify under the HAA. The development can consist of attached or detached units and may occupy more than one parcel, so long as the development is included in the same development application.

Pursuant To Government Code Section 65589.5 (h)(3), "a housing development affordable to lower- or moderate- income households" means a project that provides either of the following:

- At least 20 percent of the total units shall be sold or rented to lower income households. Lower-income households are those persons and families whose income does not exceed that specified by Health and Safety Code, § 50079.5, which is 80 percent of the area median income.

SUBJECT: 14859, 14917, 14925, and 16392 Los Gatos Boulevard; 16250, 16260, and 16270 Burton Road; and Assessor Parcel Number 424-07-116/S-23-031 and M-23-005

DATE: January 8, 2026

- 100 percent of the units shall be sold or rented to persons and families of moderate income, or persons and families of middle income. Moderate-income households are those persons and families whose incomes are 80 percent to 120 percent of the area median income (Health and Safety Code, § 50093). Middle-income households are those persons and families whose income does not exceed 150 percent of the area median income (Gov. Code, § 65008 subd. (c)).

In addition, the rent or sales prices of the affordable housing that is provided cannot exceed the following:

- For lower-income units, the monthly housing cost does not exceed 30 percent of 60 percent of area median income, with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based.
- For moderate-income units, the monthly housing cost does not exceed 30 percent of 100 percent of area median income, with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based.

2) What are Objective Development Standards?

Pursuant to Government Code Section 65589.5 (f), local agencies are not prohibited from requiring a housing development project to comply with objective, quantifiable, written development standards, conditions, and policies that were in effect at the time of project vesting. Those standards, conditions, and policies must meet the following criteria:

- Be appropriate to, and consistent with, meeting the local agency's share of its Regional Housing Needs Allocation (RHNA);
- Be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development; and
- Meet the definition of "objective." Objective standards are those that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant and the public official.

3) HAA Provisions Addressing Disapproval of Housing Development Projects

Pursuant to Government Code Section 65589.5, the HAA limits, but does not prohibit, a local agency from disapproving a housing development project. The HAA defines "disapproval" to include the following:

SUBJECT: 14859, 14917, 14925, and 16392 Los Gatos Boulevard; 16250, 16260, and 16270 Burton Road; and Assessor Parcel Number 424-07-116/S-23-031 and M-23-005

DATE: January 8, 2026

- A vote to disapprove a housing development project application.
- Failure to comply with statutory deadlines for a decision, including, but not limited to:
 - 90 days after certification of an environmental impact report pursuant to the California Environmental Quality Act (“CEQA”);
 - 60 days from the date of adoption of a negative declaration pursuant to CEQA; and
 - 60 days from a determination by the local agency that the project is exempt from CEQA.

The foregoing is a non-exhaustive list of the local agency actions that constitute “disapproval” of a housing development project under the HAA.

4) Ability to Impose Development Conditions

The HAA does not prohibit a local agency from imposing conditions of approval on housing development projects. However, the HAA limits the application of conditions that lower the residential density of the project and, for housing affordable to low- and moderate-income households, would render the project economically infeasible or would have a substantial adverse effect on the viability of the proposed housing, unless specific findings are made and supported by a preponderance of evidence in the record. The “preponderance of the evidence” standard requires that local agencies weigh the evidence and conclude that the evidence on one side outweighs the evidence on the other side (i.e., 51 percent to 49 percent).

5) Determination of Consistency with Applicable Standards is Based on “Reasonable Person” Standard

In most cases, courts will uphold an agency’s determination if there is “substantial evidence” to support that determination. “Substantial evidence” means that there is reasonable, adequate evidence in the administrative record to support the agency’s findings. However, when a project is subject to the HAA, a housing development project will be deemed consistent with local standards if there is substantial evidence that could allow a “reasonable person” to conclude that it is consistent.

6) Application of the State Density Bonus Law

The use of a density bonus pursuant to state density bonus law (SDBL) does not constitute a valid basis on which to find a proposed housing development project is inconsistent with local standards. Here, with the use of incentives, concessions, and waivers that are available pursuant to SDBL, the project is consistent with Town standards. However, in order to be eligible for these incentives, concessions, and waivers, the applicant must “seek and agree” to build affordable housing.

SUBJECT: 14859, 14917, 14925, and 16392 Los Gatos Boulevard; 16250, 16260, and 16270
Burton Road; and Assessor Parcel Number 424-07-116/S-23-031 and M-23-005

DATE: January 8, 2026

7) Denial of a Housing Project that is Consistent with Local Standards

When a proposed housing development complies with applicable local standards, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall adopt written findings supported by a preponderance of the evidence that both of the following conditions exist:

- The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density.
- There is no feasible method to satisfactorily mitigate or avoid the adverse impact, other than the disapproval of the housing project or the approval of the project upon the condition that it be developed at a lower density. "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

8) Denial or Conditioning of Affordable Housing Affordable to Low- and Moderate-Income Households

The HAA specifies findings that local agencies must make if they wish to deny a housing development project that provides housing affordable to low-or moderate-income households, or condition such a project so as to render it infeasible or have a substantial adverse effect on the viability or affordability of the project. These findings are in addition to the findings described above. Under the version of the HAA that was in effect at the time that the preliminary application for this project was submitted, the local agency must make one of the following specific findings based upon a preponderance of the evidence:

- The local government has an adopted Housing Element and has met its share of the RHNA in all income categories proposed in the housing development project.
- The housing development project would have a specific, adverse impact upon public health or safety, and there is no feasible method to mitigate or avoid the impact without rendering the project unaffordable or financially infeasible.
- Denial of the housing project or the imposition of conditions is required to comply with specific state or federal law, and there is no feasible method to comply without rendering the project unaffordable to low- and moderate-income households.
- The housing development project is proposed on land zoned for agriculture or resource preservation that is either 1) surrounded on two sides by land being used for agriculture or resource preservation; or 2) does not have adequate water or wastewater facilities to serve the housing development project.
- The housing development project meets both of the following conditions:

SUBJECT: 14859, 14917, 14925, and 16392 Los Gatos Boulevard; 16250, 16260, and 16270 Burton Road; and Assessor Parcel Number 424-07-116/S-23-031 and M-23-005

DATE: January 8, 2026

- Is inconsistent with both the zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete. This finding cannot be used when the project is inconsistent with one but is consistent with the other.
- The local government has an adopted Housing Element in substantial compliance with state housing element law.
- This finding cannot be used when:
 - The project is proposed for a site identified as suitable or available for very low, low, or moderate-income households within the Housing Element, and the project is consistent with the specified density identified in the Housing Element.
 - The local agency has failed to identify sufficient adequate sites in its inventory to accommodate its RHNA, and the project is proposed on a site identified in any Element of its General Plan for residential use or in a commercial zone where residential uses are permitted or conditionally permitted.

In September 2024, the California State Legislature passed, and the Governor signed into law, Assembly Bill 1893 (AB 1893), which went into effect on January 1, 2025. AB 1893 made revisions to the findings in subsection (d) of Government Code Section 65589.5. However, the applicant for this project has not chosen to invoke the provisions of AB 1893. Therefore, the findings enumerated above are the ones that remain relevant to this project.

9) Violations of the HAA

If a plaintiff alleges an HAA violation and prevails, the court must issue an order compelling compliance with the HAA in 60 days. The court may also issue an order directing the local agency to approve the project. If the plaintiff prevails, the court awards attorney fees and costs to the plaintiff. If the local agency fails to comply with the order, the court must impose a minimum fine of \$10,000 per housing unit.

C. No Net Loss Law

Pursuant to Government Code Section 65863 (No Net Loss Law), the Town must maintain adequate capacity in the Housing Element to accommodate its remaining unmet RHNA by each income category at all times throughout the entire planning period. To comply with the No Net Loss Law, as the Town makes decisions regarding zoning and land use, or as development is approved, the Town must assess whether it has adequate site capacity in the Housing Element to accommodate its RHNA at all income levels. If the Town approves a development of a parcel identified in the Housing Element with fewer units than anticipated, or at different income levels than projected, the Town must either find that the remaining capacity of the sites identified in the Housing Element is sufficient to

SUBJECT: 14859, 14917, 14925, and 16392 Los Gatos Boulevard; 16250, 16260, and 16270 Burton Road; and Assessor Parcel Number 424-07-116/S-23-031 and M-23-005

DATE: January 8, 2026

accommodate the remaining unmet RHNA by each income level or identify and make available sufficient sites to accommodate the remaining unmet RHNA for each income category.

If a developer proposes fewer units than shown in the Housing Element, then the developer may be required to identify additional sites if the Town does not have adequate capacity for its total RHNA. However, if the approval of a housing development results in the remaining sites capacity becoming inadequate to accommodate the RHNA by income category, the Town may not disapprove the development but has up to 180 days from the approval to identify and rezone “sufficient additional, adequate, and available sites” to accommodate the remaining RHNA for each income category. Sites identified and rezoned must meet the following criteria:

- Must be considered an adequate site pursuant to the requirements of Government Code section 65583.2; and
- If the capacity to be replaced was on a site that was zoned by-right pursuant to Government Code section 65863.2 (h) and (i), then the replacement site must also satisfy those requirements.

As described in the table on the following page, the project provides fewer Very Low-, Low-, and Moderate-Income units than anticipated in the Sites Inventory of the Housing Element, but more Above Moderate-Income units.

No Net Loss Evaluation					
Proposed Project's Impact on the Anticipated Development in the Housing Element Sites Inventory					
	Units by Income Category				
	Very Low	Low	Moderate	Above Moderate	Net Total
Anticipated Development Included in the Housing Element Sites Inventory	184	89	92	108	473
Proposed Project	67	10	0	373	450
Net Site-Level Impact from the Proposed Project to the Housing Element Sites Inventory	-117	-79	-92	+265	-23

The following table shows that the cumulative impact of the project on the capacity of the Housing Element creates a negative surplus in the Very Low-income category. Therefore, the remaining capacity of the Housing Element is not adequate to meet the Town's remaining RHNA requirements. The No Net Loss findings cannot be made, and the Town is required to identify additional site(s) to accommodate the remaining RHNA should this project be approved. Pursuant to the No Net Loss law, 180 days from approval of a project,

SUBJECT: 14859, 14917, 14925, and 16392 Los Gatos Boulevard; 16250, 16260, and 16270
Burton Road; and Assessor Parcel Number 424-07-116/S-23-031 and M-23-005

DATE: January 8, 2026

the Town must identify and rezone available sites to accommodate the remaining RHNA for each income category.

Since the October 29, 2025, Planning Commission meeting, staff reevaluated the project's impact on the Housing Element sites inventory surplus, taking into account approved planning projects, pending planning applications, Housing Element annual progress reporting for the 2023 and 2024 years, as well as Accessory Dwelling Unit and Senate Bill 9 production. Based on the modified table below, the cumulative impact of the project on the capacity of the Housing Element no longer creates a negative surplus in the Moderate-income category as previously stated in the October 29, 2025, Planning Commission staff report.

No Net Loss Evaluation					
Evaluation of the Proposed Project's Impact on the Cumulative Housing Element Sites Inventory Surplus					
	Units by Income Category				
	Very Low	Low	Moderate	Above Moderate	Net Total
Housing Element Sites Inventory Surplus	52	36	34	160	282
Net Site-Level Impact from the Proposed Project to Housing Element Assumed Development Potential	-117	-79	-92	265	-23
Projects Approved/Pending, ADU and SB 9 Production and RHNA Reporting for 23' and 24'	57	238	93	1,313	1,701
Remaining Housing Element Sites Inventory Surplus with Project Approval	-8	195	35	1,738	1,960

DISCUSSION:

A. Planning Commission:

On October 29, 2025, the Planning Commission received the staff report, the applicant's presentation, and public comments on the proposed project (Attachments 8 through 11). The Planning Commission voted five to two to forward a recommendation to the Council to approve the project with the following modified conditions of approval, as reflected in italics in Attachment 2, Exhibit A:

1. A requirement that 25 percent of the units in the 100 percent affordable building on Lot 19 shall have a preference for developmentally disabled residents (Condition of Approval #4);

SUBJECT: 14859, 14917, 14925, and 16392 Los Gatos Boulevard; 16250, 16260, and 16270 Burton Road; and Assessor Parcel Number 424-07-116/S-23-031 and M-23-005

DATE: January 8, 2026

2. A requirement that the affordable units be constructed along with market-rate units, such that 17 percent of the constructed units shall be affordable at all times during construction (Condition of Approval #6);
3. The applicant shall consider alternative trees with less water requirements, including, but not limited to, Foothill Pine, Western Red Buds, Bay Laurels, Black Cottonwood, Box Elder, Big Leaf Maple, Holly Leaf Cherry, California Buckeye, Blue Oak, Black Oak, Valley Oak, and Canyon Live Oak trees. The proposed landscaping for the perimeter orchard open space and street trees shall be native (Condition of Approval #14); and
4. There shall be no use of Los Gatos Boulevard for hauling of materials, storage of materials, or idling of trucks without prior authorization from the Parks and Public Works Department (Condition of Approval #114).

During the Planning Commission meeting, several questions arose regarding the issue of what it means to “seek and agree to construct” affordable housing in order to qualify for the benefits of SDBL. After the Planning Commission meeting, the applicant contacted the state Department of Housing and Community Development (“HCD”) to ask whether its proposal constituted sufficient “agreement” to build affordable housing in order to qualify for the state density bonus law. HCD met with the applicant and Town staff. At that meeting, HCD stated verbally that the applicant’s proposal to transfer one parcel to Eden Housing for the construction of 67 affordable units constituted sufficient “agreement” to construct the affordable units. HCD’s rationale was that it is common to allocate all of the affordable units to one building so that financing can be obtained. Staff has requested a written opinion from HCD.

PUBLIC COMMENTS:

Consistent with the Town’s Height Pole, Flagging, Netting, and Signage Policy, a project sign was installed on the site. Additionally, notice cards for the Town Council meeting were mailed to all property owners and residents within 1000 feet, a legal advertisement was published in the newspaper, and meeting agendas were posted at Town Hall and the Library.

Public comments received between 11:01 a.m., Wednesday, October 29, 2025, and 11:00 a.m., Thursday, January 8, 2026, are included as Attachment 13.

CONCLUSION:

The applicant is requesting approval of Architecture and Site and Subdivision applications to construct a mixed-use residential development (450 units), a vesting tentative map, site improvements requiring a grading permit, and removal of large protected trees under SB 330 on property zoned NF-SP:HEOZ, located at 14859, 14917, 14925, and 16392 Los Gatos Boulevard; 16250, 16260, and 16270 Burton Road; and Assessor Parcel Number 424-07-116.

As detailed above, the application was submitted and is being processed under SB 330, and the applicant has requested two concessions and a number of waivers to Town standards pursuant

SUBJECT: 14859, 14917, 14925, and 16392 Los Gatos Boulevard; 16250, 16260, and 16270
Burton Road; and Assessor Parcel Number 424-07-116/S-23-031 and M-23-005

DATE: January 8, 2026

to SDBL. On October 29, 2025, the Planning Commission forwarded a recommendation of approval to the Town Council with modified conditions of approval.

RECOMMENDATION:

Staff recommends that the Town Council adopt the draft modified Resolution (Attachment 2) to make the required findings and approve the Architecture and Site and Subdivision applications subject to the modified conditions of approval (Attachment 2, Exhibit A) with the following modifications proposed by staff:

1. Modify Conditions #3, as reflected in the underlined text:

BELOW MARKET PRICE (BMP) UNITS, MIXED-USE BUILDING: The developer shall provide at least 10 BMP units (low-income) as part of the mixed-use building (Building E1). “BMP Units” are dwelling units to be rented at affordable rent to lower income households for a 55-year period, as defined by the Town’s applicable BMP Program Guidelines and the applicable BMP Resolution, state density bonus law (Government Code Section 65915 *et seq.*), and the Housing Accountability Act (Government Code Section 65589.5). A deed restriction shall be recorded prior to the issuance of any building permits for residential units in the mixed-use building providing for at least 10 BMP Units in Building E1.

2. Modify paragraph four of Condition #6, as reflected in the strikeout and underlined text:

~~The BMP Units shall be constructed, and building permits and Certificates of Occupancy secured, so that at all times at least 17 percent of the residential units with building permits and Certificates of Occupancy are lower income BMP Units.~~ If BMP units are provided in the project in addition to those planned to be included in Buildings E1 and G1, the number of BMP Units required in Buildings E1 and G1 may be reduced, so long as at least 17 percent of the residential units with building permits and Certificates of Occupancy are 77 units within the project are BMP Units.

3. Add the following new condition, as reflected in the underlined text:

DEED RESTRICTION AND COVENANT: Prior to the issuance of building permits for any residential units, the developer shall record against each parcel in the project a Deed Restriction and Covenant, on a form approved by the Town Attorney, requiring that all of the parcels shall, as part of the project approval, be collectively responsible for satisfying the requirements of the Town’s Below Market Price (BMP) Program to construct and offer seventy-seven (77) units affordable to lower-income households. The Deed Restriction and Covenant shall provide that if the developer transfers, sells, assigns, leases, or otherwise conveys one or more of the parcels in the project such that there are separate owners of the parcels within the project, then the obligation to comply with the

SUBJECT: 14859, 14917, 14925, and 16392 Los Gatos Boulevard; 16250, 16260, and 16270
Burton Road; and Assessor Parcel Number 424-07-116/S-23-031 and M-23-005

DATE: January 8, 2026

Town's BMP Program shall be shared, jointly and severally, between the developer and the transferee(s) and that said requirement shall burden all of the parcels in the project equally and shall run with the land so as to be binding upon every person or entity having any fee, leasehold, or other estate in any of the parcels now or in the future. The Deed Restriction and Covenant shall further provide that the Town and the developer intend that 10 BMP units will be provided in Building E1 and 67 BMP units will be provided in Building G1; however, if a building permit for Building E1 is pulled before a building permit for Building G1, Building E1 will include 77 BMP units with the ability to transfer 67 BMP units to Building G1 in the future.

4. Modify Conditions #5, as reflected in the strikeout and underlined text:

AFFORDABLE HOUSING AGREEMENT: Prior to approval of any final or parcel map or issuance of any building permit for a residential unit, whichever occurs first, the developer shall execute and record an Affordable Housing Agreement with the Town in a form subject to the Town Attorney's approval. The Affordable Housing Agreement shall provide for construction of the required BMP Units and facilitate their rental pursuant to applicable provisions of the BMP Program Guidelines and BMP Resolution in place as of April 17, 2023, state density bonus law, and the Housing Accountability Act. The applicant may satisfy this condition through the recordation of the Affordable Housing Agreement described in Condition 76.

ALTERNATIVES:

Alternatively, the Council can:

1. Approve the applications with additional and/or modified conditions;
2. Continue the matter with specific direction; or
3. Deny the applications and make the required findings for denial.

COORDINATION:

This report was coordinated with the offices of the Town Manager and Town Attorney.

ENVIRONMENTAL ASSESSMENT:

This is a project as defined under CEQA, but is statutorily exempt under Section 15183. A Notice of Exemption will be filed by the applicant.

The Town Council adopted the 2040 General Plan and certified the 2040 General Plan EIR on June 30, 2022. On April 2, 2024, the Town Council voted to rescind the Land Use Element and Community Design Element of the 2040 General Plan. Therefore, the Town's current General Plan consists of the Land Use Element and Community Design Element of the 2020 General Plan, and the remaining elements of the 2040 General Plan.

SUBJECT: 14859, 14917, 14925, and 16392 Los Gatos Boulevard; 16250, 16260, and 16270
Burton Road; and Assessor Parcel Number 424-07-116/S-23-031 and M-23-005
DATE: January 8, 2026

CEQA Guidelines Section 15183 provides that a programmatic EIR, in this case the 2040 General Plan EIR, may serve as the EIR for subsequent activities or implementing actions, provided that it contemplates and adequately analyzes the potential environmental impacts of those subsequent activities. If the Town, as the CEQA Lead Agency, determines, pursuant to Section 15183 of the CEQA Guidelines, that no Subsequent EIR would be required, the agency can approve the activity as being within the scope of the project covered by the programmatic EIR, and new environmental documentation would not be required.

In accordance with Section 15183 of the CEQA Guidelines, an Initial Study (Attachment 1) was prepared to provide project-level consideration of potential new or more severe significant impacts associated with the proposed project to determine whether the project: 1) is within the scope of activities evaluated in the 2040 General Plan EIR; and 2) would trigger any of the criteria in CEQA Guidelines Section 15183.

The Initial Study includes a number of project-level technical studies, including: an Air Quality, Health Risk, and Greenhouse Gas Assessment; Noise Assessment; Arborist Report; and Transportation Analysis (Attachment 1). All technical reports were peer reviewed by the Town or the Town's consultants. The Initial Study determined that the project's environmental impacts have been considered in the 2040 General Plan EIR that was certified by the Town, which remains relevant, and the conditions set forth in Section 15183 are not triggered by the proposed project. In addition, the analysis determined that the proposed project is within the scope of activities evaluated in the 2040 General Plan EIR and the Environmental Analysis for the 6th Cycle Housing Element. As such, this Initial Study is the appropriate environmental document for the proposed project, pursuant to CEQA Guidelines Section 15183, and no additional environmental review is necessary.

ATTACHMENTS:

1. Final Initial Study – September 2025
(available online at https://www.losgatosca.gov/N40II_FinalInitialStudy)
2. Draft Modified Resolution making the required findings and approving the applications subject to the Modified Conditions of Approval (included as Exhibit A)
3. April 30, 2025, Planning Commission Staff Report, with Exhibits 1 through 16
4. April 30, 2025, Planning Commission Addendum, with Exhibits 17 through 18
5. April 30, 2025, Planning Commission Desk Item, with Exhibits 19 through 20
6. April 30, 2025, Planning Commission Desk Item 2, with Exhibit 21
7. April 30, 2025, Planning Commission Verbatim Minutes
8. October 29, 2025, Planning Commission Staff Report, with Exhibits 21 through 26
9. October 29, 2025, Planning Commission Addendum 1, with Exhibit 27
10. October 29, 2025, Planning Commission Addendum 2, with Exhibit 28
11. October 29, 2025, Planning Commission Desk Item, with Exhibits 29 through 30
12. October 29, 2025, Planning Commission Verbatim Minutes

PAGE **18** OF **18**

SUBJECT: 14859, 14917, 14925, and 16392 Los Gatos Boulevard; 16250, 16260, and 16270
Burton Road; and Assessor Parcel Number 424-07-116/S-23-031 and M-23-005

DATE: January 8, 2026

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