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August 14, 2026

Los Gatos Town Council
110 E. Main Street
Los Gatos, CA 95030

Re: **14789 Oka Road -- Inapplicability of ODS Section B.4.5**

Dear Mayor and Councilmembers:

We represent Urban Catalyst (the “Applicant”) in connection with the proposed 138-unit multifamily residential development (the “Project”) located at 14789 Oka Road (the “Project site”) in Los Gatos, California (the “Town”). We write in advance of the Town Council’s hearing on August 18, 2026 to formally object to the suggestion of Town staff that in approving the Project, the Town Council impose a requirement for the Project to comply with Objective Design Standard (“ODS”) Section B.4.5. As set forth below, this Builder’s Remedy project cannot lawfully be compelled to comply with the Town’s ODS framework, and the Town has failed to satisfy its burden of proof to overcome the Housing Accountability Act’s (“HAA”) statutory protections. Accordingly, we respectfully request that the Town Council reject the suggestion to impose ODS Section B.4.5 and approve this Project as proposed in a manner consistent with State housing law requirements.

I. The Builder’s Remedy Shields This Project from Zoning Standards and Any Other Requirements That Do Not Impact Public Health or Safety.

Pursuant to Senate Bill (“SB”) 330, the Applicant submitted a complete preliminary application for the Project on May 2, 2024. Accordingly, the Project is vested to the applicable Town “ordinances, policies, and standards” adopted and in effect as of May 2, 2024,¹ and the Applicant’s vested rights under SB 330 and the HAA include the right to proceed under the Town’s Housing Element compliance status in effect at the time of submission. Because the Town did not possess a valid Housing Element when the preliminary application was submitted, the Applicant is vested to the Town’s non-compliant housing element status and is proceeding under the “Builder’s

¹ Gov. Code § 65589.5(o).

Remedy.”² Accordingly, the Project cannot be denied for noncompliance with, nor conditioned to ensure compliance with, General Plan land use or Zoning Code requirements.³ It is our understanding that the ODS have been adopted pursuant to the Zoning Code and they function as zoning in that they impose specific design standards on development proposals. Accordingly, the Project is not required to comply with ODS requirements due to the applicability of the Builder’s Remedy provision of the HAA.⁴

Even if the ODS was not considered zoning for the purposes of the Builder’s Remedy, the Town is likewise prohibited from applying ODS B.4.5 (either by denying the Project for noncompliance or by conditioning it upon compliance, which are functionally the same thing) because it does not relate to any “specific, adverse impact upon the public health or safety.”⁵ For these purposes, “a ‘specific, adverse impact’ means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.” The HAA also specifies that inconsistencies with a general plan designation or zoning ordinance do not constitute qualifying grounds for a finding of a public health or safety impact.⁶

The Town’s ODS B.4.5 – which requires material changes at inside corners of building facades – is, by its nature and purpose, an aesthetic design regulation governing the visual articulation and exterior appearance of structures. It does not derive from, nor is it grounded in, any “objective, identified written public health or safety standards, policies, or conditions” within the meaning of Government Code section 65589.5(d)(2)(A). A requirement that building facades incorporate material variation at corners bears no rational nexus to the prevention of significant, quantifiable, direct harm to the health or physical safety of the community. It establishes no threshold tied to structural integrity, fire protection, seismic safety, hazardous materials, traffic safety, or any other cognizable category of public health or safety impact. Because ODS B.4.5 cannot possibly form the basis of findings that satisfy the HAA’s statutory definition – a “significant, quantifiable, direct, and unavoidable impact” – it is legally insufficient to support denial or conditional approval of the Project under Government Code section 65589.5(d)(2).

² The Town’s Housing Element was certified by the California Department of Housing and Community Development (“HCD”) on July 10, 2024. See [Housing Element Review and Compliance Report | California Department of Housing and Community Development](#).

³ Gov. Code Section 65589.5(d)(5).

⁴ As a “Builder’s Remedy 1.0” project that was in process prior to the adoption of AB 1893.

⁵ Gov. Code Section 65589.5(d)(2). Because the Town lacked a substantially compliant Housing Element when the Project submitted an SB 330 preliminary application, the Town is precluded from disapproving this Project on the basis of Government Code section 65589.5 subdivisions (d)(1) and (d)(5). Subdivisions (d)(3) and (d)(4) are similarly unavailable because disapproval is not required by any state or federal laws, and because the Project site is not zoned for agriculture or resource preservation, nor surrounded by properties used for those purposes. Only subdivision (d)(2) may serve as a potential basis for denial.

⁶ Gov. Code § 65589.5(d)(2)(A).

II. The Housing Accountability Act Broadly Protects Projects from Infeasible Conditions.

The HAA independently prohibits local agencies from “condition[ing] approval in a manner that renders [the Project] infeasible,”⁷ and expansively defines the term “feasible” to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.”⁸ Critically, the HAA places the burden of proof of demonstrating that a particular condition is in-fact feasible upon the Town.⁹

The Council Agenda Report prepared for this action states in conclusory fashion:

Staff has evaluated the project relative to Objective Design Standard B.4.5 and determined that compliance can be achieved through minor revisions to the building elevations without rendering the project infeasible. Accordingly, staff recommends that the Town Council add a condition of approval requiring the applicant to revise the architectural elevations prior to issuance of building permits to ensure that changes in building materials occur at inside corners in compliance with Objective Design Standard B.4.5.

Staff’s conclusion is legally insufficient to satisfy the Town’s burden under the HAA – the Council Agenda Report offers a single sentence unaccompanied by any analysis, evidence, cost estimate, schedule impact, market study, or other findings addressing the economic, environmental, social, or technological factors that the Legislature expressly incorporated into the definition of “feasible.”

This deficiency is fatal because the HAA does not permit the Town to shift its evidentiary burden onto the Applicant, nor does it permit the Town to rely on unsubstantiated staff opinion in lieu of a reasoned, evidence-based determination. It is the position of the Applicant that being required to change its design to comply with B.4.5 is infeasible, and the Town cannot lawfully impose the proposed condition. The Council must reject Staff’s recommendation and approve the Project without the unsubstantiated condition.

III. In the Alternative, The Project Applies for a State Density Bonus Law Concession.

The Project also independently qualifies for various benefits under the State Density Bonus Law (“SDBL”) because it proposes to set aside 20 percent of units for low-income households.¹⁰ Among these benefits, the Project will be entitled to receive up to two concessions.¹¹ The SDBL defines “concessions” to include:

⁷ Gov. Code § 65589.5(d).

⁸ Gov. Code § 65589.5(h)(1).

⁹ Gov. Code § 65589.5(i).

¹⁰ Gov. Code § 65915(b)(1)(A).

¹¹ Gov. Code § 65915(d)(2)(B).

1. *A reduction in site development standards or a modification of zoning code requirements or architectural requirements that exceed the minimum building standards approved by the California Building Standards Commission . . .*
2. *Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.*
3. *Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).¹²*

The Applicant hereby invokes its statutory authority to request, as one of its two concessions, the removal of this standard.¹³ Because compliance with ODS B.4.5 would require the Applicant to redesign the building elevations and incorporate various additional materials, removal of the requirement produces actual and identifiable cost reductions in design labor and materials.

Under the SDBL, the Town's discretion to deny a requested concession is narrowly circumscribed: the Town **must** grant the concession unless it makes a written finding, based upon substantial evidence, that the concession (i) does not result in identifiable and actual cost reductions, (ii) would have a specific adverse impact upon public health and safety or the physical environment for which there is no feasible method to satisfactorily mitigate, or (iii) would be contrary to state or federal law.¹⁴

None of these findings can be sustained on this record. As discussed above, Staff's conclusory statement – that compliance with Objective Design Standard B.4.5 “can be achieved through minor revisions to the building elevations” – fails to establish that the Project’s present proposal of exterior materials would impose a specific adverse impact upon public health and safety or the physical environment that cannot be feasibly mitigated, and the Town has never asserted that failure to adopt ODS B.4.5 would result in a violation of state or federal law. But the Town also bears the burden of proof to demonstrate that the requested concession would not yield actual,

¹² Gov. Code § 65915(k). Emphasis added.

¹³ Throughout the entitlement process for this Project, the Applicant has maintained that it qualifies for and may make requests for State Density Bonus Law benefits including concessions, even where it is not taking a “density bonus” pursuant to the State Density Bonus Law because it is independently permitted to propose 138 units in excess of the density the State Density Bonus Law would allow by the “Builder’s Remedy” provision of the HAA. It has been made exceedingly clear in the last few years that the HAA and State Density Bonus Law can be used in combination, inclusive of the Builder’s Remedy provision. The prerequisite to access concessions is the provision of affordable housing, not applying for a density bonus.

¹⁴ Gov. Code § 65915(d)(1).

identifiable cost-savings: “[t]he city . . . shall bear the burden of proof for the denial of a requested concession or incentive.”¹⁵

IV. Conclusion

For the foregoing reasons, the Applicant demands that the Town Council approve the Project without requiring compliance with ODS B.4.5. The requirement functions as “zoning” with which the Project cannot be required to comply because of the Builder’s Remedy; the Town cannot meet its burden under Government Code section 65589.5(d)(2) to demonstrate that an aesthetic façade standard would prevent a specific, adverse impact to public health or safety; it has wholly failed to carry its burden under section 65589.5(i) to show that the proposed condition is feasible; and, in the alternative, the Applicant is entitled as a matter of law to an SDBL concession that eliminates ODS B.4.5, which the Town lacks any lawful basis to deny.

Sincerely,

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¹⁵ Gov. Code § 65915(d)(4). *See also Schreiber v. City of Los Angeles* (2021) 69 Cal.App.5th 549, 555-56 (“By requiring the city to grant incentives *unless* it makes particular findings, the statute places the burden of proof on the city to overcome the presumption that incentives will result in cost reductions.”). Emphasis in original.