

March 6, 2025

Jocelyn Shoopman
Senior Planner
Town of Los Gatos
Community Development Department
110 E. Main Street
Los Gatos, CA 95030

**Re: Supplemental Material for 14859 Los Gatos Blvd and 16270 Burton Road
(APN 424-07-009, -053, -081, -094, -095, -115, -116, and -052)
Architecture and Site Application S-23-031
Subdivision Application M-23-005**

Dear Ms. Shoopman:

On behalf of Grosvenor Property Americas (“**Applicant**”), we are pleased to submit further updates to our complete application for a development project at 14859 Los Gatos Blvd and 16270 Burton Road (“**Project Site**”) in the Town of Los Gatos (“**Town**”) to develop 450 homes, 15,000 square feet of retail, over 3,000 square feet of commercial and civic space, and associated on- and off-site improvements (the “**Project**”).

The Applicant submitted a complete preliminary application for the Project on April 18, 2023, and followed with its formal development application on September 18, 2023. The Town found the application complete on April 17, 2024. The Town’s completeness determination included numerous substantive comments regarding the Project. The Applicant supplemented its complete application in May of 2024, and the Town issued a series of written consistency evaluation letters on July 17, 2024. The Applicant submitted additional information on October 3, 2024, which triggered further comments from the Town on October 30, 2024. The Applicant responded with revisions on November 23, 2024, and the Town provided additional written comments on December 23, 2024. Since then, the Applicant team and the Town staff have had ongoing meetings and exchanged written comments. Based on those discussions we believe that this submittal fully responds to the comments raised by the Town in its December 23, 2024 letters.

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I. Updated Project Description.

The Applicant proposes the construction of the Project, a mixed-use housing development project that includes 450 homes, 15,000 square feet of retail, over 3,000 square feet of commercial and civic space, and associated on- and off-site improvements located in the North 40 Specific Plan area of the Town.

The Project Site is 15.65 total acres, which includes unbuildable areas, areas planned for open space, and all of the land that will be dedicated to the public for access to the Project's circulation system and public utilities. Excluding the primary backbone public infrastructure and circulation portions of the Project Site that will be dedicated by easement for public use results in a lot area of 14.47 acres, which conservatively includes alleys, open space, and undevelopable land on the Project Site.

The Project Site currently includes eight (8) single family homes, which would be demolished (as anticipated in the previously certified North 40 Specific Plan Environmental Impact Report) and replaced by the Project.

The Town's Housing Element includes the Project Site in its inventory of sites available for housing development that will be affordable to lower income households to accommodate the Town's RHNA. The Housing Element designates the Project Site for residential development at a minimum density of at least 30 dwelling units per acre, and it assumed a development capacity of up to 461 units. The Project proposes 450 dwelling units on a site area of 14.47 acres, resulting in a gross density of 31.1 du/ac, which is consistent with the Housing Element's use and density designations.

The Project's residential program will provide a total of 450 new rental apartments and for-sale and/or rental town homes. Of the 450 total units, the Project will dedicate 77 units as units that will be rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code as affordable rents, as defined in Section 50053 of the Health and Safety Code. The 77 dedicated units will include 67 affordable rental homes available to low and very low-income households (in addition to one unit reserved for a manager) on approximately 1.25 acres that will be transferred to an affordable housing developer. Ten additional units dedicated to low-income households will be made available in the Project's mixed-income multi-family building.

The 450 homes are complemented by various resident amenities and community-serving ground floor commercial spaces within the multi-family rental building. The new buildings are arranged around a generously sized central public open space (the "**Meadow**"), open to all and visible from Los Gatos Boulevard along a pedestrian "**Paseo**". The Meadow will feature active uses, landscaping, and an interpretive display that features the existing red barn, that collectively celebrate the Property's agricultural heritage. The Meadow will also include a new public

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pavilion, which is designed to be adaptable for a variety of civic, community and/or retail uses for future flexibility.

Adjacent to the public open space, a 2,400 square foot barn-inspired commercial space, Building J, is proposed and envisioned to complement both the Meadow's agrarian theme and the retail uses in Building I. A new 4,800 square foot retail building (Building I) is located closer to Los Gatos Boulevard and is designed to be sub-dividable for multiple tenants and includes generous outdoor dining areas. Building J and Building I are part of approximately 15,000 square feet of commercial space that helps create vibrancy and a sense of place.

The Project includes all necessary access, circulation, streetscape, and landscaping to complement and service the new buildings and to complete relevant sections of the bicycle and pedestrian routes through and around the site. On-site streets will be connected to existing North 40 Phase I streets. The Applicant will dedicate land to the Town to accommodate the future widening of Burton Road and a through-connection between Burton Road and the Project to complete the internal circulation system as anticipated in the North 40 Specific Plan.

II. The Project is Consistent with Applicable Objective Development Standards.

On January 31, 2023, the Town adopted its first version of the Sixth Cycle Housing Element Update, which was adopted and in effect when the Applicant submitted its complete preliminary application. The California Department of Housing and Community Development ("HCD") found that the Town's January 31, 2023 Housing Element did not substantially comply with the requirements of state Housing Element law. The Town made numerous revisions to its Housing Element in response to HCD's findings before adopting a substantially compliant Housing Element that HCD certified on July 10, 2024. However, because the Project has a vested right to proceed under the ordinances, policies, and standards in place at the time the Applicant submitted the preliminary application, the January 31, 2023 Housing Element applies. (See Gov. Code § 65589.5(o).)

The Project proposes to provide 77 of its 450 dwelling units at rents affordable to lower income households as defined in Health and Safety Code section 50079.5. Therefore, the Project is "housing for very low, low-, or moderate-income households" as defined in the Housing Accountability Act. (Gov. Code § 65589.5(h)(3).) In addition, as discussed above, the Project is consistent with the Housing Element's land use and density designations. Because the Town identified the Project Site "as suitable or available for very low, low-, or moderate-income households" in its Housing Element, and the Project is consistent with the Housing Element's specified density, the Town may not "disapprove or conditionally approve" the Project, notwithstanding potential inconsistencies with the Town's "zoning ordinance [including the North 40 Specific Plan] and general plan land use designation." (Gov. Code § 65589.5(d)(5)(A).) This means that the Town's Housing Element overrides the North 40 Specific Plan's requirement as applied to the Project.

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Because the Project provides 77 of its 450 dwelling units as affordable to lower income households, it is eligible for benefits under the State Density Bonus Law, including two concessions/incentives that result in cost reductions and unlimited waivers of development standards necessary to accommodate the Project as proposed. (Gov. Code § 65915(d)(2)(B), (e).) Attachment A to this letter includes a complete enumeration of all requested incentives/concessions and waivers, and the updated Objective Design Standards checklist references such modifications where appropriate.

Finally, the Project complies with the Town's affordability requirements as adopted in the BMP Ordinance (Division 6 of Chapter 29 of the Town Code). Of the Project's 450 total units, 373 units would be rented or sold at market rate. The Town's BMP Ordinance requires that 20 percent of the 373 market rate units – or 75 units – be reserved as affordable housing. The Project exceeds this requirement and will dedicate 77 units (21 percent of the market rate units) as units dedicated to lower income households, as defined in Section 50079.5 of the Health and Safety Code as affordable rents, as defined in Section 50053 of the Health and Safety Code.

Note that because the Project's complete preliminary application was submitted before the Town adopted a Housing Element certified by HCD, the Project is eligible for the Builder's Remedy. This means that Town would be forbidden from denying the Project, even if the Project were not consistent with the Town's standards. Although the Project is eligible for the Builder's Remedy, it is not necessary to invoke the Builder's Remedy here, because the Project complies with the Housing Element and applicable, objective standards as modified via the State Density Bonus Law.

III. Conclusion

With this submittal, the Applicant has responded to each of the Town's substantive, applicable comments provided on December 23, 2024, and during subsequent conversations and meetings with Town staff. Accordingly, we look forward to the Project's Planning Commission hearing in April.

Sincerely,



Eric S. Phillips

Encls.

ATTACHMENT A

**14859 Los Gatos Blvd and 16270 Burton Road
(APN 424-07-009, -053, -081, -094, -095, -115, -116, and -052)
Architecture and Site Application S-23-031
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Proposed Density Bonus Concessions, Waivers, and Parking Reductions

Although the Project meets many of the General Plan policies, including the land use and density designated in the Housing Element, and the guidelines of the North 40 Specific Plan, the Applicant seeks incentives or concessions, waivers, and parking reductions pursuant to the State Density Bonus Law (Gov. Code § 65915).

The Project will dedicate 77 of its 450 units to be rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code at a monthly cost that is an affordable rent, as defined in Section 50053 of the Health and Safety Code. Note that this level of affordability equals 21 percent of the Project's market rate units, which exceeds the affordability requirements in the Town's BMP Ordinance. In addition, by providing this level of affordability, the Project is entitled to the following benefits under State Density Bonus Law:

- A density bonus of 30.5% above the otherwise maximum allowable residential density (Gov. Code § 65915(f)(1));
- Two incentives or concessions (Gov. Code § 65915(d)(2)(B); for purposes of the State Density Bonus Law, the terms "incentives" and "concessions" are interchangeable, and this summary will use "concession" going forward);
- Waivers or reductions for "any development standard that will have the effect of physically precluding the construction of a development" that provides enough affordable housing to qualify for the State Bonus Law (Gov. Code § 65915(e)); and
- Minimum parking requirements, inclusive of guest parking and including parking provided in uncovered or tandem spaces, that do not exceed specified ratios. (Gov. Code § 65915(p).)

As detailed below, the Applicant proposes to use the State Density Bonus Law's concessions, waivers, and parking reduction benefits to allow the development of the Project as proposed. In addition, the Applicant reserves the right to modify the request to include different or additional concessions and waivers if needed to address additional applicable development standards.

Concessions

1. *Allow residential uses on the ground floor of buildings.* Section 2.5.10c of the North 40 Specific Plan prohibits residential uses on the ground floor of buildings in the Northern District, which covers the Project site. Because the Housing Element designates the Project site as a site that is suitable for very low, low-, or moderate-income households at a residential density of at least 30 du/ac, inconsistency with this zoning standard is not a basis to deny the Project under Government Code section 65589.5(d)(5)(A). Accordingly, we do not believe that this standard is

applicable to the Project. However, to the extent it applies, the Project proponent requests a concession to allow residential uses on the ground floor of buildings.

Although portions of the 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.¹

2. Potential Reduction in Private Open Space. (Townhomes only) The Town adopted “Objective Design Standards for Qualifying Multi-Family and Mixed-Use Residential Development” that applies to multi-family and residential mixed-use developments. Objective Design Standard A.11.1.b requires each ground floor dwelling unit to have a minimum of 120 square feet of usable private recreation space. As currently designed, the Townhomes satisfy this requirement through the provision of private roof decks. However, to reduce construction costs, it may be necessary for the Project to remove some or all of the roof decks before submitting for building permits, which would cause the Project to fall short of the open space standard. Therefore, the Project requests a concession to remove private roof decks from the design at the Applicant’s election to result in cost savings to help provide the level of affordability proposed.

Waivers

When considering the following proposed waivers, it is important to remember that “[i]n no case may [the Town] apply any development standard that will have the effect of physically precluding the construction of a development [that qualifies for the State Density Bonus Law] at the densities” allowed and with the requested concessions. (See Gov. Code, § 65915(e)(1).) Cases have confirmed that once a project qualifies for a density bonus, “the law provides a developer with broad discretion to design projects with additional amenities even if doing so would conflict with local development standards.” (*Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 774-75; see also *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1346–1347 [waivers must be granted even though redesigning the project to decrease amenities would reduce the need for waivers].)

1. Increased Maximum Height. Section 2.5.2 of the North 40 Specific Plan and referenced in Policy LU5 sets a maximum building height of 30 feet across the Project site and Section 2.5.7(b) sets a maximum building height of 25 feet for buildings located within 50 feet of Los Gatos Boulevard. The Project requires a waiver to allow the Affordable Multifamily (Building G) units to achieve a maximum height of 63 feet measured from the lowest natural grade to highest roof surface or 61 feet when measured from the proposed grade, and the town home units to achieve a maximum height of 49 feet when measured from the lowest natural grade or 44 feet when measured from lowest proposed grade, and the Mixed-Income Multifamily (Building E) units to achieve a maximum height of 100 feet from when measured from the lowest natural grade to the highest roof surface or approximately 94 feet when measured from the lowest

¹ See HCD Notice of Violation to City of Elk Grove (October 12, 2022), which concludes that allowing residential ground floor development in mixed use areas that otherwise require ground floor commercial uses results in actual and identifiable cost reductions such that refusal to approve a concession would violate the State Density Bonus Law.

proposed grade. It should be noted that Building E is approximately 89 feet when measured from Los Gatos Boulevard and that detailed measurements are included in the updated architectural sheets in the attached revised drawings (Planning Comments 18, 27 and 29). The Specific Plan's development standards do not accommodate the Project's proposed density, which is allowed pursuant to the adopted Housing Element. Increased height is necessary for each proposed building typology to accommodate the proposed unit count and necessary parking facilities across the Project site.^{2, 3}

2. Modified Street Sections. Section 4.13.3 of the North 40 Specific Plan defines a 40' road section for Section 6d of North A Street with two 12' drive lanes and two 8' parking lanes. The Project proposes wider sidewalks, bicycle lanes, and reduced lane widths; accommodating all of the proposed facilities in the street would require additional right of way that would reduce the amount of developable area for buildings, resulting in a lower unit count. Therefore, the Project proponent requests a waiver from the required street section dimensions.

3. Deviations from Objective Design Standards. The Project has been designed to comply with as many of the Objective Design Standards as feasible while meeting the unit count called for in the Housing Element; however, to physically fit the Project as designed at the density allowed, the following standards must be waived:

- A.2.1. (100% affordable multifamily housing, townhomes, and commercial buildings only) Short-term bicycle parking cannot be accommodated within 50' of each building entry while maintaining adequate space for residential density and proposed open space. In the alternative, the project distributes bike parking throughout the site to balance even distribution and convenience, while also supporting active community use.
- A.2.2. (100% affordable multifamily housing, mixed-use multifamily, and townhomes) Long-term bicycle parking is provided at one space per unit. To maintain adequate space for residential density and proposed open space, short-term bicycle parking is provided at a ratio of one space per 2,000 square feet of non-residential floor area.
- A.3.4.e. (100% affordable multifamily housing and mixed-use multifamily only) To maintain adequate space for residential density and proposed open space, long-term bicycle spaces are proposed to be accommodated with stacked parking. Although the proposed bicycle racks would not meet the Objective Design Standards' dimensions, a reduction is necessary to provide adequate long-term bicycle parking without reducing the Project's residential density.
- A.5.1. (Commercial building only) The project is designed to prioritize the pedestrian experience and active ground-floor retail uses where the buildings have frontage on C1 Street, D4 Street, and the Pedestrian Paseo, which is proposed as a Project amenity serving the public and future Project residents. It is necessary to locate surface parking

² In some cases, the height waivers proposed may exceed the more precise heights shown on the architectural plans. We propose rounding the height up to nearest foot to allow for some variance between the current plans and final construction plans.

³ See HCD Notice of Violation to City and County of San Francisco (December 29, 2022), which concludes that it is a violation of the State Density Bonus Law to approve a project subject to a condition of approval that the applicant reduce the height proposed as a waiver.

between the buildings and Los Gatos Boulevard, otherwise the Project would need to be redesigned to remove the proposed amenity or reduce its residential density.

- A.6.3, (Mixed-use multifamily only) The multifamily building has a parking structure, and a pedestrian access gate cannot be provided without redesigning the Project and affecting its density. Pedestrians can access the exterior by using an elevator, corridor or stairs.
- A.10.2. (Mixed-use multifamily and townhomes only) The Project requires a new unbroken retaining wall between C5 Street and the neighboring property so long as the adjacent grade remains lower than the Project Site's grade to support development at the permitted density.
- A.11.1.b. (100% affordable multifamily housing and mixed-use multifamily only) The 100% affordable multifamily building cannot accommodate balconies and cannot meet the private open space requirements while maintaining the unit count. The mixed-use multifamily building can accommodate balconies on only 49% of the units (126 units) without reducing Project density.
- A.12.1. (Mixed-use multifamily and commercial buildings only) The Project proposes a Paseo to connect Los Gatos Boulevard to the Meadow, which would house the ground floor retail consistent with the Project's first concession request and serve as a Project amenity serving the public and future Project residents. Providing 75 percent of any street-facing façade would require a Project redesign to remove the proposed amenity and conflict with its concession request.
- B.1.1. (Townhomes only) The primary street-facing façade of the townhomes complies with B1.1.1b, c, and f. However, since each facade of the townhomes faces a street, depending on siting, it is not possible for the townhomes to comply with the requirement that all street-facing facades incorporate three of the identified design solutions.
- B.1.2. (100% affordable multifamily housing and mixed-use multifamily only) An upper-story setback would reduce the density of the Project.
- B.3.1. (Mixed-use multifamily only) The mixed-use multifamily building (E1) cannot comply with the requirement to install horizontal eave breaks every 40 feet of building façade without redesigning the Project and reducing its density.
- B.4.1. (Townhomes only) Townhomes comply at Front Facade of each building, but redesigning the Project to differentiate the base of the buildings at the Rear/Garage or Side Facades would affect the overall residential capacity by reducing the building form and floor area for the Project's residential uses.
- B.4.3. (100% affordable multifamily housing and townhomes only) The 100% affordable multifamily building (6 points) and the townhomes (14 points) cannot reach 16 points through street-facing façade plan variation while maintaining the unit count.
- B.4.4. (Townhomes only) The Project proposes the Meadow as an amenity serving the public and future Project residents. Townhomes H1 and H2 are designed to face the Meadow rather than the street to activate this project amenity. As a result, the garage doors on these two townhomes exceed 40 percent of the length of the façade; otherwise, the Project would need to be designed to modify the proposed amenity or reduce its residential density.
- B.4.6.b. (Commercial building only) The Project proposes a Paseo to connect Los Gatos Boulevard to the Meadow, which would house the ground floor retail consistent with the Project's first concession request and serve as a Project amenity serving the public and

future Project residents. To activate the Paseo and accommodate the design of this Project amenity consistent with the Project's concession request, the commercial buildings deviate from the façade requirements.

- B.4.10. (Townhome F3 only) Townhome B3 is adjacent to a single-family use and cannot be designed to set back five additional feet from the façade plan of the lower floor without reducing the project's residential development capacity.
- B.4.11. (Mixed-use multifamily building and townhomes only) The mixed-use multifamily building's balconies extend into the airspace beyond the building footprint, as does the balcony for Townhome F3. This encroachment must be allowed to accommodate the project's residential density and open space amenities.
- B.4.13. (Mixed-use multifamily building only) The mixed-use multifamily building (E1) cannot comply with the façade requirement without redesigning the Project and reducing its density.

4. BMP Program Standards. As noted above, because the Project is consistent with the Housing Element's designated density for the Property and because it reserves 77 of its units as affordable to lower income households, the Housing Accountability Act prohibits the Town from denying the Project based on inconsistencies with zoning standards, including the Town's BMP Program. However, to the extent applicable, we request a waiver from the BMP Program requirement to provide affordable units proportionately in the same unit type mix as the market rate units and to have the units be dispersed throughout the Property. Because the Project would involve a partnership with a non-profit developer to provide affordable housing units using tax credits and other financing mechanisms that require the affordable units be consolidated, compliance with the BMP Program requirements would physically preclude development of the Project. Likewise, requiring larger affordable units would result in few units per building, reducing the Project's density.

Parking Reductions

Consistent with the standards established in subdivision (p) of Government Code section 65915, the Applicant proposes that the mixed-use multifamily housing building and the townhomes be subject to the following minimum parking ratios, inclusive of guest parking:

- Zero to one bedroom: one onsite parking space;
- Two to three bedrooms: one and one-half onsite parking spaces; and
- Four and more bedrooms: two and one-half parking spaces.

Note that the 100% affordable multifamily housing building complies with the Town's parking standards, which require less parking than the State Density Bonus Law. Therefore, this portion of the request is not applicable to the affordable housing component of the Project.

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