

DRAFT RESOLUTION 2025-____

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
ADOPTING FINDINGS REQUIRED BY GOVERNMENT CODE § 65589.5(f)(6)(D)(iv)
IN RESPONSE TO NOTICE OF CHALLENGED CONDUCT
SUBMITTED TO THE TOWN ON OCTOBER 2, 2025**

**PROPERTY LOCATION: 14288 CAPRI DRIVE
APN: 406-30-016
ARCHITECTURE AND SITE APPLICATION: S-24-044
PROPERTY OWNER: LOS GATOS LLC
APPLICANT: SOCAL INDUSTRIAL EQUITIES**

WHEREAS, the Government Code Section 65589.5(h)(6)(D) defines “disapprove the housing development project” to include any instance in which a local agency fails to cease a course of conduct undertaken for an improper purpose, including to harass or to cause unnecessary delay or needless increases in the cost of a proposed housing development project, that effectively disapproves the proposed housing development without taking final administrative action if certain conditions are met; and

WHEREAS, Government Code Section 65589.5(h)(6)(D)(i) provides that the applicant for a proposed housing development project must provide a local agency with written notice detailing the challenged conduct and why it constitutes disapproval; and

WHEREAS, Government Code Section 65589.5(h)(6)(D)(iii) bars the local agency from making a determination on a Challenged Conduct Notice until at least 60 days after the project applicant provides the local agency with the written Challenged Conduct Notice; and

WHEREAS, Government Code Section 65589.5(h)(6)(D)(iv) provides that within 90 days of receipt of the applicant’s written Challenged Conduct Notice, the local agency shall issue written statement that it will immediately cease the challenged conduct, or issue written findings that (1) articulate an objective basis for why the challenged course of conduct is necessary, and (2) provide clear instructions on what the applicant must submit or supplement so that the local agency can make a final determination regarding the next necessary approval or set the date and time of the next hearing; and

WHEREAS, on August 23, 2024, SoCal Industrial Equities submitted Architecture and Site Application S-24-044 for 119 dwelling units; and

WHEREAS, Architecture and Site Application S-24-044 was deemed complete on September 17, 2025; and

WHEREAS, on October 2, 2025, SoCal Industrial Equities submitted a Challenged Conduct Notice pursuant to Government Code Section 65589.5(h)(6)(D)(i), as described in Exhibit A and attached as Attachment A; and

WHEREAS, within five working days of receiving the Challenged Conduct Notice, the Town posted the notice on the Town's website and filed the notice with the Santa Clara County Clerk. No person had made a written request for notice under Public Resources Code Section 21167(f); and

WHEREAS, the Town considered all objections, comments, evidence and concerns about the project and the applicant's written notice and did not make a determination until at least 60 days after receipt of the applicant's written notice; and

WHEREAS, on December 16, 2025, the Los Gatos Town Council reviewed the Challenged Conduct Notice and proposed findings at a public meeting and considered all public testimony and all written materials provided to the Council; and

WHEREAS, based on substantial evidence and the totality of the record, the Town Council resolves as follows.

NOW, THEREFORE, BE IT RESOLVED, THAT THE TOWN COUNCIL HEREBY FINDS THAT BASED ON SUBSTANTIAL EVIDENCE IN THE RECORD:

1. The foregoing recitals are true and correct and are incorporated by reference into this action.
2. The Town Council adopts the findings, attached hereto as **Exhibit "A,"** including all attachments and linked documents, in response to the Challenged Conduct Notice provided by SoCal Industrial Equities on October 2, 2025.

PASSED AND ADOPTED at a meeting of the Town Council of the Town of Los Gatos, California, held on the 16th day of December, 2025, by the following vote:

TOWN COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR, LOS GATOS TOWN COUNCIL

DATE: _____

EXHIBIT "A"

December 16, 2025

VIA ELECTRONIC MAIL

Ben Eilenberg
SoCal Industrial Equities
eilenberglegal@gmail.com
socalindustrialequities@gmail.com

RE: Findings in Response to Challenged Conduct Notice (Gov't Code Section 65589.5(h)(6)(D) Regarding Vista Capri Housing Development Project

This Exhibit provides the findings of the Town of Los Gatos (the "Town") in response to the Challenged Conduct Notice (the "Notice") submitted to the Town on October 2, 2025 by SoCal Industrial Equities (the "Applicant") for a 119-unit housing development project (the "Project") located at 14288 Capri Drive in the Town.

In response to the receipt of the Notice, and as required by the Government Code Section 65589.5(h)(6)(D)(ii)¹, the Town posted the Notice on the Town's website on October 9, 2025 (<https://www.losgatosca.gov/2371/C>) and filed the Notice with the Santa Clara County Clerk on October 9, 2025 (See Attachment A). No person has made a request for notices under Public Resources Code Section 21167(f).

As required by Section 65589.5(h)(6)(D)(iv), this letter describes why the challenged course of conduct was necessary and provides clear instructions on what the Applicant must submit or supplement so that the Town can make a final determination regarding the next necessary approval or set the date and time of the next hearing.

Background and Project History

On March 5, 2024, the Applicant filed a preliminary application for the Project containing all the information required by Section 65941.1. On August 23, 2024, the Applicant filed Architecture and Site Application No. S-24-044 (the "Application") for approval of demolition of an existing commercial building, construction of a multi-family residential development containing 119 units, and site work requiring a grading permit. The Town found the application to be complete on September 17, 2025, pursuant to Section 65943.

If the Town considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with any applicable "plan, program, policy, ordinance, standard, requirement, or other similar provision," Section 65589.5(j)(2) requires the Town to provide written documentation identifying the provision and an explanation of the reasons that the development is non-compliant within 30 days after the application is found to be complete under Section 65943. In accordance with this requirement of state law, the Town provided written documentation of the Project inconsistencies to the Applicant in a letter dated September 17, 2025 (the "Staff Technical

¹ All further references are to the Government Code unless otherwise stated.

Review Letter”), in the same letter in which the Town found the Project to be complete (See Attachment B).

On September 17, 2025, the Applicant’s legal counsel, Richard Jacobs, sent a letter to the Town detailing the Applicant’s position that the Project qualifies for the statutory exemption from the California Environmental Quality Act (“CEQA”) contained in Public Resources Code Section 21080.66 and requesting a response by September 26, 2025 (See Attachment A).

On September 18, 2025, Jacobs sent another letter to the Town, this time raising various objections to requests in the Staff Technical Review Letter (See Attachment A).

On October 2, 2025, the Applicant’s representative, Ben Eilenberg, sent an email to the Town regarding the September 17 and September 18 letters. Eilenberg’s email stated, in relevant part: “Please consider this our request to move forward with the administrative process set forth in Government Code Section 65589.5(h)(6)(D).” Eilenberg’s email attached Jacobs’ September 17 and September 18 letters (See Attachment A). Based on the foregoing, the Town determined that the Applicant’s Challenged Conduct Notice – which includes Eilenberg’s email and both of Jacobs’ letters – was submitted on October 2, 2025.

Section 65589.5(h)(6)(D)(iii) does not allow the Town to make any determination about the Notices until at least 60 days after the Notice is filed, so that that the Town could not make any determination regarding the issues raised in the Notice before December 1, 2025. The Town must make a determination within 90 days after the Notice.

Actions Challenged

A course of conduct “effectively disapproves” a proposed housing development if the course of conduct was “undertaken for an improper purpose, such as to harass or to cause unnecessary delay or needless increases in the cost of the proposed housing development,” and that course of conduct “effectively disapproves the proposed housing development” [Section 65589.5(h)(6)(D)].

The Notice challenges several actions taken by the Town regarding the Project, as follows:

Issues Related to CEQA Compliance

- The Applicant’s contention that the Project is eligible for the exemption from CEQA provided by Public Resources Code Section 21080.66 (September 17, 2025 Letter).
- The Town’s request for additional information to determine what environmental analysis should be completed for the Project and the Town’s note that future fees may be required to complete the required environmental analysis (Items 3 and 4 in September 18, 2025 Letter).

Other Issues Contained in September 18, 2025 Letter

- The Town’s requirement that the Project apply for a Conditional Use Permit and ask not to include commercial uses in the Project (Item 1).
- The Town’s requirement that the Applicant pay outstanding fees related to review by the Town’s Consulting Arborist and Consulting Architect (Items 5 and 6),

- The Town’s recommendation that the Applicant reach out to all necessary outside agencies and neighboring properties to provide any required notification regarding the Project (Item 7).
- The Town’s determination that the Project Description/Letter of Justification and the Project floor plans do not demonstrate how the Project complies with the Town’s Below Market Price (BMP) program requirements (Items 8 and 10).

Challenges to Town’s Actions under CEQA

The September 17 letter states that the Project qualifies for the statutory exemption from CEQA in Public Resources Code Section 21080.66. Items 3 and 4 in the September 18 letter state that any attempts from the Town to require additional reports on environmental matters are improper because the Project is exempt from CEQA.

However, the Town’s actions “in furtherance of complying with [CEQA], including, but not limited to, imposing mitigation measures, **shall not constitute project disapproval under this subparagraph**” (i.e., pursuant to a Challenged Conduct Notice) [Section 65589.5(h)(6)(D)(vi)]. The requests included in Items 3 and 4 in the Staff Technical Review Letter (challenged in the September 18 letter), copied below, were in furtherance of complying with CEQA:

- 3) CEQA: Clarify whether the applicant team anticipates providing any technical studies related to environmental analysis (traffic, habitat, cultural, air quality, noise, soils, etc.) for peer review by the Town Environmental Consultants. If not provided, the studies determined to be required by the Environmental Consultant will be prepared by the Town Environmental Consultants at the cost of the applicant.
 - *You previously indicated via email that your team will prepare an Arborist Report and Traffic Study. Please confirm. Additionally, an email was forwarded to your team on 9/13/24, requesting some additional information in the Phase I ESA and the Noise Report. Please provide a response.*
 - The response letter uploaded in July 2025 [a response from the applicant quoted by the Town] states that, “under the new laws passed, CEQA no longer applies to this project.” Please specify which CEQA exemption you believe applies to this project, and provide substantial evidence that the project meets each requirement of the exemption. Staff will then review to determine eligibility.
- 4) CEQA: Staff is coordinating with Town Environmental Consultants to determine what environmental analysis will be required for the project. Environmental analysis is required at cost to the applicant. Staff will require payment of a deposit at a future date.
 - The response letter uploaded in July 2025 states that, “under the new laws passed, CEQA no longer applies to this project.” See response to #[3] above.

The Applicant has challenged both of these items based on the Applicant’s contention that no further environmental review can be required because the Project is eligible for the statutory exemption from CEQA provided by Section 21080.66. Both items were requested by the Town in furtherance of

complying with CEQA. As a result, the Town's request for that information cannot constitute project disapproval pursuant to a Challenged Conduct Notice.

The September 17, 2025 letter asserts that the Project is eligible for the statutory exemption provided by Public Resources Code Section 20180.66. The Town was reviewing the letter but had not reached a conclusion when the Challenged Conduct Notice was filed on October 2, 2025. The Town's review of the request was in furtherance of complying with CEQA by determining whether the Project was eligible for the proposed exemption. As a result, the Town's actions cannot constitute project disapproval pursuant to a Challenged Conduct Notice. Note that because no response can be made to a Challenged Conduct Notice for 60 days, the Town's response has been substantially delayed.

All of the issues raised regarding the Town's actions in furtherance of complying with CEQA are not a proper subject for a Challenged Conduct Notice and will not be further discussed further.

The Housing Accountability Act establishes a specific procedure for an applicant to challenge a local agency if the applicant believes a project is eligible for a CEQA exemption (See Section 65589.5.1). The Applicant has not invoked or followed this process.

Objective Basis for the Challenged Course of Conduct.

The findings below respond to the remaining items challenged in the Applicant's letter of September 18, 2025. All of the challenged conduct relates to items contained in the Staff Technical Review Letter, dated September 17, 2025, regarding the Project's consistency with Town standards and requirements. Agency conduct is not consistent with State law if it is taken for an improper purpose.

In responding to the Notice, the Town must first provide findings that articulate an objective basis for why the challenged course of conduct was necessary. In this case, the Town's course of conduct was both required by and complies with state law, is consistent with the Town's local objective requirements, and was not undertaken for an improper purpose.

A. The Town's Challenged Course of Conduct Was Required by State Law.

Government Code Section 65589.5(j)(2)(A) requires the following actions by the Town:

"If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:

"(i) Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units."

After the Project application was found to be complete on September 17, 2025 under Section 65943, the Town was required to notify the Applicant within 30 days of any standard with which the Project was inconsistent. Town Staff reviewed each applicable "plan, program, policy, ordinance, standard, requirement, or other similar provision" adopted by the Town. On the same day that the Town found

the application was complete, the Town sent the Applicant the Staff Technical Review Letter, which contained the required written documentation identifying the provisions with which the Project was inconsistent, including an explanation of the reasons it considered the housing development project to be inconsistent. The purpose of a consistency letter is to enable an applicant to correct any deficiencies so that a housing development project may be approved. An applicant may elect to achieve consistency by some combination of design modifications, requests for rezoning or other discretionary approvals, or specific requests for concessions and waivers of the various standards that were not met, as permitted under state density bonus law (See Sections 65915 *et seq.*).

The requirements of State law provide an objective basis why this course of conduct was necessary: the Town was required to provide the Applicant with written documentation identifying those Town standards with which it considered the Project to be inconsistent.

B. The Town's Determinations of Inconsistency are Supported by Local and State Law.

The Applicant challenges several of the conclusions in the Staff Technical Review Letter. These actions by the Town constitute a disapproval only if they were taken for an improper purpose, such as to harass or to cause unnecessary delay or needless cost increases [Section 65589.5(h)(6)(D)]. **The sections below present the Town's objective bases for the challenged course of conduct.**

1. Conditional Use Permit Requirement.

Town Requirement. The project site is zoned C-1 (Neighborhood Commercial). The Town's Zoning Code provides that "the activities listed in the table in section 29.20.185 are allowed [in the C-1 Zone] if a conditional use permit is issued" (Town Code § 29.60.215). Among the conditionally permitted uses for the C-1 Zone is "Multiple-family dwelling (in a mixed-use project)" (Town Code § 29.20.185(8)(c)) (See Attachment C). The requirement to apply for a Conditional Use Permit (CUP) is applied uniformly to all projects that propose multi-family residences in the C-1 zone.

The Staff Technical Review Letter explains that multi-family residential is not a principally permitted use in the C-1 Zone, and that the C-1 Zone allows 'multiple-family dwelling (in a mixed-use project)' with a conditional use permit. Accordingly, the Staff Technical Review Letter provides that because the Project proposes to construct multi-family dwellings but no commercial in the C-1 Zone, the Applicant "must apply for a Conditional Use Permit," and request that mixed-uses not be required.

Applicant Objection. The Notice states that the "primary issue [is that] CUP's are not an allowable requirement for Builder's Remedy projects...because Government Code Section 65589.5 [the "Housing Accountability Act," or "HAA"] deems projects to be consistent with zoning and general plans once the planning application is complete." To support this assertion, the Notice cites to Section 65589.5(f)(6)(D)(iii), which provides "Notwithstanding paragraphs (1) to (5), inclusive, all of the following apply to a housing development project that is a builder's remedy project:....Any project that complies with this paragraph shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, redevelopment plan and implementing instruments, or other similar provision for all purposes, and shall not be considered or treated as a nonconforming lot, use, or structure for any purpose."

The Notice further challenges the Town's requirement that the Project apply for a CUP on the basis that "CUP's are, by their very nature, discretionary." The Notice states that because "with Builder's

Remedy projects all discretion must be exercised in favor of the approval and provision of housing (Gov. Code § 89(a)(2)(L)),” then “CUP process is both irrelevant and improper.”

Basis for the Town’s Course of Conduct. The Project does not qualify as a “builder’s remedy project” as defined by the version of the HAA that went into effect on January 1, 2025. The provisions that the Notice quotes from Section 65589.5 apply only to projects meeting the definition of a “builder’s remedy project” contained in Section 65589.5(h)(11).

The Project is Not a “Builder’s Remedy Project” As Now Defined by the HAA. Section 65589.5(h)(11) provides that a “builder’s remedy project” must not have a density that exceeds the greatest of the following: (a) 50 percent greater than the minimum density deemed appropriate to accommodate housing for the jurisdiction (which is 30 dwelling units/acre for the Town); (b) three times the density allowed by the general plan, zoning, or state law, whichever is greater; or (c) the density that is consistent with the density specified in the housing element [Section 65589.5(h)(11)(C)(i)]. Where any portion of the site is located in a high or highest resource census tract, then the greatest allowable density is 35 units per acre more than the amount allowable pursuant to clause (i) [Section 65589.5(h)(11)(C)(ii)].

Here, the maximum density allowed on the site by the general plan and zoning is 20 dwelling units per acre; no provisions of state law set density for the site. Three times the maximum density is 60 dwelling units per acre, plus 35 dwelling units per acre because the site is in a high opportunity census tract. The maximum density is thus 95 dwelling units per acre.

For the 0.53-acre Project site, the base density allowed is 51 units (rounded up). The Project is proposed to have 24 low income units, entitling the project to a 50 percent density bonus, and so allowing 77 units. The Applicant is proposing to construct 119 units, well in excess of the maximum density for a “builder’s remedy project” as defined by Section 65589.5(h)(11). Therefore, the provisions to which the Notice cites do not apply to the Project because the Project is not a “builder’s remedy project” for the purposes of the cited sections.

The Project May Utilize the “Builder’s Remedy” Provisions Contained in the 2024 Version of the HAA. Nonetheless, because the Project submitted a preliminary application prior to certification by the California Department of Housing and Community Development (HCD) of the Town’s Sixth Cycle Housing Element, the Project is a “builder’s remedy project” under the 2024 version of the HAA [Section 65589.5(f)(7)(A)]. That version of the HAA stated that, **“nothing in this section** shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the [Town’s] share of the regional housing need” so long as the ordinance, policy, or standard being applied was adopted and in effect at the time that the project submitted its preliminary application [Sections 65589.5(f)(1),(o)]. The Town may therefore require the Project to comply with objective standards in effect when the preliminary application was filed, even if the Town may not be able to deny the project under Section 65589.5(d)(5) (2024).

The HAA Allows the Town to Require a CUP. The requirement to *apply for* a CUP is an objective, written standard that was in effect at the time that the preliminary application for the Project was submitted. Specifically, the Town’s Zoning Code provides that “the activities listed in the table in section 29.20.185 *are allowed [in the C-1 Zone] if a conditional use permit*

is issued” [Town Code § 29.60.215 (emphasis added)]. Among the conditionally permitted uses for the C-1 Zone is “Multiple-family dwelling (in a mixed-use project)” [Town Code § 29.20.185(8)(c)]. The requirement to apply for a CUP is applied uniformly to all projects that propose a multi-family residential use in the C-1 zone.²

Further, the contention that the review of an application for a CUP is inherently discretionary is entirely speculative. For one, the Staff Technical Review Letter merely requires that the Applicant *submit the application* for a CUP, which, as explained, is an objective requirement in and of itself. More importantly, the Staff Technical Review Letter does not state or imply that the Town will consider or require the Project to comply with any subjective standards to issue the CUP.

2. Town Consulting Arborist Fee.

Town Requirement. The Staff Technical Review Letter states that review by the Town’s Consulting Arborist is required to provide a peer review of the arborist report submitted by the Applicant, and a deposit of \$2,750 is required.

Applicant Objection. Citing to the standards in Section 29.10.0990 of the Town Code, the Notice challenges the Town’s requirement for payment for a fee for review by the Town’s Consulting Arborist on the basis that “the standards of review for the Town Arborist are, by their very nature, discretionary.” The Notice states that because “with Builder’s Remedy projects all discretion must be exercised in favor of the approval and provision of housing” then “the consulting arborist review is both irrelevant and improper.” The Notice also states that because “the Town cannot create new standards that apply to the project after the submission of the SB330 Preliminary Application under Government code Sections 65941, *et seq.*, the Town’s Arborist cannot perform the discretionary review called for in the Town’s Municipal Code.”

Basis for the Town’s Course of Conduct. As explained above, the Project does not qualify as a “builder’s remedy project” under the 2025 version of the HAA. Accordingly, the Town may, under the 2024 version of the HAA, require the Project “to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the [Town’s] share of the regional housing need pursuant to Section 65584” so long as the ordinance, policy, or standard being applied was adopted and in effect at the time that the housing development project submitted its preliminary application [Section 65589.5, subs. (f)(1); (o)]. “Ordinances, policies, and standards” include “permit or processing fees” [Section 65589.5(o)(4)].

The Town has adopted a Tree Protection Ordinance (Division 2 of Chapter 29 of the Town Code) which applies “to every property owner and to every person, corporation, partnership, sole proprietorship or other entity responsible for removing, maintaining or protecting a tree”

² Even if the Project is redesigned to meet the 2025 definition of a “builder’s remedy project,” the Town could still require an application for a conditional use permit. For projects meeting the 2025 definition, the statute provides that the applicant cannot be required to apply for a legislative approval, such as a general plan or zoning amendment, and cannot be required to apply for any permit not generally required of a project of the same type and density as proposed by the applicant. (§ 65589.5(f)(6)(D)(i), (ii).) A conditional use permit is not a legislative approval. The Town requires all applicants for multifamily projects in commercial zones to apply for a use permit and may require the same for builder’s remedy projects proposing multifamily uses in commercial zones.

which trees are enumerated in the Code (See Town Code § 29.10.0960). Where any new development proposes the removal of or impact to one or more protected trees, the Town requires that the application for the development project “include a Tree Survey Plan and Tree Preservation Report based on this survey” [Town Code § 29.10.1000(a)]. The Tree Survey and Tree Preservation Report (together, the “Arborist Report”) are to be prepared by either the applicant’s certified arborist or the Town’s consulting arborist [Town Code § 29.10.1000(a);(c)]. Where the Arborist Report is completed by the applicant’s certified arborist, the Town’s consulting arborist is required to peer review the Arborist Report [Town Code §§ 29.10.1000(b); (c)(2)]. The Arborist Report is required to be submitted as part of the project application and included as part of the staff report to the Town reviewing body upon consideration of the application for a development project [Town Code § 29.10.1000(a); (c)(1); (d)] (See Attachment D).

Since the requirement to provide an Arborist Report as part of the application for a new development is provided in the Town Code and applies uniformly to all projects that propose the removal or impact to a protected tree, this requirement is an objective standard with which the Town can require compliance. Similarly, the requirement to pay a fee to have the submitted Arborist Report reviewed by the Town’s Consulting Arborist is also a written, objective standard that can be found in Town’s Comprehensive Fee Schedule for Fiscal Year 2023/24³. The Fee Schedule was published on the Town’s website at the time that the Project submitted its preliminary application. On page 26, under “Development Services,” the Fee Schedule provides that fees for “consultation” shall be equal to actual cost on an hourly basis. Although that provision establishes a deposit of \$2,000, provisions regarding “Fees for Major Projects,” on page 15, state:

If it is anticipated that the application processing costs of selected major projects will significantly exceed the following fees, the Director of Community Development may collect a deposit and charge actual time spent to process the applications based upon current hourly rates.

Here, the staff emailed the Consulting Arborist, who stated that the cost of the review was estimated at \$2,500. The Town’s Fee Schedule, on page 21, imposes a 10 percent Administrative Fee on all other fees. The Administrative Fee for the Consulting Arborist’s review totaled \$250, resulting in the requested deposit of \$2,750.

The requirement to *pay for* a Consulting Arborist’s review is an objective, written standard that was in effect at the time that the preliminary application for the Project was submitted.

Further, the contention that the Arborist’s review is inherently discretionary is entirely speculative. The Staff Technical Review Letter merely requires that the Applicant *submit the deposit for* the review, which is an objective requirement in and of itself. More importantly, the Staff Technical Review Letter does not state or imply that the Town will consider or require the Project to comply with any subjective standards.

³ The Town’s fee schedule is published on the Town’s website. The fee schedule applicable to this Project is available here: <https://www.losgatosca.gov/DocumentCenter/View/35733/FY23-24-Fee-Schedule?bidId=>.

3. Town Consulting Architect Fee.

Town Requirement. The Staff Technical Review Letter states that review by the Town's Consulting Architect requires payment of an \$8,250 deposit.

Applicant Objection. The Notice challenges that Town's requirement for payment of a fee for review by the Town's Consulting Architect on the basis that "it is unsupported by [the Applicant's] review of the Town's Municipal Code" meaning that the Applicant "did not find any reference to a requirement that the Town's Consulting Architect." The Notice also objects to this requirement on the basis that "any review of the project is limited the Town' [sic] objective design standards" which "is traditionally in the purview of the Planning Staff, not an outside architectural consultant" and accordingly requests that the Town provide (1) statutory authorization delegating the power to conduct objective design standard review to the Town's Consulting Architect and (2) a copy of the contact with the Town's Consulting Architect demonstrating that their duties include review of projects for objective design standards.

Basis for the Town's Course of Conduct. The Project does not qualify as a "builder's remedy project" under the 2025 version of the HAA. Accordingly, the Town may, under the 2024 version of the HAA, require the Project "to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the [Town's] share of the regional housing need pursuant to Section 65584" so long as the ordinance, policy, or standard being applied was adopted and in effect at the time that the housing development project submitted its preliminary application [Section 65589.5, subs. (f)(1); (o)]. "Ordinances, policies, and standards" includes "design review standards and criteria" and "permit or processing fees" [Section 65589.5(o)(4)].

The Town Council has established the roles and responsibilities of the Town's Planning Commission and Consulting Architect by resolution [See Attachment E (Town Council Resolution No. 2002-25)]. The Resolution provides that the "architectural consultant will review plans and provide guidance to applicants to ensure plans are in compliance with applicable design standards and guidelines, specific plans and the General Plan" and that "[r]eports on projects that reviewed by the Planning Commission will include the recommendations of the architectural consultant and plans that have been revised to incorporate those recommendations." (*Id.*) The Town's contract with the current Consulting Architect, Cannon Design Group, incorporates the duties established by Resolution No. 2002-25 into the scope of services [See Attachment F (Agreement for Consulting Services, Article II, section 2.1)].

Since the requirement for review by the Consulting Architect applies uniformly to all projects that require review by the Planning Commission, this requirement is an objective standard with which the Town can require compliance. Similarly, the requirement to pay a fee to have the plans reviewed by the Town's Consulting Architect is also a written, objective standard that can be found in Town's Comprehensive Fee Schedule for Fiscal Year 2023/24⁴. The Fee Schedule was published on the Town's website at the time that the Project submitted its preliminary application. On page 26, under "Development Services," it provides that fees for

⁴ The Town's fee schedule is published on the Town's website. The fee schedule applicable to this Project is available here: <https://www.losgatosca.gov/DocumentCenter/View/35733/FY23-24-Fee-Schedule?bidId=>.

“consultation” shall be equal to actual cost on an hourly basis. Although that provision establishes a deposit of \$2,000, provisions regarding “Fees for Major Projects,” on page 15, state:

If it is anticipated that the application processing costs of selected major projects will significantly exceed the following fees, the Director of Community Development may collect a deposit and charge actual time spent to process the applications based upon current hourly rates.

Here, the staff called the Consulting Architect, who stated that the cost of the review was estimated at \$7,500. The Town’s Fee Schedule, on page 21, imposes a 10 percent Administrative Fee on all other fees. The Administrative Fee for the Consulting Arborist’s review totaled \$750, resulting in the requested deposit of \$8,250.

The requirement to *pay for* a Consulting Architect’s review is an objective, written standard that was in effect at the time that the preliminary application for the Project was submitted.

Further, the contention that the Architect’s review is inherently discretionary is entirely speculative. The Staff Technical Review Letter merely requires that the Applicant *submit the deposit for* the review, which is an objective requirement in and of itself. More importantly, the Staff Technical Review Letter does not state or imply that the Town will consider or require the Project to comply with any subjective standards.

4. Notification to Outside Agencies and Neighboring Properties.

Town Requirement. The Staff Technical Review Letter requests that the Applicant provide a response letter to VTA’s comments, which were provided to Staff on May 29, 2025 and thereafter forwarded by Staff to the Applicant, to explain which of VTA’s comments have been addressed.

Applicant Objection. The Notice challenges the request to respond to VTA’s comments on the basis that traffic impacts are part of CEQA analysis and therefore do not need to be addressed since the Project is exempt from CEQA. Additionally, the Notice states that “there does not appear to be a basis for imposing exactions from Caltrans and VTA” and that “VTA’s own addition in its email dated May 29, 2025 that it is not providing ADA compliant facilities two blocks away from [the Project] does not obligate [the Applicant] to pay for the VTA coming into compliance with the ADA.” The Notice requests a basis for imposing this exaction on the Project.

Basis for the Town’s Course of Conduct. While the request to respond to VTA’s comment was included in the “consistency” letter, it was a recommendation only. Neither the continued processing of the Project application nor scheduling the Project for public hearing are contingent upon the requirement that the Applicant provide a written response to VTA’s comments.

5. Town’s Below Market-Rate Program Requirements.

Town Requirement. The Staff Technical Review Letter provides that the “floor plans and the ‘Project Description/Letter of Justification’ need to specify which units are Below Market Price (BMP) and specify how compliance with the Town’s BMP requirements at met.” Specifically, the Staff Technical Review Letter states that the “Project Description/Letter of Justification does not mention the Town’s

BMP program” and requests that the Applicant provide justification(s) if they do not intend to comply with the BMP unit size or other standards. The Staff Technical Review Letter requests that the Applicant provide a written statement in the Project Description/Letter of Justification about how the Project will comply with the BMP requirements or alternatively, if the Project will not comply any of the BMP requirements, a justification for any such deviation.

Applicant Objection. The Notice challenges both of these aforementioned requirements on the basis that the “Town’s BMP Program is superseded by the California State Housing Laws for this project, including the Housing Crisis Act, the Housing Accountability Act, the Permit Streamlining Act and the related measures. (Cal. Const. Art. XI, Sec. 7.)” Therefore, the Notice concludes, “the Town’s BMP Program is irrelevant to this project.”

Basis for the Town’s Course of Conduct. The Project does not qualify as a “builder’s remedy project” under the 2025 version of the HAA. Accordingly, the Town may, under the 2024 version of the HAA, require the Project “to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the [Town’s] share of the regional housing need pursuant to Section 65584” so long as the ordinance, policy, or standard being applied was adopted and in effect at the time that the housing development project submitted its preliminary application [Section 65589.5, subs. (f)(1); (o)]. “Ordinances, policies, and standards” includes “zoning” and “any other rules, regulations, requirements, and policies of a local agency, as defined in Section 66000, including those relating to development impact fees...and other exactions” [Section 65589.5(o)(4)].

The Town’s BMP program is codified in Division 6 of Article VIII of Chapter 29 of the Town Code and further detailed in the Town’s Below Market Price Housing Program Guidelines (the “Guidelines”).⁵ The BMP Program is applicable to all residential projects that include five (5) or more residential units or parcels (Town Code § 29.10.3025). As applicable to this Project, the BMP Program requires that “all projects in excess of one hundred (100) market rate units must provide a number of BMP units equal to twenty (20) percent of the market rate units.”⁶ (*Id.*) The Guidelines establish additional requirements related to the characteristics of the BMP units, including the size, location and finish of said units (Guidelines, section III).

The requirement to provide BMP units is a written, objective standard that was in effect at the time that the Applicant submitted the preliminary application for the Project. As such, the Town may request additional information to determine how and whether the Applicant intends to comply with the requirement to provide BMP units, or alternatively, whether the

⁵ The Town’s BMP Program Guidelines are published on the Town’s website and are available here: <https://www.losatosca.gov/DocumentCenter/View/2773/BMP-POLICIES?bidId=>.

⁶ To qualify as a builder’s remedy project under the 2024 version of the HAA, the Project must be “housing for very low, low, or moderate income households” meaning that either (a) at least 20 percent of the total units shall be sold or rented to lower-income households (as defined in Health and Safety Code Section 50079.5) or (b) 100 percent of the units are sold or rented to persons and families of moderate income (as defined in Health and Safety Code Section 50093) or persons and families of middle income (as defined in Section 65008). (Section 65589.5(d); (h)(3).)

Applicant is seeking a waiver from the BMP requirements and the basis for the requested waiver.

State law also requires that occupants of the affordable housing units within a mixed-income multifamily structure shall have the same access to the common entrances and common areas and amenities of that structure as the occupants of the market-rate housing units and that a mixed-income multifamily structure shall not isolate the affordable housing units within that structure to a specific floor or an area on a specific floor (Health and Safety Code § 17929). The Town needs to know the location of the BMP units to confirm that the Project conforms with this requirement.

Finally, state and federal fair housing laws do not allow discrimination against families with children. The Town needs to know the size and number of bedrooms and baths to ensure that the units have the same proportion of bedrooms and baths as the market-rate units and are not all designated for studio and one-bedroom units that are unsuitable for children.

C. There Is No Evidence that the Course of Conduct was Undertaken for an Improper Purpose, Such as to Harass or to Cause Unnecessary Delay or Needless Increases in the Cost of the Proposed Project.

The Notice provides no evidence that the Town's course of conduct in providing the Staff Technical Review Letter was undertaken for the purpose of harassing the Applicant, causing unnecessary delay, or causing needless increases in Project costs. None of the requirements that the Applicant objects to would necessarily require changes in the Project, nor would they cause an unnecessary delay or increase in cost. The statute cannot be interpreted to mean that an applicant can submit a project inconsistent with Town ordinances, policies, guidelines and standards and then argue that the Town's actions in pointing out those inconsistencies was taken for an improper purpose.

The Applicant disagrees with some of the requirements contained in the Staff Technical Review Letter. However, even if the Applicant's arguments are correct, disagreements about the interpretation of State law cannot be considered to have been made for an improper purpose unless the Town's conclusions were made in bad faith, that is, "frivolous, pretextual, intended to cause unnecessary delay, or entirely without merit" [Section 65589.5(l)]. As described above and in the record, the Town has provided reasoned, good faith arguments for the conclusions in the Staff Technical Review Letter. Many of the arguments made by the Applicant are based on provisions of state law that are not even applicable to its Project.

Without evidence of an improper purpose for the Town's actions, its actions cannot constitute an "effective disapproval" under Section 65589.5(h)(6)(D).

Instructions on What the Applicant Must Submit or Supplement

Findings in response to a Challenged Conduct Notice must provide "clear instructions on what the Applicant must submit or supplement so that the local agency can make a final determination regarding the next necessary approval or set the date and time of the next hearing" [Section 65589.5(h)(6)(D)(iv)(II)].

The Applicant must submit or supplement the following so that the Town can make a final determination regarding the next necessary approval and set the date and time of the next hearing:

1. Submit an application for a Conditional Use Permit, and request that the mixed-use component of the conditional use not be required as part of the CUP application. Contact the Project planner, Ryan Safty, when prepared to pay the CUP application fee of \$2,358.26 and indicate whether you will be paying the fee by check or credit card.
2. Submit a deposit fee of \$2,750 for the Town's Consulting Arborist to complete a peer review of the arborist report you have submitted, and indicate whether you will be paying the fee by check or credit card.
3. Submit a deposit fee of \$8,250 for the Town's Consulting Architect to complete a review of the Project plans, and indicate whether you will be paying the fee by check or credit card.
4. Submit revised floor plans for the Project specifying which units will be designated as BMP units and detailing the floor plan and number of bedrooms and baths for each BMP unit.
5. Submit a written statement in the Project Description/Letter of Justification either (a) explaining how the Project intends to comply with each of the four BMP Program requirements and state law, or (b) alternatively, if the Project will not comply with one or more of the BMP Program requirements, providing a justification for the requested deviation.

The Town will respond to the request regarding the Project's eligibility for the CEQA exemption provided by Public Resources Code Section 21080.66 within 30 days. If you disagree with this determination, you may elect to utilize the procedure established under the Housing Accountability Act to assert that the Project is eligible for a CEQA exemption (See Section 65589.5.1).

Attachments:

- A. Challenged Conduct Noticed Filed with Town on October 2, 2025
- B. Town's Fifth Planning Staff Technical Review Letter, dated September 17, 2025
- C. C-1 Zoning District Standards and Town Code Section 29.20.185
- D. Tree Protection Ordinance (Town Code Sections 29.10.0950 – 29.10.1050)
- E. Resolution No. 2002-25, Resolution of the Town Council of the Town of Los Gatos Governing the Design Review Process and Clarifying the Roles and Responsibilities of the Town Planning Commission and Architectural Consultant
- F. Agreement for Consultant Services, dated July 1, 2022, by and between the Town of Los Gatos and Larry Cannon of Cannon Design Group
- G. Email with Estimate of Arborist Consulting Costs

Cc: Richard B. Jacobs
richardjacobslaw@gmail.com

Kurt Anderson, Architect



County of Santa Clara - Clerk-Recorder's Office
State of California

File Number: ENV25842

ENVIRONMENTAL FILING

No. of Pages: 14

Total Fees: \$0.00

File Date: 10/09/2025

Expires: 11/08/2025

LOUIS CHIARAMONTE, Clerk-Recorder

By: Corinne Vasquez, Deputy Clerk-Recorder

**SANTA CLARA COUNTY CLERK
CEQA FILING COVER SHEET**

THIS SPACE FOR CLERK'S USE ONLY

Complete and attach this form to each CEQA Notice filed with the County Clerk

TYPE OR PRINT CLEARLY

Check Document being Filed:

- ☐ Environmental Impact Report (EIR)
- ☐ Filing Fee (new project)
- ☐ Previously Paid F&W (must attach F&W receipt and project titles must match)
- ☐ No Effect Determination (F&W letter must be attached)
- ☐ Mitigated Negative Declaration (MND) or Negative Declaration (ND)
- ☐ Filing Fee (new project)
- ☐ Previously Paid F&W (must attach F&W receipt and project titles must match)
- ☐ No Effect Determination (F&W letter must be attached)
- ☐ Notice of Exemption (NOE)
- ☒ Other (Please fill in type):

Government Code Section 65589.5(h)(6)(D) - Challenged Conduct Notice

1. LEAD AGENCY: Town of Los Gatos
2. LEAD AGENCY EMAIL: rsafy@losgatosca.gov
3. PROJECT TITLE: 14288 Capri Drive
4. APPLICANT NAME: Kurt B. Anderson, AIA PHONE: (408)202-5462
5. APPLICANT EMAIL: kanderson@andarchinc.com
6. APPLICANT ADDRESS: 120 W. Campbell Ave, Suite D, Campbell, CA 95008
7. PROJECT APPLICANT IS A: ☐ Local Public Agency ☐ School District ☐ Other Special District ☐ State Agency ☒ Private Entity
8. NOTICE TO BE POSTED FOR 30 DAYS.

Filing fees are due at the time a Notice of Determination/Exemption is filed with our office. For more information on filing fees and No Effect Determinations, please refer to California Code of Regulations, Title 14, section 753.5.

County of Santa Clara
Clerk-Recorder's Office

110 West Tasman Drive, First Floor
San Jose, California 95134
(408) 299-5688



11/10/2025

TOWN OF LOS GATOS

110 E. Main St.
Los Gatos, CA 95030

Re: CALIFORNIA ENVIRONMENTAL QUALITY ACT POSTINGS

Dear Lead Agency:

**Enclosed please find the public copy posted in Santa Clara County
Clerk-Recorder's Office for 30 days per CALIFORNIA CODES PUBLIC
RESOURCES CODE SECTION 21152 (c)**

Sincerely,

County Clerk-Recorder

By: _____

Mike Louie , Deputy Clerk-Recorder

A handwritten signature in black ink, appearing to read "Mike Louie", written over a horizontal line.



From: SoCal Industrial Equities
To: Ryan Safty; Kurt Anderson; Ben Eilenberg; Richard Jacobs
Subject: 14288 Capri Drive - Follow-up re: September 17, 2025 and September 18, 2025 letters
Date: Thursday, October 2, 2025 2:14:29 PM
Attachments: 9-18-2025 Letter.pdf
9-17-2025 Letter.pdf

[EXTERNAL SENDER]

Ryan,

I am following up on our letters sent two weeks ago. We have not received a substantive response to either one.

To remind you, the September 17, 2025 letter outlined the CEQA exemption in Public Resources Code Section 20180.66. The September 18, 2025 letter addressed the improper fees and requirements for the project imposed by the Town.

Please get back to us with a response from the Town on or before October 7, 2025.

Please consider this our request to move forward with the administrative process set forth in Government Code Section 65589.5(h)(6)(D). We will consider withdrawing the request depending on the substantive response. The violations are set forth in detail in the September 17, 2025 and September 18, 2025 letters, both of which are attached.

Thank you in advance.

Ben

LAW OFFICE OF RICHARD B. JACOBS

September 17, 2025

The Town of Los Gatos

Sent via email to Ryan Safty and uploaded

RE: CEQA Exemption under Public Resources Code Section 65589.5 for the project located at 14288 Capri Drive

As per the meeting this morning regarding this project located at 14288 Capri Drive I have been requested to prepare a short memorandum on the question of CEQA exemption for the project. As you may be aware, AB-130 was recently passed by the Legislature and signed by Governor Newsom. Among other matters, AB-130 added Section 21080.66 to the Public Resources Code. For your convenience, the link to AB-130 is

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260AB130.

Section 21080.66(a) sets forth an 8-part test to determine whether a project is exempt from CEQA. I have included each of the 8 parts below with an explanation of how this project meets the criteria:

1. The project must be less than 20 acres, or if it is a Builder's Remedy project, the project must be less than 5 acres. (§ 21080.66(a)(1)(A)&(B).)
 - a. This project is a Builder's Remedy project. Therefore it must be less than 5 acres.
 - b. This project is less than 1 acre.
2. The project site must be either within the boundaries of an incorporated municipality or be located within an urban area as defined by the U.S. Census Bureau. (§21080.66(a)(2)(A)&(B).)
 - a. This project is located within the Town of Los Gatos.
 - b. The Town of Los Gatos was incorporated in 1887.
3. The project must be on a parcel that meets any of the following criteria: (A) the parcel was previously developed with an urban use; or (B) at least 75% of the perimeter of the site adjoins parcels that are developed with urban uses; or (C) at least 75% of the area within one-quarter mile radius of the site is developed with urban uses; or (D) for sites with 4 sides, at least 3 of the 4 sides are developed with urban uses and at least 2/3 of the perimeter of the parcel adjoins parcels that are developed with urban uses.
 - a. While any of the four preceding criteria are acceptable, this project meets all of the four different methods of satisfying this question.
 - b. For convenience, I have included a satellite image of the project site:

LAW OFFICE OF RICHARD B. JACOBS



- c. The project parcel is already developed for urban use.
 - d. At least 75% of the surrounding parcels are developed for urban use.
 - e. At least 75% of the area within one-quarter mile is developed for urban use.
 - f. All 4 of the 4 sides are developed with urban uses and over 2/3 of the perimeter of the site adjoin parcels that are developed for urban uses.
4. The project is consistent with the general plan and/or zoning.
 - a. This is a Builder's Remedy project subject to Government Code Section 65589.5.
 - b. As per Government Code Section 65589.5(f)(6)(D)(iii), "(f)(6) Notwithstanding paragraphs (1) to (5), inclusive, all of the following apply to a housing development project that is a builder's remedy project: ... (D)(iii) Any project that complies with this paragraph shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, redevelopment plan and implementing instruments, or other similar provision for all purposes, and shall not be considered or treated as a nonconforming lot, use, or structure for any purpose."
 - c. Summarized, Builder's Remedy projects are deemed consistent with general plans and zoning for all purposes.
 - d. As this is a Builder's Remedy project, it is therefore legally deemed consistent with the general plan and zoning.
5. The project will be at least one-half of the applicable density specified in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65583.2 of the Government Code.
 - a. This is also known as the "Mullin Density."
 - b. This means that the project must be at least five units per acre for an unincorporated area in a nonmetropolitan county, 10 units per acre in a suburban jurisdiction, and 15 units per acre in a metropolitan jurisdiction.

LAW OFFICE OF RICHARD B. JACOBS

- c. As this is a project in a suburban jurisdiction, the project must have at least 10 units per acre.
 - d. The project has more than the requisite units per acre.
- 6. The project satisfies the requirements specified in paragraph (6) of subdivision (a) of Section 65913.4 of the Government Code.
 - a. Government Code Section 65913.4(a)(6) requires that a project not be on a site that is any of the following:
 - i. An area of the coastal zone subject to paragraph (1) or (2) of subdivision (a) of Section 30603 of the Public Resources Code.
 - ii. An area of the coastal zone that is not subject to a certified local coastal program or a certified land use plan.
 - iii. An area of the coastal zone that is vulnerable to five feet of sea level rise, as determined by the National Oceanic and Atmospheric Administration, the Ocean Protection Council, the United States Geological Survey, the University of California, or a local government's coastal hazards vulnerability assessment.
 - iv. In a parcel within the coastal zone that is not zoned for multifamily housing.
 - v. In a parcel in the coastal zone and located on either of the following:
 - 1. On, or within a 100-foot radius of, a wetland, as defined in Section 30121 of the Public Resources Code.
 - 2. On prime agricultural land, as defined in Sections 30113 and 30241 of the Public Resources Code.
 - b. This project is not in a coastal zone, therefore none of the above criteria are implicated.
- 7. The project does not require the demolition of a historic structure.
 - a. There are no historic structures on the site.
- 8. For a project that was deemed complete on or after January 1, 2025, no portion of the project is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging.
 - a. This project was deemed complete after January 1, 2025.
 - b. No portion of this project is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging.

Therefore, as set forth in detail above, this project falls within the CEQA exemption created by AB130 and codified in Public Resources Code Section 21080.66(a).

Please confirm to me and my client that the Town will comply with Public Resources Code Section 21080.66(a) and issue a determination that this project is CEQA exempt on or before September 26, 2025.

Sincerely,

Richard B. Jacobs

LAW OFFICE OF RICHARD B. JACOBS

September 18, 2025

The Town of Los Gatos

Sent via email to Ryan Safty and uploaded

RE: Improper Requirements And Fees for the project located at 14288 Capri Drive

As per the meeting yesterday morning regarding this project located at 14288 Capri Drive I have been requested to prepare a short memorandum on the question of whether there are improper requirements and fees being demanded by the Town of Los Gatos. There are.

This letter specifically addresses the items listed in the September 17, 2025 Staff Technical Review for the project.

1. Project Consistency Related Items: Letters

- a. Item 1 – “Multi-Family Residential is not a principally permitted use (or an allowed conditional use) in the C-1 zone. The C-1 zone allows “multiple-family dwelling (in a mixed-use project)” with a conditional use permit. You must apply for a Conditional Use Permit, and request that the “mixed-use” component of the be removed as a part of the application. • Contact project planner when you are ready to pay the CUP fee, and staff will invoice. Please also confirm if you will be paying by check or credit card. • Previous deficiency comment moved to consistency. • This remains outstanding. The fee is now \$3,524.26 based on the Town’s new fee schedule. See the Town’s letters from March 3, 2025, and May 27, 2025, addressing this comment and applicant responses in detail. The application materials continue to make the same argument, without responding to the Town’s responses. • The response letter submitted on July 18, 2025, as well as the letter from the Law Office of Richard Jacobs dated May 16, 2025, state that this requirement is not in the “New Residential Submittal Requirements.” As noted in the staff’s response to the May 16, 2025, letter, the “New Residential Submittal Requirements” is not the Town’s submittal checklist for a discretionary planning application. The “New Residential Submittal Requirements” is a checklist for Building Permit submittals”
 - i. The primary issue that CUP’s are not an allowable requirement for Builder’s Remedy projects. This is because Government Code Section 65589.5 deems projects to be consistent with zoning and general plans once the planning application is complete.
 1. As per Government Code Section 65589.5(f)(6)(D)(iii), “(f)(6) Notwithstanding paragraphs (1) to (5), inclusive, all of the following apply to a housing development project that is a builder’s remedy project: ...(D)(iii) Any project that complies with this paragraph shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, redevelopment plan and implementing

LAW OFFICE OF RICHARD B. JACOBS

instruments, or other similar provision for all purposes, and shall not be considered or treated as a nonconforming lot, use, or structure for any purpose.”

2. CUP's are only required for projects that are inconsistent with the “by right” uses for a zone. In this case, Government Code Section 65589.5(f)(6)(D)(iii) makes this project consistent with the “by right” uses for the zone.
- ii. The second issue is that CUP's are, by their very nature, discretionary.
 1. According to Section 29.20.180 of the Town's Municipal Code, “Conditional use permits. The adoption of this chapter is based on the premise that there are uses which can be specified for each zone which, in practically all instances, will be mutually compatible. In addition, there are other uses which might be compatible with ordinarily allowed uses if properly located and regulated. These are called conditional uses. They are listed in section 29.20.185. However, the listing of a conditional use does not indicate that the use must be allowed. There will be locations or instances where a specified conditional use is inappropriate in a zone regardless of the extent of regulation.”
 2. However, with Builder's Remedy projects all discretion must be exercised in favor of the approval and provision of housing. (Gov. Code § 89(a)(2)(L).) Therefore, any discretion must be exercised in favor of the project, meaning that the CUP process is both irrelevant and improper.
- iii. The third issue is that CUP's do not address the only five questions that may be addressed by the Town under Government Code Section 65589.5(d)(5).
 1. As noted above, this project is a Builder's Remedy project under Government Code Section 65589.5. As this project was submitted while the Town's Housing Element was non-compliant, the five questions that may be addressed are encapsulated in Government Code Section 65589.5(d)(5). They are:
 - a. (1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or

more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the housing development project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

- b. (2) The housing development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, 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 following shall not constitute a specific, adverse impact upon the public health or safety:
 - i. (A) Inconsistency with the zoning ordinance or general plan land use designation.
 - ii. (B) The eligibility to claim a welfare exemption under subdivision (g) of Section 214 of the Revenue and Taxation Code.
- c. (3) The denial of the housing development project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.
- d. (4) The housing development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation

purposes, or which does not have adequate water or wastewater facilities to serve the project.

- e. (5) On the date an application for the housing development project or emergency shelter was deemed complete, the jurisdiction had adopted a revised housing element that was in substantial compliance with this article, and the housing development project or emergency shelter was inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan.
 - i. (A) This paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed on a site, including a candidate site for rezoning, that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element if the housing development project is consistent with the density specified in the housing element, even though the housing development project was inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation on the date the application was deemed complete.
 - ii. (B) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

LAW OFFICE OF RICHARD B. JACOBS

- f. A CUP does not fit this five point analysis.
- b. Item 3 – “CEQA: Clarify whether the applicant team anticipates providing any technical studies related to environmental analysis (traffic, habitat, cultural, air quality, noise, soils etc.) for peer review by the Town Environmental Consultants. If not provided, the studies determined to be required by the Environmental Consultant will be prepared by the Town Environmental Consultants at the cost of the applicant. • You previously indicated via email that your team will prepare an Arborist Report and Traffic Study. Please confirm. Additionally, an email was forwarded to your team on 9/13/24, requesting some additional information in the Phase I ESA and the Noise Report. Please provide a response. • The response letter uploaded in July 2025 states that, “under the new laws passed, CEQA no longer applies to this project.” Please specify which CEQA exemption you believe applies to this project, and provide substantial evidence that the project meets each requirement of the exemption. Staff will then review to determine eligibility.
 - i. This item has already been addressed in my letter dated September 17, 2025, a courtesy copy of which is attached hereto as **Exhibit 1**.
 - ii. I will also note, to the extent that the Town wishes to attempt to seek additional reports on environmental matters that would be addressed in the CEQA process, those reports are now unnecessary as this project is CEQA exempt.
- c. Item 4 – “CEQA: Staff is coordinating with Town Environmental Consultants to determine what environmental analysis will be required for the project. Environmental analysis is required at cost to the applicant. Staff will require payment of a deposit at a future date. • The response letter uploaded in July 2025 states that, “under the new laws passed, CEQA no longer applies to this project.” Please see response to #9 above.”
 - i. This item has already been addressed in my letter dated September 17, 2025, a courtesy copy of which is attached hereto as **Exhibit 1**.
 - ii. I will also note, to the extent that the Town wishes to attempt to seek additional reports on environmental matters that would be addressed in the CEQA process, those reports are now unnecessary as this project is CEQA exempt.
- d. Item 5 – “Review by the Town’s Consulting Arborist is required to provide a peer review of the arborist report submitted by the applicant. A deposit payment of \$2,750 is required. • This continues to remain outstanding.”
 - i. The primary issue is that the standards of review for the Town Arborist are, by their very nature, discretionary.
 - 1. According to Section 29.10.0990 of the Town’s Municipal Code, “Standards of review.
 - 2. The Director or deciding body shall review each application for a tree removal permit required by this division using the following standards of review. The standards of review are intended to serve as criteria for evaluating tree removal requests and the basis upon

LAW OFFICE OF RICHARD B. JACOBS

which the Director or the deciding body will subsequently determine whether or not one (1) or more of the Required Findings listed in section 29.10.0992 can be made. (1)The condition of the tree or trees with respect to: (a) disease, (b) imminent danger of falling, (c) structural failure, (d) proximity to existing or proposed structures, (e) structural damage to a building, or (f) a public nuisance caused by a tree. The International Society of Arboriculture (ISA) Best Management Practices for Tree Risk Assessment shall be used where appropriate in determining a Tree Risk Rating.(2)The condition of the tree giving rise to the permit application cannot be reduced to a less than significant level by the reasonable application of preservation, preventative measures or routine maintenance.(3)The removal of the tree(s) will not result in a density of trees or tree cover that is inconsistent with the neighborhood.(4)The number of trees the particular parcel can adequately support according to good urban forestry practices, or whether a protected tree is a detriment to or crowding another protected tree.(5)In connection with a proposed subdivision of land into two (2) or more parcels, the removal of a protected tree is unavoidable due to restricted access to the property or deemed necessary to repair a geologic hazard (landslide, repairs, etc.).(6)Except for properties located within the hillsides, the retention of a protected tree would result in reduction of the otherwise-permissible building envelope by more than twenty-five (25) percent.(7)The Hillside Development Standards and Guidelines.(8)Removal of the protected tree(s) will not result in a substantial adverse change in the site's aesthetic and biological significance; the topography of the land and the effect of the removal of the tree on erosion, soil retention, or diversion or increased flow of surface waters.(9)Whether the Protected Tree has a significant impact on the property. Significant impact from a tree is defined in section 29.10.0955. Definitions.(10)The species, size (diameter, canopy, height), estimated age and location on the property of the protected tree."

3. However, with Builder's Remedy projects all discretion must be exercised in favor of the approval and provision of housing. (Gov. Code § 89(a)(2)(L).) Therefore, any discretion must be exercised in favor of the project, meaning that the consulting arborist review is both irrelevant and improper.
4. As the Town cannot create new standards to apply to the project after the submission of the SB330 Preliminary Application under Government Code Sections 65941 *et seq.*, the Town's Arborist

LAW OFFICE OF RICHARD B. JACOBS

cannot perform the discretionary review called for in the Town's Municipal Code.

- e. Item 6 – “Review by the Town’s Consulting Architect requires payment of a \$8,250 deposit. • This continues to remain outstanding.”
 - i. The primary issue for this requirement is that it is unsupported by my review of the Town’s Municipal Code. I did not find any reference to a requirement that the Town’s Consulting Architect be retained to review the project.
 - ii. The second issue is that any review of the project is limited to the Town’s objective design standards in place at the time of the submission of the SB330 Preliminary Application. (Gov. Code § 65589.5(f).) Review of the objective design standards is traditionally the purview of the Planning Staff, not an outside architectural consultant. If you contend that the Town’s Consulting Architect is the party conducting the Town’s objective design standard analysis, please provide the following:
 - 1. The statutory authorization delegating that power to the Town’s Consulting Architect; and
 - 2. The contract for the Town’s Consulting Architect showing that his/her duties include the review of projects for objective design standards.
- f. Item 7 – “Please reach out to all necessary outside agencies and neighboring properties regarding this project (Caltrans, VTA, FAA for the helipad, etc.). • plan.review@vta.org • This remains outstanding. The July 2025 response letter says that VTA communication has already been provided. Staff has not been provided with this information. Staff reached out to VTA, who provided comments on 5/29/25, which were forwarded to your team. Provide a response letter to VTA’s comments, explaining what has been addressed.”
 - i. There is no helipad on this project, so the FAA is irrelevant.
 - ii. My clients have already posted all required signage regarding the development providing notice to the neighbors. Please send us any statutory authority for additional requirements regarding noticing the neighbors.
 - iii. As to Caltrans and VTA, traffic impacts are part of the CEQA analysis. This item has already been addressed in my letter dated September 17, 2025, a courtesy copy of which is attached hereto as **Exhibit 1**.
 - iv. Finally, there does not appear to be a basis for imposing exactions from Caltrans and VTA. The VTA’s own admission in its email dated May 29, 2025 that it is not providing ADA compliant facilities two blocks away from my client’s project does not obligate my client to pay for the VTA coming into compliance with the ADA. Please provide any basis for imposing this exaction on the project.
- g. Item 8 – “Below Market Price Units: The floor plans and the “Project Description/Letter of Justification” need to specify which units are Below Market Price (BMP) and specify how compliance with the Town’s BMP requirements are

LAW OFFICE OF RICHARD B. JACOBS

met. Detailed floor plans for each unit must be provided. The letter should respond to each of the four characteristics listed in Section III below, and the plans should contain enough information so that staff can determine that the size of units are compatible with the market rate, that the location of BMP units are dispersed throughout the proposal, that the exterior appearance be indiscernible from the market rate units, and that all project facilities and amenities be available to the BMP units. Pursuant to the Town's Below Market Price Housing Program, Section III (Characteristics of BMP Units): A. Size of units: BMP dwelling units should to the extent possible, be consistent with the market rate units in the project. The Town and developer may negotiate regarding the size of units if more units than required are to be provided. BMP units should be provided proportionately in the same unit type mix (number of bedrooms) as the market rate units. In consideration of the household size of the households on the current program interest list, the Town and developer may negotiate to provide a greater proportion of a particular unit type. There should to the extent possible, not be a significant identifiable difference between the BMP and market-rate units visible from the exterior. The size and design of the BMP units should to the extent possible, be consistent with the market-rate units in the development. The goal of the BMP Program is for a seamless integration of the BMP units with the market-rate units in a development. B. Location of units: BMP units shall be dispersed throughout the development, to the extent feasible, in all buildings, on each floor, and in each project phase. A concentration of BMP units in one location is not desirable and will generally not be allowed. C. Finish of units: The external appearance of BMP units should be indiscernible to that of the market rate units in the project. The internal finish of BMP units should be identical to that of the market rate units in the project, except that the developer may request Town approval of substitutions for luxury interior finishes, appliances, or fixtures, if such substitutions do not violate any Town code requirement. D. Project Facilities: All project facilities and amenities, including parking, must be available on the same basis to the BMP units as to the market rate units in the project, to the extent feasible, unless the deciding body approves a reduction in parking for the BMP units. • This remains outstanding. The Project Description/Letter of Justification does not mention the Town's BMP program. If the Town's BMP program would not be complied with regarding BMP unit size or other standards, please provide the justification for this deviation."

- i. The Town's BMP program is superseded by the California State Housing Laws for this project, including the Housing Crisis Act, the Housing Accountability Act, the Permit Streamlining Act and the related measures. (Cal. Const. Art. XI, Sec. 7.) Therefore, the Town's BMP program is irrelevant to this project.
- h. Item 10 – "Project Description/Letter of Justification: (Updated 7/17/25) - Staff is requesting that this information be included in the revised "Project Description/Letter of Justification". • See comment above regarding BMP information included in the letter. The letter needs to also specify the exact

LAW OFFICE OF RICHARD B. JACOBS

number of proposed BMP units (not a percentage). • This continues to remain outstanding (BMP information). The July 2025 response letter says that this was included in the plans. However, staff is asking for a written statement in the Project Description/Letter of Justification. If the Town's BMP program would not be complied with regarding BMP unit size or other standards, please provide the justification for this deviation."

- i. The Town's BMP program is superseded by the California State Housing Laws for this project, including the Housing Crisis Act, the Housing Accountability Act, the Permit Streamlining Act and the related measures. (Cal. Const. Art. XI, Sec. 7.) Therefore, the Town's BMP program is irrelevant to this project.

While my client is happy to work with the Town on any items that do not conflict with the State Housing Laws, these items do conflict with those laws and therefore are improper restrictions and exactions on the project.

Please confirm to me and my client that the Town will comply with the State Housing Laws and rescind the foregoing requirements.

Sincerely,

Richard B. Jacobs



**TOWN OF LOS GATOS
FIFTH STAFF TECHNICAL
REVIEW COMMENTS**

**STAFF TECHNICAL REVIEW
PLANNING DIVISION
September 17, 2025**

**ITEM 4: 14288 Capri Drive
Architecture and Site Application S-24-044**

Requesting Approval for Demolition of an Existing Commercial Building, Construction of a Multi-Family Residential Development (119 Apartment Units), Site Work Requiring a Grading Permit, and Removal of Large Protected Trees Under Senate Bill 330 (SB 330) on Property Zoned C-1. APN 406-30-016. CEQA Review is Pending.

PROPERTY OWNER: Los Gatos LLC.

APPLICANT: Kurt B. Anderson.

PROJECT PLANNER: Ryan Safty
LAST REVIEWED BY STAFF: 9/18/24, 1/8/25, 4/23/25, 8/14/25
SUBMITTAL DATE: 8/23/24

DETERMINATION: This planning application resubmitted to the Town on August 22, 2025, is deemed COMPLETE effective September 17, 2025. In conformance with Section 65589.5(j)(2), this letter provides written documentation identifying the applicable plans, programs, policies, ordinances, standards, requirements, and similar provisions that the project is inconsistent with, and the reasons the project is inconsistent.

The Town is currently seeking a judicial determination regarding the correct interpretation of Government Code Section 65941.1(e). Under the Town's interpretation, the vesting provided by your preliminary application has expired prior to this completeness determination. However, if requested by you, the Town will continue to process this planning application, at your own risk, under the vesting provided by your preliminary application, pending a judicial determination regarding the effect of Government Code Section 65941.1(e) upon any vesting provided by your preliminary application.

The following comments apply to the most recent submittal. Resubmittal of plans and application materials to address inconsistencies noted herein is required. Comments that have been resolved are shown in ~~strikeout~~, additional notes are provided in **green** for those that remain outstanding.

When resubmitting, please continue to provide the Town with two printed, full-sized plan sets (24" by 36").





TOWN OF LOS GATOS FIFTH STAFF TECHNICAL REVIEW COMMENTS

ENVIRONMENTAL: CEQA review is pending.

SUBMITTAL NOTE: The July 2025 resubmittal documents erroneously refer to the “New Residential Submittal Requirements” as the appropriate application package and submittal requirements to follow. This is not the application package for a discretionary planning application. Instead, this is a Building Permit Application submittal guide. If you click on the link to the (incorrect) application package which your letters refer to, “New Residential Submittal Requirements”, you will see the following:

<https://www.losgatosca.gov/DocumentCenter/View/23918/New-Residential-Submittal-Requirements-and-Application-PDF?bidId=>

		
TOWN OF LOS GATOS BUILDING PERMIT APPLICATION		
Upload Completed Application via your Citizen's Portal Account: https://permits.losgatosca.gov/Login-and-Manage-My-Records		
INCOMPLETE APPLICATIONS WILL RESULT IN EXTENDED PROCESSING TIME		
*PROJECT ADDRESS	*APN#	
*PROPERTY OWNER NAME	*PHONE - REQUIRED	E-MAIL
*STREET ADDRESS	*CITY, STATE, ZIP	FAX
APPLICANT NAME	PHONE	E-MAIL


TOWN OF LOS GATOS NEW RESIDENTIAL SUBMITTAL REQUIREMENTS
<p>In order to process your request for a building permit, please submit the items listed below and include this completed checklist in your submittal. We do not accept submittals by mail or courier. A plan check fee will be required after the preapplication process is completed. If one or more required items are not submitted, the application will be considered incomplete and will not be accepted.</p>

The **correct application package**, which is what your team signed and submitted when applying for this application, can be found via the link below.

<https://www.losgatosca.gov/DocumentCenter/View/361/Development-Review-Application-Package-PDF?bidId=>

PROJECT DEFICIENCIES RELATED TO APPLICATION COMPLETENESS: NONE



TOWN OF LOS GATOS FIFTH STAFF TECHNICAL REVIEW COMMENTS

CONSISTENCY ISSUES: While conducting the completeness review of your planning application, staff had previously identified consistency issues that were observed and had provided them as “courtesy consistency comments” while the application was incomplete. The following list constitutes the Consistency Review for Planning, in conformance with Section 65589.5(j)(2). Items underlined are new (consistency) comments based on new information provided as part of the July and August 2025 resubmittal to the Town. Although a resubmittal occurred in August 2025, only the outstanding completeness items were addressed and no response letters were received, so these consistency comments from August 14, 2025, remain outstanding.

PROJECT CONSISTENCY RELATED ITEMS: LETTERS

- 1) Multi-Family Residential is not a principally permitted use (or an allowed conditional use) in the C-1 zone. The C-1 zone allows “multiple-family dwelling (in a mixed-use project)” with a conditional use permit. You must apply for a Conditional Use Permit, and request that the “mixed-use” component of the be removed as a part of the application.
 - Contact project planner when you are ready to pay the CUP fee, and staff will invoice. Please also confirm if you will be paying by check or credit card.
 - **Previous deficiency comment moved to consistency.**
 - This remains outstanding. The fee is now \$3,524.26 based on the Town’s new fee schedule. See the Town’s letters from March 3, 2025, and May 27, 2025, addressing this comment and applicant responses in detail. The application materials continue to make the same argument, without responding to the Town’s responses.
 - The response letter submitted on July 18, 2025, as well as the letter from the Law Office of Richard Jacobs dated May 16, 2025, state that this requirement is not in the “New Residential Submittal Requirements.” As noted in the staff’s response to the May 16, 2025, letter, the “New Residential Submittal Requirements” is not the Town’s submittal checklist for a discretionary planning application. The “New Residential Submittal Requirements” is a checklist for Building Permit submittals.
- 2) ~~Provide photographs of the existing development on-site. The photographs on the plans just show street views (Google) and do not include the interior of the lot and existing structures and sheds.~~
- 3) CEQA: Clarify whether the applicant team anticipates providing any technical studies related to environmental analysis (traffic, habitat, cultural, air quality, noise, soils etc.) for peer review by the Town Environmental Consultants. If not provided, the studies determined to be required by the Environmental Consultant will be prepared by the Town Environmental Consultants at the cost of the applicant.
 - *You previously indicated via email that your team will prepare an Arborist Report and Traffic Study. Please confirm. Additionally, an email was forwarded to your team on*



TOWN OF LOS GATOS FIFTH STAFF TECHNICAL REVIEW COMMENTS

- 9/13/24, requesting some additional information in the Phase I ESA and the Noise Report. Please provide a response.*
- The response letter uploaded in July 2025 states that, “under the new laws passed, CEQA no longer applies to this project.” Please specify which CEQA exemption you believe applies to this project, and provide substantial evidence that the project meets each requirement of the exemption. Staff will then review to determine eligibility.
- 4) CEQA: Staff is coordinating with Town Environmental Consultants to determine what environmental analysis will be required for the project. Environmental analysis is required at cost to the applicant. Staff will require payment of a deposit at a future date.
- The response letter uploaded in July 2025 states that, “under the new laws passed, CEQA no longer applies to this project.” Please see response to #9 above.
- 5) Review by the Town’s Consulting Arborist is required to provide a peer review of the arborist report submitted by the applicant. A deposit payment of \$2,750 is required.
- This continues to remain outstanding.
- 6) Review by the Town’s Consulting Architect requires payment of a \$8,250 deposit.
- This continues to remain outstanding.
- 7) Please reach out to all necessary outside agencies and neighboring properties regarding this project (Caltrans, VTA, FAA for the helipad, etc.).
- plan.review@vta.org
 - This remains outstanding. The July 2025 response letter says that VTA communication has already been provided. Staff has not been provided with this information. Staff reached out to VTA, who provided comments on 5/29/25, which were forwarded to your team. Provide a response letter to VTA’s comments, explaining what has been addressed.
- 8) Below Market Price Units: The floor plans and the “Project Description/Letter of Justification” need to specify which units are Below Market Price (BMP) and specify how compliance with the Town’s BMP requirements are met. Detailed floor plans for each unit must be provided. The letter should respond to each of the four characteristics listed in Section III below, and the plans should contain enough information so that staff can determine that the size of units are compatible with the market rate, that the location of BMP units are dispersed throughout the proposal, that the exterior appearance be indiscernible from the market rate units, and that all project facilities and amenities be available to the BMP units. Pursuant to the Town’s Below Market Price Housing Program, Section III (Characteristics of BMP Units):
- A. Size of units: BMP dwelling units should to the extent possible, be consistent with the market rate units in the project. The Town and developer may negotiate regarding the size of units if more units than required are to be provided. BMP units should be provided proportionately in the same unit type mix (number of bedrooms) as the market rate units. In consideration of the household size of the households on the current program interest list, the Town and developer may negotiate to provide a greater proportion of a particular unit type. There should to the extent possible, not be a significant identifiable difference between the BMP



TOWN OF LOS GATOS FIFTH STAFF TECHNICAL REVIEW COMMENTS

and market-rate units visible from the exterior. The size and design of the BMP units should to the extent possible, be consistent with the market-rate units in the development. The goal of the BMP Program is for a seamless integration of the BMP units with the market-rate units in a development.

B. Location of units: BMP units shall be dispersed throughout the development, to the extent feasible, in all buildings, on each floor, and in each project phase. A concentration of BMP units in one location is not desirable and will generally not be allowed.

C. Finish of units: The external appearance of BMP units should be indiscernible to that of the market rate units in the project. The internal finish of BMP units should be identical to that of the market rate units in the project, except that the developer may request Town approval of substitutions for luxury interior finishes, appliances, or fixtures, if such substitutions do not violate any Town code requirement.

D. Project Facilities: All project facilities and amenities, including parking, must be available on the same basis to the BMP units as to the market rate units in the project, to the extent feasible, unless the deciding body approves a reduction in parking for the BMP units.

- This remains outstanding. The Project Description/Letter of Justification does not mention the Town's BMP program. If the Town's BMP program would not be complied with regarding BMP unit size or other standards, please provide the justification for this deviation.

9) ~~Contact the garbage and recycling service provider to ensure the trash rooms and trash pickup (once shown on the plans) are adequately sized for the proposed uses and that they have adequate access for pick up. Provide correspondence from provider.~~

10) Project Description/Letter of Justification: (Updated 7/17/25) - Staff is requesting that this information be included in the revised "Project Description/Letter of Justification".

- See comment above regarding BMP information included in the letter. ~~The letter needs to also specify the exact number of proposed BMP units (not a percentage).~~
 - This continues to remain outstanding (BMP information). The July 2025 response letter says that this was included in the plans. However, staff is asking for a written statement in the Project Description/Letter of Justification. If the Town's BMP program would not be complied with regarding BMP unit size or other standards, please provide the justification for this deviation.
- ~~The Existing Property Description states that the property is located at the southwest corner of Winchester and Highway 85. This is not accurate. The property is north of the intersection.~~
- ~~The Existing Property Description states that the project is surrounded on three sides by streets and parking. This is not accurate. It is surrounded on two sides by streets, and the third side is an existing residence.~~
- ~~The letter states that, "the exterior façade incorporates stone and [...]," yet stone is not shown in the plans.~~
- ~~Clarify if the rooftop uses are exclusively for the residents, or if they are also available to~~



TOWN OF LOS GATOS FIFTH STAFF TECHNICAL REVIEW COMMENTS

- the public and provide a summary of the roof top uses.
- ~~Provide details on how the mechanical parking spaces will work.~~
 - i. ~~Are the spaces going to be used exclusively for residents? Will someone need to be on-site to maintain them? How do you ensure someone's car is not blocking you in? Are some of the spaces reserved for the leasing office?~~
 - ~~Provide justification for the helipad, which is a prohibited use per Town Code Section 29.10.045.~~
 - ~~If no commercial or public uses are proposed, this multi-family residential use is not allowed in the C-1 zone (whether principally permitted or a conditional use). Provide justification.~~
 - ~~Update the "Compliance with the Objective Design Standards" based on staff's markups. It is not accurate.~~
 - The letter states that each residential level has the same number of units and unit types. That is not accurate. Level 12 is different from the others.
 - This continues to remain outstanding. The July 2025 response letter says that this was updated to state that levels 5 through 11 have 15 units and that level 12 has 14 units. The letter continues to say the following: "There are eight stacked residential levels which are comprised of five studios, 7 one-bedroom units, 2 two-bedroom units and 1 three-bedroom unit per level," but doesn't explain the configuration of level 12.
 - ~~The letter says that all units have exterior balconies that exceed the Town's requirements. That is not accurate. The juliet balconies are much smaller than the required 60 square feet per unit.~~
 - The plans and response letter refer to guest parking, reserved unit parking, and office parking. Please provide a statement within the letter to how this will work. Do the larger units get additional spaces, or are not all of the resident spaces "reserved"?
 - This remains outstanding. The question will come up at public hearings (as with other projects). 181 stalls are proposed for the 119 residential units. Does your team know how these will be distributed? If so, please specify in your letter.
 - Specify which Town Requirements are not being complied with for this project.
 - The July 2025 letter now includes a list of (some) of the items that are not being complied with, but only the ones from the Objective Design Standards checklist. Note: Town Code and the General Plan also include objective standards. Please include all of the exceptions; such as: max lot coverage (General Plan and Town Code), max building height (General Plan and Town Code), max density (General Plan), max FAR (Town Code), max height (Town Code), setbacks (Town Code), cul-de-sac radius (Town Code), parking garage minimum turn radius (Town Code), allowed uses (Town Code), etc. Ensure that all items listed as not compliant (marked "no") in the Objective Design Standards checklist are included here.
 - ~~Provide basic project information (lot size, building size, existing building size to be demolished, proposed use, height, etc.).~~



TOWN OF LOS GATOS FIFTH STAFF TECHNICAL REVIEW COMMENTS

- The letter should speak to how the project complies with the 2020 General Plan Land Use and Community Design elements.
 - This comment remains outstanding. We understand your team's position that General Plan conformance is not required. However, staff is asking that this information be included in the Letter of Justification.
 - ~~The letter should speak to the required conditional use permit findings per the Town's application package.~~
 - ~~The letter should speak to the structural condition of the (previously) residential structure per the Town's application package.~~
 - The letter now erroneously refers to the "New Residential Submittal Requirements" as the appropriate application package and submittal requirements to follow. This is not the application package for a discretionary planning application. Instead, this is a Building Permit Application submittal guide. If you click on the link included in your letter, you will see that this is referring to Building Permit submittals.
 - Some of the plans now show a turning radius along the cul-de-sac that is below the Town requirement 32 feet. If this is proposed, justification is needed here to ensure that adequate space is provided for cars and emergency vehicles. See comment from Santa Clara County Fire on this item.
 - The revised letter now states that CEQA is not required. Please see earlier responses to #9 and #10 above.
 - The revised Proposed Development Description section refers to a new landing pad, which has been removed from the proposal based on the latest plans. Remove mention to the landing pad from the Proposed Development Description.
 - The Compliance with the Objective Design Standards Section states that the application is meeting VTA's short-term parking recommendation. Specify what VTA's recommendation is. Per the cover sheet of the plans, VTA's recommendation is 1 space for every 20 stalls for GUEST bike parking. What do they recommend for the tenants?
 - The Compliance with the Objective Design Standards Section states that the "items that do not comply are addressed below." The second item listed (long-term bike parking) states: "we are in compliance." As noted in the Objective Design Standards Checklist, the required number of bike spaces is complied with, but the location is not. Update accordingly.
 - Justification for Item A.3.4 is not applicable. The justification is related to the number of spaces required (which should be A.3.2). A.3.4 refers to dimensions of bike rooms, which also needs separate justification as the height is not complied with in Diagram 8.
- 11) Objective Design Standard Checklist: The Objective Design Standard Checklist ~~is incomplete and~~ was filled out incorrectly. Please see attached for staff's comments. When resubmitting, please follow the format provided in staff's comments. The Excel document can be provided to you upon request, and there is a column for the applicant's response. Additionally, when



TOWN OF LOS GATOS FIFTH STAFF TECHNICAL REVIEW COMMENTS

noting the sheet that the objective standard is located on, ensure that the level of specificity is also detailed on the sheet for staff to verify the project's compliance. Describe how each Objective Design Standard is being achieved. Provide exhibits, details, and dimensions in planning set as necessary to illustrate and quantify how each applicable standard is achieved.

- This remains outstanding. A large portion of the previous comments were successfully addressed, but staff still needs additional details (see attached updated ODS Checklist). When responding "no" to any of the items, please provide brief justification within the "applicant response" section. Alternatively, a separate letter of exceptions can be submitted which provides this justification.

12) Provide response letters to the Town's review letters. No responses provided this last round.

PROJECT CONSISTENCY RELATED ITEMS: PROJECT PLANS

Cover Sheet:

- 13) Project Details:
- ~~Dedication appears to be required. Specify existing and proposed lot size (before and after dedication).~~
 - ~~Specify the existing building size and use.~~
 - ~~Specify the size of the office/leasing area.~~
 - ~~Specify existing and proposed lot coverage.~~
 - ~~Specify existing and Correct the proposed floor area ratio.~~
 - ~~Specify number of BMP units and what affordability level they are.~~
- 14) Project Summary:
- ~~Specify the size and height of the existing structures to be removed.~~
- 15) Gross Building Floor Area per Floor:
- ~~Provide a separate column which shows the countable floor area of each floor (removing the balconies and decks).~~
- 16) Parking Table:
- ~~Specify if any of the spaces are reserved. Does each unit get reserved spaces? Are there any spaces for the leasing office and employees?~~
- 17) Bicycle Parking:
- ~~Use the same terminology that the Town uses ("Short-Term vs "Long-Term"), differentiating the types and number of spaces provided.~~
- 18) Open Space:
- ~~Use the same terminology as the Town ("Landscape area", "Private Recreation Space", "Community Recreation Space").~~
 - ~~Specify the proposed amount of each area, and highlight each area on the plans. The "provided private open space" section is blank.~~
- 19) Project Summary:



TOWN OF LOS GATOS FIFTH STAFF TECHNICAL REVIEW COMMENTS

- The total height of the building is 163'-4" per Sheet A7.0, not 154'. The plans need to consistently show this maximum height.
- 20) Add the dedicated office parking spaces to the Vehicle Parking Requirement & Provided section so that the numbers match (158 vs 160 spaces).
- 21) The Unit Data table contains a "total" column that is unclear. Specify what "total" this is showing. If it is floor area, the math is wrong. This table is on several sheets.
- 22) The required parking shown is wrong (Town Code requires 300 spaces).
 - This continues to remain outstanding. The plans say "required parking", implying that the Town's standard parking requirement is not 300 spaces. Please also add a line for "Town's required parking". If the intent here is to use a different parking requirement (i.e. per State Density Bonus Law), please clarify. As of now, the statement appears to be saying that the Town Code requirement is 145 spaces, which is not accurate.
 - The response letter claims that Town Code does not require 300 spaces. See Town Code parking breakdown below:
 - i. 1.5 parking spaces per unit = 179 spaces
 - ii. 1 visitor parking space per unit = 119 spaces
 - iii. Office parking is 1 space/235 sf = 2 spaces
 - iv. Total = 300 spaces
- 23) Enclosed bike parking within the parking garage is "long term", not "short-term". Update the provided bike parking totals accordingly.
- 24) The Gross Building Floor Area Per Floor table shows levels 6-12 being 19,674 sf. The floor plans show 19,643 sf. Update accordingly.
- 25) Please update all renderings to show trees at time of planting, or add a note stating how long it will take the trees to get to this size. It seems unlikely that the palm trees on Capri Drive will be 30+ feet tall at time of planting.
- 26) The existing building height that was added this last round does not match the existing height shown on the survey sheet.
- 27) The proposed floor area ratio that was added this last round is incorrect. It should be roughly 10.5 (244,951/23,225).
- 28) The proposed parking counts table do not match the numbers shown throughout the floorplans. Please ensure consistency throughout plan sheets.
 - This remains outstanding. The table shows 187 spaces, yet the Project Details to the left show 188 stalls. It appears the error stems from the Parking Stalls Provided table, as level 1 is shown with a total of 102 spaces, yet DG0.1 shows 102 spaces here.
- 29) The proposed setbacks that were added are incorrect. The proposed side yards per Sheet A2.0 are roughly 16' and 1'. The cover sheet shows 0'.
- 30) The required setbacks that were added are incorrect. The required front setback along Capri is 175' (see Town Code for additional height requirements when a building is across the street from a residential zone and over 20 feet in height). The rear setback along Winchester is 15' (see Town Code definition of "through lot"). The required side setbacks are 0'.



TOWN OF LOS GATOS FIFTH STAFF TECHNICAL REVIEW COMMENTS

- This remains outstanding. The response letter says that this is a Builder's Remedy project and that setbacks don't have to be met. That said, your plans list "required setbacks" which are not consistent with the Town's requirements. Revise accordingly.
- 31) The Total Grand Floor Area (275,197) does not match the Gross SF Grand Total (274,980 sf) in the table below.
- This remains outstanding as these totals are still not consistent in the plans. The updates now show total countable floor area as both 244,951 sf and 242,612 sf, and show the total gross sf as both 274,536 sf and 272,808 sf. The plans need to be consistent.
 - Note that in the Floor Area Table, the basement should not be included in the "countable sf".
- 32) Please add the Town's required bike parking to the Bicycle Parking Table that was added.
- This remains outstanding. The table currently doesn't make sense. The table shows the Town's requirement (1 per unit) and then shows the VTA's recommended guest bike parking (1 per 20 units) for a "total required" of 125, when the Town requires 119. It would be helpful if you could use the Town's standard language "short-term" vs "long-term". Is VTA's guest parking requirement supposed to supplement the Town standard for short-term bike parking?
 - Additionally, the "long-term (residence)" bike parking shows 126 at levels 1 through 4, while the counts on DG0.1 and DG0.2 add up to 138.
- 33) ~~Project Summary: ensure the existing (14' vs 16') and proposed (167' vs 171') building heights listed in this table are consistent with the heights shown in the plans.~~
- 34) ~~The landscape area table does not match what is shown in the landscape plans.~~
- 35) Update the submittal dates on the title sheet to reflect this August 22, 2025, submittal.

Old Sheet C1.0 (New Sheet C2.0):

- 36) ~~Label existing setbacks.~~
- 37) ~~The survey shows an existing 4,292-sf building to be removed. Based on Google Maps, County Assessor's office, and site pictures, the existing building is closer to 2,100-sf and there are several sheds at the rear of the site. Update the survey accordingly.~~
- 38) The existing tree table is missing information (see submittal item comments above).
- This continues to remain outstanding. See comments above regarding height.
- 39) ~~Provide a legend for the symbols and abbreviations used.~~
- 40) ~~All trees with canopies within 30' of construction shall be included in the tree inventory and on this sheet. The neighbor trees at 14274 Capri Drive are missing. Also label the (what appears to be) shrubs along Winchester Boulevard.~~
- 41) ~~The arborist report, once updated per comment above, needs to provide protection recommendation for the missing trees.~~
- 42) ~~Ensure driplines are included for all trees identified. For example, trees 9 and 10 don't have driplines/canopies shown, and there are some canopies shown that aren't numbered.~~
- 43) ~~Who owns Tree 31? (town or neighbor?)~~
- 44) Specify which of the trees are considered fruit-bearing. Now that canopy spread and tree height was provided, staff calculated the tree replacement requirement as being (108) 24"



TOWN OF LOS GATOS FIFTH STAFF TECHNICAL REVIEW COMMENTS

box trees or (54) 36" box trees. As proposed, only (23) 36" box trees are proposed, which would be short of the requirement by (31) 36" box trees or (62) 24" box trees. This would require an in-lieu payment of \$15,500 per Town Code. However, several of these trees may be exempt from the replacement requirement if they are determined to be "fruit-bearing" (Trees 10, 17, 20, 21, 26, 27, 30-36, and 39). This could drastically reduce the in-lieu fee.

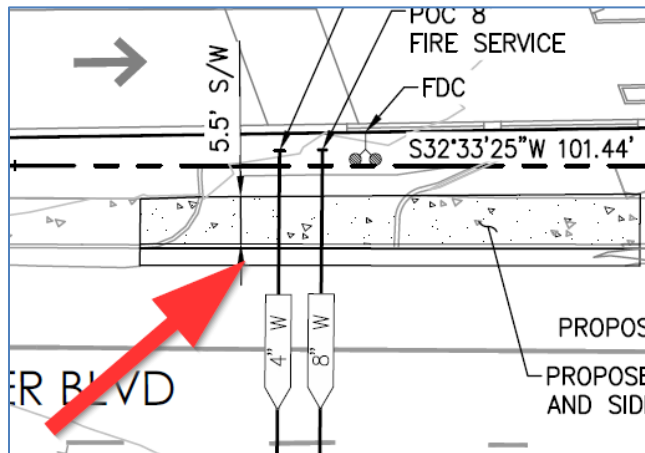
Old Sheet C2.0 (New Sheet C3.0):

- 45) ~~Utilities are shown overhead. Confirm with PPW if they will require undergrounding.~~
- 46) ~~The Earthwork Notes show Maximum site fill = 0'. The plans show 275 cubic yards of fill, which means that more than 0' of fill are proposed. Be more specific with your information.~~
- 47) ~~Show the dedication area and include dimensions and total area.~~
- 48) ~~Provide an additional section running through the length of the site.~~
- 49) ~~Dimensions the property boundaries.~~
- 50) ~~Dimension the sidewalks, curbs, roadways, etc (plans must be fully dimensioned).~~
- 51) ~~Show traffic direction on the streets.~~
- 52) ~~Specify location of the fill area (this should also be labeled in the civil sections).~~
- 53) ~~Provide details on the "temporary loading/staging zone". The arrow is pointing to the sidewalk.~~
- 54) ~~Would any physical barrier be proposed between the southern edge of the cul-de-sac and Winchester Blvd?~~
- 55) ~~There is a "proposed driveway" note on 14333 Capri Drive.~~
- 56) ~~Put an "X" on the (visible) trees that are proposed for removal.~~
- 57) ~~The sidewalk around Tree 1 shows the bulb-out encroaching into the bike lane to remain. Sheet C1.0 shows this being removed. Ensure the plans are consistent.~~
- 58) ~~Provide a legend for the symbols and abbreviations used.~~
- 59) ~~The area to the north of the building would create a dead-end area (see area highlighted below). Consider fencing this area off so as not to create a safety issue.~~
- 60) ~~Please provide the following setbacks (see below).~~
- 61) The plans now show a dog park and fenced area at the southern end of the cul-de-sac. On this sheet, the site plan, or the landscape plan, provide additional details (fence height, design, lighting, landscaping, etc.). Please also ensure that coordination with Parks and Public Works continues to occur as this is proposed within the Town's right-of-way.
 - The response letter says that the dog park has been removed from the proposal, yet the landscape plans still show it.
- 62) ~~Now that the arborist report shows recommended tree protection, show it on this sheet or note it somewhere in the plan set.~~
- 63) ~~Dimension the depth of the roof overhang, noted as "Outline of Floor Above."~~
- 64) The bulb out along Winchester has been removed, but (what appears to be) a driveway approach is now shown, which would lead to a 13-story wall. Please confirm what is proposed here.



TOWN OF LOS GATOS FIFTH STAFF TECHNICAL REVIEW COMMENTS

- This remains outstanding. See screenshot below.



- 65) Please specify estimated location of construction staging here or somewhere in the plan set.
- 66) Specify the surfacing materials of the parking garage.
- **Previous deficiency comment moved to consistency. Please specify these materials.**

New Sheet C3.1:

- 67) Remove the scale at the bottom of the sheet as it is not accurate.
- 68) Show existing and proposed grade lines, noting areas of cut and fill (and labeling the cut and fill depths).

Old Sheet C3.0 (new Sheet C4.0):

- 69) The total site area is shown here as 29,305 sf, while the rest of the plans show 23,225 sf.
- 70) Specify the percent of increase/replacement.

New Sheet DG0.1:

- 71) This sheet shows a 19' ceiling height in Level 1, the section shows 16', and the floor plan on A3.0 shows 15'.
- 72) The plans say 58 "guest bicycle parking" proposed. Use the correct terminology ("short-term") and correct the number (12 are proposed; the indoor spaces are long-term).
- 73) The short-term/guest parking spaces would block the sidewalk. Revise accordingly.
- 74) Provide details of vehicular gate (50% open rule).
- 75) Specify ceiling height in the bike rooms.
- 76) Label widths of pedestrian entrances.
- **This remains outstanding. The door to the parking garage (north of the mail room) is not dimensioned.**
- 77) Provide details of the long-term bike parking for compliance with the Objective Design Standards.
- 78) Put an "X" on the (visible) trees that are proposed for removal.



TOWN OF LOS GATOS FIFTH STAFF TECHNICAL REVIEW COMMENTS

- 79) ~~There is a miscellaneous double line adjacent to the angled parking stall in Level 1.~~
- 80) Keynote 4 says that ground mounted utility cabinets will be screened. The plans (perhaps the Landscape plan) need to show this detail.
- This remains outstanding. The plans do not specify height of utility cabinets. See related comments in ODS checklist. You can estimate the height for now.
- 81) ~~Please fix the setback annotations that are blocked by trees.~~
- 82) Specify how far the entrances are recessed per related comments on ODS Checklist.
- This remains outstanding. The door to the parking garage (north of the mail room) is not dimensioned. The other entrances were added.
- 83) ~~Specify how far the building steps in as it transitions from the lobby to the parking garage along Winchester related comments on ODS Checklist.~~
- 84) ~~A new parking area is shown on Capri Drive but the call-out is covered.~~
- 85) ~~New Floor Plan Note 2 provides a good response/justification for the short-term parking requirement exceptions. Please provide this in the ODS Checklist response or in the justification letter as requested.~~
- 86) Add the north arrows back to this sheet. They were removed in this submittal.
- 87) The long-term bike parking was modified, and now the floor plan note is not legible. It appears to show 32 spaces, while the table shows 34. Update accordingly.
- 88) A dashed green line was added and dimensioned (30') adjacent to the leasing office, but it is not labeled. Staff does not know what this is showing.
- 89) The "R" numbers throughout the parking areas no longer add up. For example, the numbers go from "R1 thru R19" and then jumps up to "R25 thru R49." The numbers were changed in this submittal and are no longer accurate.
- 90) Please note that the math provided for Floor Plan Note 2 is not accurate. It notes that "119 x 20 = 5.96".

New Sheet DG0.2:

- 91) ~~Floor plan note 1 says there are 120 long-term bike parking spaces, when there are 166.~~
- 92) ~~Floor plan note 2 says to see detail DG0.1/3 for long-term bike parking details. Detail DG0.1/3 is a short-term space.~~
- 93) Plans were updated and now the long term bike parking notes are inconsistent. Ensure that in each table below, the floor plan matches the actual floor plan. For example, Level 3 floor

LEVEL 3 PARKING GARAGE 19,749 GSF	
1.	AS PER OBJECTIVE DESIGN STANDARD, A.3.2, ONE LONG TERM BICYCLE SPACE IS REQUIRED PER DWELLING UNIT.
	- TOTAL NUMBER OF DWELLING UNITS = 119
	- TOTAL NUMBER OF LONG TERM BICYCLE PARKING PROVIDED AT LEVELS 2, 3 AND 4) = g
	TOTAL = 140

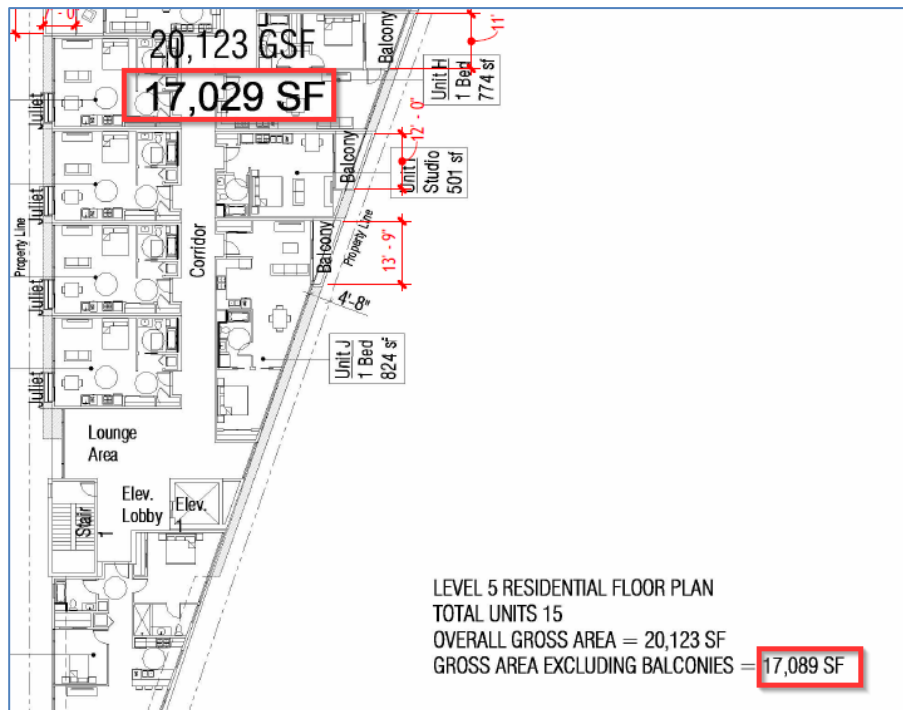


TOWN OF LOS GATOS FIFTH STAFF TECHNICAL REVIEW COMMENTS

- plan table shows 52 long term bike spaces, while the call-out notes show 32 and 24 (56 total), and the call-out for 24 bike spaces is pointing to bike room 3, which shows 20 bikes. Similarly, Floor Plan Note 1 needs to be updated as the updated count is no longer 140, and bike parking is proposed on the first floor and not just levels 2-4. See below screenshot.
- 94) A new “continuous wheel stop see note 2” call-out was added, but note 2 does not correspond to wheel stops. Update accordingly.
- 95) A new “sunshade device outline” call-out was added, but the dimension is not noted. Specify how far it overhangs beyond the wall.
- 96) The dimensions for the southernmost architectural awning (above the lounge) are not accurate. The dimensions measure to the property line, and this awning does not extend that far.

New Sheet DG0.3:

- 97) ~~Floor plan note 2, “total private space provided” is blank. Please note that the rule states that each unit needs 60 square feet. This is not complied with.~~
- 98) ~~What do the following numbers represent? (see below).~~
- 99) ~~Provide a scale.~~
- 100) ~~As noted above, specify location of BMP units somewhere in the plans.~~
- 101) The common open space note was updated on Sheet A3.0 and the Cover Sheet, but not this sheet.
- 102) New notes are added to the floor plans for Level 5 and Levels 6-11 that show building sizes that do not match the tables directly below. Revise accordingly. See below for an example.





TOWN OF LOS GATOS FIFTH STAFF TECHNICAL REVIEW COMMENTS

New Sheet DG0.4:

- 103) ~~Label the proposed areas in the terrace plan.~~
- 104) ~~Add the following to Note 1, "the mechanical equipment will be shorter than the proposed roof-screen."~~
- 105) A new "metal screen tall fence" call-out is shown along the play-court. Specify the height and design somewhere in the plans.
- 106) New boxes are shown in the play-court which are not legible. What are these showing?

Sheet A1.0:

- 107) ~~Label the addresses of the properties shown.~~
- 108) ~~You must also include pictures of the existing structure proposed for demolition. The pictures provided are from Google Streetview and do not show inside the property fence. This is a submittal requirement.~~

Sheet A2.0:

- 109) ~~Label or provide a legend for the public improvements shown outside of the building along Capri Drive.~~
- 110) ~~Label the trees. Staff is assuming these are proposed.~~
- 111) ~~Provide dimensions for the sidewalks (plans must be fully dimensioned).~~
- 112) ~~Specify all setbacks, including the setback along the southern edge of the building.~~
- 113) ~~Label and dimension the property lines.~~
- 114) ~~The majority of the items in the O.S. checklist say they are complied with on this Sheet. Anytime the O.S. checklist references this sheet, there should be annotations or dimensions that clearly show compliance.~~
- 115) ~~Show the full extent of Winchester Blvd.~~
- 116) ~~In the Site Data table, specify the lot size before and after dedication.~~
- 117) ~~Show the required building setbacks. This is a submittal requirement (noted above).~~
- 118) ~~The sidewalk around Tree 1 shows the bulb-out encroaching into the bike lane to remain. Sheet C1.0 shows this being removed. Ensure the plans are consistent.~~
- 119) ~~Several of the setback labels along Winchester Blvd are not legible.~~
- 120) ~~Please provide the following setbacks (see below).~~
- 121) ~~Fix the proposed and required setbacks as noted above in the Cover Sheet comments.~~
 - **This remains outstanding. The response says that required setbacks were updated (which they weren't), and the response references North 40. This is not a North 40 project.**
- 122) ~~Fix the FAR as noted above in the Cover Sheet comments.~~
- 123) ~~Provide details of the proposed fencing here or somewhere in the plans.~~
 - **This remains outstanding. Thank you for providing details for the metal panel fence; however, staff is still looking for location details for the 6' tall concrete wall.**
- 124) A new, Proposed Landscaping Calcs, table was added. The total shown (2,504 sf) does not match the totals shown throughout the rest of the plan set. Additionally, specify what "LA" refers to, as each area is numbered "LA1, LA2,..." etc.
- 125) Per Town Code Section 29.10.06702, minimum turning radius is 32'. This sheet shows that



TOWN OF LOS GATOS FIFTH STAFF TECHNICAL REVIEW COMMENTS

- 30.5' are proposed. Ensure that the turning radius is consistent between the sheets, and if under 32 feet is proposed, include justification in the project description letter on how the proposed radius can accommodate cars and emergency vehicles. The letter currently just talks about the transformer location and the need for an easement.
- 126) The sheet says "(E) cul-de-sac." There is no existing cul-de-sac at the site.
- 127) Specify the ROW width of the new cul-de-sac. Town code requires 42'. If this is not met, provide justification.

Sheet A2.1:

- 128) The revised cul-de-sac radius note (32') does not match the rest of the plans.
- 129) The sheet says "(E) cul-de-sac." There is no existing cul-de-sac at the site.

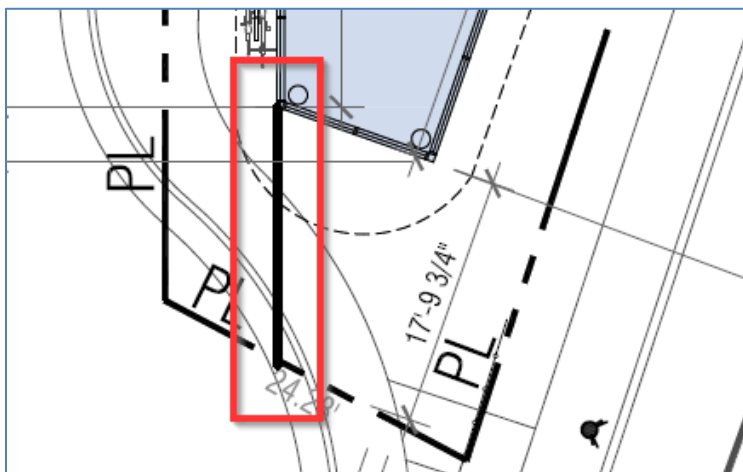
Sheet A3.0:

- 130) ~~Provide dimensions throughout the parking garages (i.e. drive aisle, parking space dimensions, radius of angled spaces, turn-around area, turn radius, etc.).~~
- 131) ~~Label and dimension the property lines.~~
- 132) ~~Provide full road details (full extent of drive aisles, center line, etc.).~~
- 133) ~~Per Town Code, dead end areas in a parking garage must have turn-around space approved by the Town Engineer. Each level of the parking garage has a dead-end area.~~
- 134) ~~Provide details of the bike parking areas (what type of bike parking, number of spaces, individual bike lockers or one larger room, etc.). See the Town's Objective Design Standards checklist for more detail.~~
- 135) ~~Provide specific details for the mechanical parking lifts proposed (not just a factory spec sheet). You need to show how much room each parking lifts takes, and how the Town's requirements for drive aisles are still complied with.~~
- 136) ~~Label the size of the lease office area.~~
- 137) ~~Specify if a vehicular gate is proposed. If so, provide details on design and location.~~
- 138) ~~Level 1 is shown with a 19' clear ceiling height, yet the elevation shows a 16' plate height. Which is accurate?~~
- 139) ~~Show maneuverability of the angled parking stall (north-eastern corner of the garage) in relation to the two-way ramp immediately adjacent.~~
- 140) ~~What is meant by "PIT PARKING"? Does this refer to the bottom of the mechanical lifts?~~
- 141) ~~Show how trash pick-up will be accessed. Does the truck drive into the parking garage?~~
- 142) ~~Per the spec sheet, the mechanical lifts have a stall depth of 18.3', yet the plans only show 18 feet. Ensure that the lift spaces fit as shown.~~
- 143) ~~Per the spec sheet, the only way to get a 3 parking space lift is to have some sort of tandem configuration. No tandem configuration is shown. Confirm that the 3 spaces per stall can work in this configuration.~~
- 144) ~~Label the width of the vehicle entrance (each drive aisle).~~
- 145) ~~Parking spaces adjacent to a wall (i.e. space 42) must be a minimum of 9.5' wide.~~
- 146) ~~Update the short term and long term bike parking notes based on the comments on Sheet DG0.1.~~



TOWN OF LOS GATOS FIFTH STAFF TECHNICAL REVIEW COMMENTS

- 147) ~~Town Code requires one continuous curb for wheel stops.~~
- 148) ~~Specify the height of the proposed concrete wall.~~
- 149) ~~Parking stalls with a 60-degree angle (space 60) must have a depth of 19'-8" per Town Code.~~
- 150) ~~There are two parking spaces numbered 61.~~
- 151) The front elevation shows a shade element/roof element over the door adjacent to the mail room. Show depth of overhang on this sheet per applicable ODS Checklist comments.
- This remains outstanding. They are not shown or dimensioned on this sheet, but they were added to DG0.2. Update this sheet as well.
- 152) Specify how far the proposed prefab concrete wall extends.
- This remains outstanding.
- 153) Show the Town's standard double-striping in plans (see attached).
- This remains outstanding. Would the mechanical lift spaces contain the double-striping?
- 154) There is a new note along the vehicular entry to the garage that says "slope". Specify what the slope would be.
- 155) The Level 1 table shows 101 parking stalls, while the floor plans shows 97. The spaces shown adjacent to Stair 2 are shown as 24 spaces on this sheet, and 29 on DG0.1. Update accordingly.
- 156) Specify the exact location of the concrete wall. It is not clear if it extends all the way to the Capri Drive frontage (which would not be allowed).
- Previous deficiency comment moved to consistency.
- 157) A new bold line was added south of the building (see below). Specify what this is for.



Sheet A4.0:

- 158) ~~Provide dimensions throughout the parking garages (i.e. drive aisle, parking space dimensions, radius of angled spaces, turn-around area, turn radius, motorcycle spaces, etc.).~~
- 159) ~~Label and dimension the property lines.~~
- 160) ~~Per Town Code, dead end areas in a parking garage must have turn-around space approved by the Town Engineer. Each level of the parking garage has a dead-end area.~~



TOWN OF LOS GATOS FIFTH STAFF TECHNICAL REVIEW COMMENTS

- 161) ~~Provide details of the bike parking areas (what type of bike parking, number of spaces, individual bike lockers or one larger room, etc.). See the Town's Objective Design Standards checklist for more detail.~~
- 162) ~~What is the purpose of a lounge within a parking garage? Perhaps you could include a brief explanation in the Letter of Justification.~~
- 163) ~~Please note that the lounge areas count toward the Community Recreation Space requirement.~~
- 164) ~~Level 4 has 31 total spaces (29 single stalls). The plans say 32 total spaces (30 single stalls).~~
- 165) ~~Show maneuverability of the angled parking stall (north-eastern corner of the garage) in relation to the two-way ramp immediately adjacent.~~
- 166) ~~Clarify if any of the spaces are reserved for employees or future tenants (leasing office).~~
- 167) The minimum inside turning radius in the parking garage is 20' per Town Code. The plans show a turning radius of only 10-11 feet.
- This continues to remain outstanding and non-conforming. The turning radius shown does not comply. Explain how the reduced turning radius can accommodate auto movements within the garage and provide justification for the reduction.
- 168) ~~Town code requires stalls to have "double striping". See Town Code 29.10.155 for details. This needs to be shown on the plans.~~
- 169) ~~Specify if key access is provided for the bike rooms.~~
- 170) ~~Provide details or notes on the continuous curb that is shown, ensuring compliance with Town standards.~~
- 171) New notes were added for the architectural metal awnings and sunshade device. Provide dimensions of each.

Sheet A4.1:

- 172) As the turn-around spaces have been reconfigured, show how parking space R1 (adjacent to the mail room) would back-out.

Sheet A4.2:

- 173) The turn-around exhibit for parking space R116 shows that the vehicle would need to drive outside of the building walls to make that turn. Revise accordingly.

New Sheet A4.3: (in the future, when adding a new plan sheet, please create a new page number since we are tracking comments per sheet number).

- 174) This sheet appears to be included to justify an exception to the minimum turning radius within a parking garage. Reference to this sheet should be included in your justification letter.
- 175) Include the centerline of the ramps. As drawn, it appears that a Ford Escape would extend beyond the drive aisle.

Sheet A4.4 (Previously Sheet A4.3):

- 176) ~~Dimensions the bike storage length in Diagrams 3, 4, and 7 per ODS Standard A.3.4.e.~~



TOWN OF LOS GATOS FIFTH STAFF TECHNICAL REVIEW COMMENTS

- 177) The bike arrangement in Diagram 1 would block the sidewalk and should be removed. The arrangement in Diagram 2 is what is shown on the plans.
- 178) Label the height of the bike racks in Diagram 8 for compliance with ODS Standard A.3.4.e.
- 179) The bike parking table says that 140 long-term spaces are located on floors 2-4, when they are actually located on floors 1-4.
- 180) Diagram 3 now shows two bike spaces adjacent to the workstand and pump station. Specify the dimensions and type of bike parking proposed here.

Sheet A5.1:

- 181) This sheet was included twice in the plan set.

Sheet A5.0:

- 182) Provide setback dimensions along the entire building.
- 183) Label and dimension the property lines.
- 184) Specify the size of each balcony and include dimensions so staff can confirm the "private recreation space" requirements are met.
- 185) Confirm that the unit sizes shown are not including the balconies.
- 186) Level 5 and Levels 6-12 look identical, yet the overall gross area is roughly 500 square feet different. Please confirm this is accurate. Again, decks don't count as gross square footage.
- 187) Specify the corridor width.
- 188) Confirm what the shaded area of Level 5 represents (roof below?).
- 189) Why are the open space areas for Level 5 labeled as decks when they are above grade?
- 190) There are setbacks on Level 5 that are incorrect (i.e. 8' setback shown several feet inside Unit A).
- 191) The Unit Data table contains a "total" column that is unclear. Specify what "total" this is showing. If it is floor area, the math is wrong. This table is on several sheets.
- 192) The Gross Building Floor Area Per Floor table on the cover sheet shows levels 6-12 being 19,674 sf. The floor plans show 19,643 sf. Update accordingly.

Sheet A6.0:

- 193) Provide setback dimensions along the entire building.
- 194) Label and dimension the property lines.
- 195) Is anything proposed underneath the helipad? It appears to be an empty building shell.
- 196) Specify if any mechanical equipment is proposed on the roof. If so, specify if it will be visible.
- 197) Confirm if the roof top activities are solely for the use of residents.
- 198) Specify the size of the covered clubhouse.
- 199) The Level 13 data shows 8,256 sf of "total community open space", while the Community Open Space table at the bottom of the sheet says a total of 18,166 sf of community open space is provided at the roof terrace. Update accordingly.
- 200) Add the three trees along the sports court, per the landscape plans.
- 201) The size of the quiet open deck is no longer legible.
- 202) A new, Proposed Landscaping Calcs, table was added. Specify what "LA" refers to, as each



TOWN OF LOS GATOS FIFTH STAFF TECHNICAL REVIEW COMMENTS

- area is numbered "LA1, LA2,..." etc.
- 203) The total in the Proposed Landscape Area table (1,242 sf) does not match the total shown in the level 13 table (1,277 sf).
- 204) The total community recreation space (12,134 sf – in the Level 13 table) does not match what is shown in the Community Open Space table (18,166 sf at roof terrace level 13).
- 205) Please specify the height of the new metal screen fence along the outdoor play-court.

Sheet A7.0 and A7.1:

- 206) ~~Label existing and proposed grade on all elevation and section drawings.~~
- 207) ~~Give cardinal directions for the elevation titles.~~
- 208) ~~Provide all four sides of the building.~~
- 209) ~~Provide information on proposed exterior materials. The color scheme legend is not correct and hardly used. One of the two items used (E – wood composite cladding) is pointing to a glass railing.~~
- 210) ~~Please provide a section running through the helipad portion of the building. Staff is unclear what is proposed within this building. Is the helipad technically a 14th story?~~
- 211) ~~Provide finished floor heights along each story of the building.~~
- 212) ~~Show neighboring structures in the "Front Elevation along Capri Drive."~~
- 213) ~~Label the vehicular and pedestrian entry points.~~
- 214) ~~There is a (roughly) 10' difference between the two elevations. All the elevation and section drawings need to show the maximum proposed height.~~
- 215) ~~This sheet shows the total height at 168', while the streetscape shows 167'.~~
- 216) ~~Label the vertical clearance below the sunshade device (front elevation).~~
- 217) ~~Items "F" through "I" are missing in the color scheme.~~
- 218) ~~The neighboring structure on the left elevation is cut off and missing its height dimension.~~
- 219) ~~Show the new trees along the Left Elevation and Rear Elevation.~~
- 220) ~~Provide the address and height for all buildings shown. The office building on the front elevation is missing this.~~
- 221) ~~Now that existing grade is shown, ensure that building height is measured to existing grade on all section and elevation drawings.~~
- 222) ~~Provide material callout for the garage gate on the front elevation ("K").~~
 - This remains outstanding. The "K" call-out does not have an arrow and is currently on top of the residence at 14274.
- 223) Label the metal screen around the play court, specify the height, and include a material call-out.
- 224) On the left elevation, the cypress trees are cut-off, and notes to the old Brisbane box trees (removed from the landscape plans) are still shown.
- 225) Provide details on the new exterior molding/band proposed.

Sheet A8.0:

- 226) ~~Label existing and proposed grade on all elevation and section drawings.~~
- 227) ~~Label building heights (existing neighboring buildings and proposed building).~~



TOWN OF LOS GATOS FIFTH STAFF TECHNICAL REVIEW COMMENTS

- 228) Specify proposed materials.
- 229) Label property lines.
- 230) Provide finished floor heights along each story of the building.
- 231) Provide the address and heights of all neighbors shown.
- 232) Label the vehicular and pedestrian entry points.
- 233) The “Winchester Avenue Streetview” appears to be mislabeled. The Winchester Streetview would arguable be just as wide as the Capri Drive street view. Instead, this looks like a street view from the southern corner of the building. Rename accordingly.
- 234) Label the location of each elevation and street view within the smaller Site Plan on this sheet.
- 235) What is shown on the Capri Drive Streetview? (see below).
- 236) Add the missing Winchester Blvd Streetscape.
- 237) Label maximum total height on each streetscape. Left elevation isn’t maximum height. Left elevation shows 154’, but it isn’t pointing to the top of the screening. Additionally, the sections show this area as 155’.
- 238) See comment above regarding different max heights shown between streetscapes and elevations.
- 239) As noted in the completeness section above, there are three missing views from the streetscape, as well as missing buildings from the streetscapes that were provided.
- 240) Specify the heights of the residences in the new Rear Elevation.

Sheet A9.0:

- 241) Provide a site plan showing where each view is taken from.
- 242) Label exterior materials.
- 243) Include neighboring buildings where applicable.
- 244) “View 1 Along Capri Drive” is not “facing west.” Revise accordingly.
- 245) Either show tree sizes based off size at planting, or note how long they will take to get this tall.

Sheets A10.0 and A10.1:

- 246) Include a north arrow in the Kep Map and label the streets.
- 247) Label existing and proposed grade on all elevation and section drawings.
- 248) Specify the finished floor heights.
- 249) Show neighboring buildings (noting addresses and height).
- 250) The section shows 155’, the elevations show 154’, and one of the elevations shows 163’-4”. The maximum proposed height needs to be consistent throughout all the drawings.
- 251) Specify what “T.O. P.W.” means. This is a height measurement shown just below the rooftop.
- 252) There is a “Capri Dr” label to the left of the section view, which should not be there.
- 253) What does this “x” represent? (see below).
- 254) Section B-B shows the top of rooftop at 155’, while the elevations show 154’.
- 255) Now that existing grade is shown, ensure that building height is measured to existing grade



TOWN OF LOS GATOS FIFTH STAFF TECHNICAL REVIEW COMMENTS

~~on all section and elevation drawings.~~

- 256) The address added on A10.1 is incorrect. There is no "579" across Capri Drive.

Sheet A11.0- A11.3:

- 257) ~~Specify the size (square feet) of each unit's balcony.~~
258) ~~Ensure that the unit size shown does not include the balcony.~~
259) ~~Provide width and depth dimensions of all the balconies (Unit B is missing the width).~~
260) ~~Ensure that the full extent of the balcony is shown (missing on A11.2 and A11.3).~~
261) ~~The Unit Data table contains a "total" column that is unclear. Specify what "total" this is showing. If it is total floor area, the math is wrong. This table is on several sheets.~~
262) ~~There are two different "Unit H" floor plans, but only one "H" column in the table.~~
263) ~~There is a "l12" column in the table that doesn't match any of the floor plan titles.~~
264) ~~Units F, G, H, I, H (there are two "H" floor plans) are missing the second depth dimension along the balcony.~~
265) ~~Sheet A11.0 was included twice in the plan set.~~
266) The Total Private Open Space shown in the table on these sheets is 21,003 sf, while the cover sheet shows 17,656.
267) The Key Map on Sheet A11.2 is not displaying correctly.
268) The summary table on Sheet A11.3 is cut-off. The "total" column should say "total private open space" to match the other tables.

Sheet A12.0

- 269) ~~The shadow study is incomplete, and the shadow is cut-off. Zoom out on the December views to show the full extent of the shadows.~~
270) ~~Include addresses and number of stories of each neighbor shown.~~
271) The March 21st (3pm) shadow study does not show the full extent of the shadow.

Sheet A13.0:

- 272) ~~The plans need to be updated to clearly show where each of these materials are used.~~
273) ~~Add information on the vehicular and pedestrian gates.~~

New Sheet A16.0:

- 274) ~~For Diagram #2, staff is unclear where the "stepbacks" are taken from. For example, when the wall plane says "2' stepback", what is it stepping back from?~~
275) ~~For the Level 13 diagram on A16.1, what is the 5'-11" dashed line represent?~~

Sheet PL-1:

- 276) ~~Include a planting plan with a proposed tree table (see application packet for details).~~
277) Is any fencing proposed? The O.S. Checklist calls for at least 5 trees along the rear property line and a masonry wall.
 - This remains outstanding. Please clearly call out fencing proposed on the northern property line.



TOWN OF LOS GATOS FIFTH STAFF TECHNICAL REVIEW COMMENTS

- 278) Specify the percentage of the site that is landscaped.
- 279) Specify the percentage of the community open space that has landscaping.
- 280) Specify the percent of the front setback area that is landscaped. Note that the landscape area highlighted extends into the public right-of-way. Only the on-site landscaping counts.
- 281) Ensure that the total landscape area (4,645-sf) does not include the landscaping in the public right-of-way. A diagram showing the overall landscape area would be helpful.
- 282) The electric transformer must be screened from view. Provide details on how this will be accomplished.
 - This remains outstanding. Specify (or estimate) the height of the transformer.
- 283) Consider adding fencing along the cypress screen wall at the north of the building. Currently it dead ends and would present a possible safety issue.
- 284) The Italian Cypress is missing from the tree list on this sheet.
- 285) The palm trees were removed, but they are still shown on this sheet.
- 286) Fix the call-out line for the electrical transformer now that it has moved.

Sheet PL-2:

- 287) Specify the size of trees at maturity (submittal requirement).
- 288) Note that in-lieu fees will be required as the number of replacement trees does not meet Town Code.

Sheet PL-3:

- 289) Staff is having difficulty telling the difference between the (new) Trumpet Vine and the Toyon plants. Revise accordingly.

New Sheet E0.10:

- 290) Lighting is needed every 30' per the Town's Objective Design Standards (A.7.1). The lighting plan needs to note distances between exterior lights.
- 291) Add information to confirm lights will comply with the 30-degree shielding rule per Objective Design Standard A.7.2.

New Sheet E0.16:

- 292) Lighting is needed every 30' per the Town's Objective Design Standards (A.7.1). The lighting plan needs to note distances between exterior lights.
- 293) The step lights along the "quick deck" would not meet the height requirements of A.7.1.
- 294) Specify the height of wall mount lights and SW3 within the sports court.
- 295) Add information to confirm lights will comply with the 30-degree shielding rule per Objective Design Standard A.7.2.

Sheet E0.50:

- 296) Ensure there is an image for each of the callouts in the luminaire schedule. S1, SW1, D1, and SW3 are missing.
- 297) Specify mounting height for each. Only a few are shown. See related comment on ODS



**TOWN OF LOS GATOS
FIFTH STAFF TECHNICAL
REVIEW COMMENTS**

Checklist:

General Comments:

- 1) Please modify plans per the above comments and resubmit to Planning via the Town's Online Permitting Service with a compliance memorandum and any other supporting documents. Please also submit 2, full-size printed sets to Town Hall.
- 2) This Architecture and Site application is required to follow the Town's Height Pole and Netting Policy. Height poles/renderings and project identification signs will be required prior to the public notice of any pending approval.
- 3) Pursuant to the adopted fee schedule, in the event additional processing services by the Town are required due to changes, modifications, additions, errors, omissions, or discrepancies caused by the applicant or his/her agents or representatives, the applicant shall pay an additional fee as determined by the Director of Community Development to cover the actual cost.
- 4) Pursuant to the adopted fee schedule, if the requested information from any of the Tech Review Staff is not submitted within 180 days of this meeting, the applicant will be required to pay a fee of 10% of the current application fee at the time the requested information is submitted. Any resubmittal after one year from September 17, 2025 will be processed as a new application, subject to new fees.
- 5) Pursuant to the adopted fee schedule, if after three meetings, any additional review is required by the Technical Review Committee and/or DRC, there will be an additional fee based on time and material cost.
- 6) The project is subject to WELO - New construction projects with an aggregate landscape area equal to or greater than five hundred 500 square feet or rehabilitated landscape projects with an aggregate landscape area of 2,500 square feet are subject to the State's Model Water Efficiency Landscape Ordinance (WELO). A complete WELO Landscape Documentation Package is required prior to issuance of building and/or grading permits. A completed WELO Certificate of Completion is required prior to final inspection/certificate of occupancy. Review by the Town's Consulting Landscape Architect for WELO requires a payment of a \$5,500 deposit.

The application is complete but contains inconsistencies as identified above. Please resubmit and provide a compliance memorandum showing how all the deficiencies, corrections, and general comments have been addressed. When resubmitting, please include two printed, full-sized, 24" by 36" plan sets.



**TOWN OF LOS GATOS
FIFTH STAFF TECHNICAL
REVIEW COMMENTS**

Ryan Safty

Ryan Safty
Associate Planner
RSafty@losgatosca.gov
(408) 354-6802

N:\DEV\PLANNING PROJECT FILES\Capri Drive\14288\S-24-044 - SB 330 Formal App\Staff Comment Letters\R5 - Complete\PLN - 14288 Capri Drive - Complete
Letter 9-17-25.docx

OBJECTIVE DESIGN STANDARDS CHECKLIST - 7/18/25 UPDATES

APPLICANT RESPONSIBILITY

Applicants are responsible for accurately responding to each objective design standard listed below by indicating whether each standard has been met or does not apply. Applicants shall indicate the sheet(s) within the project plans that show compliance with each objective design standard.

Highlighted fields represents missing, incomplete, or inaccurate responses as identified by staff

			A. SITE STANDARDS			SHEETS (UPDATED 7/18/25)	STAFF RESPONSE (UPDATED BASED ON 7/18/25 RESUBMITTAL)	APPLICANT RESPONSE	STAFF RECOMMENDATION TO INCREASE JUSTIFICATION AND NEW STAFF COMMENTS BASED ON PLAN UPDATES
			A.1. Pedestrian Access						
YES	NO	N/A	Objective Design Standard						
X			A.1.1	All on-site buildings, entries, facilities, amenities, and vehicular and bicycle parking areas shall be internally connected with a minimum four-foot-wide pedestrian pathway or pathway network that may include use of the public sidewalk. The pedestrian pathway network shall connect to the public sidewalk along each street.		DGO.1 / Note 1, A2.0	Project complies.		
X			A.1.2	Pedestrian pathways within internal parking areas shall be separated from vehicular circulation by a physical barrier, such as a grade separation or a raised planting strip, of at least six inches in height and at least six feet in width. A pedestrian pathway is exempt from this standard where it crosses a parking vehicular drive aisle.		A2.0, PL-1, PL-2	Project complies.		
			A.2. Short-Term Bicycle Parking (Class II)						
			Short-term bicycle parking (Class II bicycle parking facility) consists of racks that support the bicycle frame at two points and allow for the bicycle frame and one wheel to be locked to the rack with a U-lock.			A3.0, DG0.1			
X			A.2.1	Short-term bicycle parking space shall be located within 50 feet of the primary pedestrian building entrance.		DGO.1 / Keynote 1	Project complies.		
	X		A.2.2	Short-term bicycle parking shall be provided at a rate of one space per dwelling unit and one space per 2,000 square feet of non-residential floor area.		DGO.1 / Note 2	Project does not comply. 119 spaces required, 12 proposed.	Our approach is to supply the amount of guest stalls the VTA recommends which is substantially less than the Town. This is allowed by Builder's Remedy.	Thank you for providing justification. As noted in the comment letter, the application materials need to specify what VTA's recommended bike parking count is. The plans show that VTA recommends 1 GUEST bike space for every 20 units, but does not specify their recommendation for tenants. Therefore, this argument is incomplete as we don't specify what VTA's recommendation is for the project.
X			A.2.3	Each short-term bicycle parking space shall be a minimum of seven feet in length and two feet in width.		DGO.1 / Note 3	Project complies.		
		X	A.2.4	If more than 20-short term bicycle spaces are provided, at least 50 percent of the spaces shall be covered by a permanent solid-roofed weather protection structure.		no sheet provided	N/A. 12 spaces proposed.		
			A.3. Long-Term Bicycle Parking (Class I)						
			Long-term bicycle parking facilities (Class I bicycle parking facility) consists of bicycle lockers or bicycle rooms with key access for use by residents.			DGO.2 / Note 3			
	X		A.3.1	Long-term bicycles parking facilities shall be located on the ground floor and shall not be located between the building and the street.		DGO.2 / Note 4	Project does not comply. Long-term bike spaces are on garage levels 1-4, while the standard says they shall be located on the ground floor.	We have added a bike room on the ground level and have additional secured bike rooms on the upper levels.	
X			A.3.2	Multi-family residential and residential mixed-use buildings shall provide one long-term bicycle parking space per dwelling unit. Developments such as townhomes that include individual garages for each unit shall not be required to provide long-term bicycle parking.		DGO.2 / Note 1	Project complies.		
			A.3.3	Bicycle locker minimum requirements:					
		X		a. Dimensions of 42 inches wide, 75 inches deep, and 54 inches high.		no sheet provided	N/A. Bike lockers are not proposed.		
		X		b. Must withstand a load of 200 pounds per square foot.		no sheet provided	N/A. Bike lockers are not proposed.		
		X		c. Opened door must withstand 500-pound vertical load.		no sheet provided	N/A. Bike lockers are not proposed.		
			A.3.4	Bicycle rooms with key access minimum requirements:					
X				a. Bicycle rooms shall have a minimum ceiling height of seven feet.		DGO.1 / Keynote 7	Project complies.		
X				b. Bicycle rooms shall contain racks that support the bicycle frame at two points and allow for the bicycle frame and one wheel to be locked to the rack with a U-lock.		A4.3 (Update the page reference as Sheet A4.3 now shows turning-radius)	Project complies.		
X				c. Long-term bicycle parking spaces shall be served by an aisle with a minimum width of six feet.		A4.3 (Update the page reference as Sheet A4.3 now shows turning-radius)	Project complies.		
X				d. Maneuverability space of at least two feet shall be provided between the aisle and long-term bicycle parking spaces.		A4.3 (Update the page reference as Sheet A4.3 now shows turning-radius)	Project complies.		

	X			e. Each horizontal long-term bicycle parking space shall be a minimum of seven feet in length, two feet in width, four-and one-half feet in height. Each vertical long-term bicycle parking space shall be a minimum of three-and one-half feet in length, two feet in width, and seven feet in height.	A4.3 (Update the page reference as Sheet A4.3 now shows turning-radius)	Project does not comply. 2' width requirement is not met. Two-tier system does not meet height requirement.	Provide justification. Only justification provided for long-term bikes is regarding the number of spaces required (A.3.2). Also, update the page reference as A4.3 now shows turning-radius.	
				A.4. Vehicular Access				
		X		A.4.1	Off-street parking lots shall have vehicular circulation using an internal vehicular network that precludes the use of a public street for aisle-to-aisle internal circulation.	no sheet provided	N/A. Parking lot is not proposed.	
				A.5. Parking Location and Design				
		X		A.5.1	Surface parking lots and carports shall not be located between the primary building frontage and the street.	no sheet provided	N/A. Parking lot is not proposed.	
		X		A.5.2	Uncovered parking rows with at least 15 consecutive parking spaces shall include a landscape area of six feet minimum width at intervals of no more than 10 consecutive parking stalls. One tree shall be provided in each landscape area.	no sheet provided	N/A. Parking lot is not proposed.	
				A.6. Parking Structure Access				
X				A.6.1	Any vehicular entry gate to a parking structure shall be located to allow a minimum of 18 feet between the gate and the back of the sidewalk to minimize conflicts between sidewalks and vehicle queuing.	DGO.1 / Keynote 2	Project complies.	
	X			A.6.2	A parking structure shall not occupy more than 50 percent of the building width of any street-facing façade, and it shall be recessed a minimum of five feet from the street-facing façade of the building.	no sheet provided	Project does not comply. Parking structure occupies more than 50% of street facing façade.	Due to the irregular shape of the parcel and the fact it is triangular in shape and bounded by street on two sides, the parking has to be configured in a garage structure that occupies the majority of the site. Builder's Remedy allows us to not conform to the guidelines.
X				A.6.3	For projects with five or more residential units and that have a vehicle access gate to the parking structure, a pedestrian gate shall also be provided.	DGO.1 / Keynote 3	Project complies.	
				A.7. Utilities				
	X			A.7.1	Pedestrian-oriented lighting shall be provided along all pedestrian paths in community recreation spaces. Exterior lighting fixtures shall be a minimum of three feet and a maximum of 12 feet in height. Light fixtures shall be placed along the pedestrian path at a spacing of no more than 30 linear feet.	E0.10, E0.16	Project does not comply. Mounting height details for SW3 are shown at 13' when 12' is max.	Provide justification.
X				A.7.2	Exterior lighting shall be fully shielded and restrain light to a minimum 30 degrees below the horizontal plane of the light source. Lighting shall be arranged so that the light will not shine directly on lands of adjacent residential zoned properties. Uplighting is prohibited.	E0.10, General Note 5	Project complies.	
	X			A.7.3	Street-level views of ground level utility cabinets, mechanical equipment, trash, and service areas shall be screened from sight with landscape planting, fencing, or a wall, as allowed by the Town Code. The screening shall be at least the same height as the item being screened and screening that is not landscape material shall be constructed with one or more of the materials used on the primary building.	DGO.1 / Keynote 4, PL-3	Additional details required. Plans do not specify height of utility item being screened. Additionally, justification provided in ODS checklist is not accurate. The plants around the new transformer would have a maturity height of 2', 4', and 10' (not 1').	Plants around the utility cabinet will be 1 foot height upon maturity. The cabinets will be painted by art. See PL-3 sheet for planting heights as a mature size.
X				A.7.4	Rooftop mechanical equipment shall be screened from view from the street. Solar	DGO.4 / Note 1	Project complies.	
				A.8. Landscaping and Screening				
	X			A.8.1	At least 50 percent of the front setback area shall be landscaped.	A2.0	Additional details required. Plans do not specify amount of landscaping along front setback. Sheet A2.0 shows total landscape area. The plans need to specify the percent of the front setback that is landscaped.	Landscaping and Screening: Again, this is a Builder's Remedy project and we do not have to conform to this requirement and we can request waivers to this requirement.
	X			A.8.2	A minimum 10-foot-wide landscape buffer shall be provided along the full length of the shared property line between multi-family or Residential Mixed-Use development and abutting residential properties. The buffer shall include the following: a. A solid masonry wall with a six-foot height, except within a street-facing setback where walls are not permitted; and b. Trees planted at a rate of at least one tree per 30 linear feet along the shared property line. Tree species shall be selected from the Town of Los Gatos Master Street Tree List and shall be a minimum 15-gallon size.	no sheet provided	Project does not comply. 10-wide buffer is not proposed.	Landscaping and Screening: Again, this is a Builder's Remedy project and we do not have to conform to this requirement and we can request waivers to this requirement.
		X		A.8.3	Surface parking lots shall be screened from view of the street with landscaping or a wall with a minimum three-foot height to screen the parking lot when not already screened by a primary building. When located in a street-facing setback, screening may not exceed a height of three feet.	no sheet provided	N/A. Parking lot is not proposed.	
				A.9. Fencing				

	X			A.9.1	Fences, walls, and gates within required setbacks along all street frontages are prohibited unless used to screen on-site parking spaces from view from the street.	no sheet provided	Project does not comply and additional details required. Provide a sheet reference. This set of plans has less information on proposed fencing than the last round, but fencing is now shown adjacent to the cul-de-sac, which does not comply with this requirement. Provide justification, details in plans, and a sheet reference.	Provide justification.	
X				A.9.2	Chain link fencing is prohibited.	no sheet provided	Project complies.		
		X		A.9.2	Perimeter barrier gates for vehicles and pedestrian entry gates shall have a maximum height of six feet.	no sheet provided	N/A. Perimeter barrier gates are not proposed.		
X				A.9.4	Solid vehicular and pedestrian entry gates are prohibited. Entry gates shall be a minimum 50 percent open view.	DGO.1 / Keynote 3, A7.0	Project complies.		
				A.10. Retaining Walls					
		X		A.10.1	Retaining walls shall not exceed five feet in height. Where an additional retained portion is necessary, multiple-terraced walls shall be used. Terraced walls shall set back at least three feet from the lower segment.	no sheet provided	N/A. Retaining walls are not proposed.		
		X		A.10.2	Retaining walls shall not run in a straight continuous direction for more than 50 feet without including the following: a. A break, offset, or landscape pocket in the wall plane of at least three feet in length and two feet in depth; and b. Landscaping at a minimum height of three feet at the time of installation along a minimum of 60 percent of the total length of the retaining wall.	no sheet provided	N/A. Retaining walls are not proposed.		
				A.11. Landscaped, Private, and Community Recreation Spaces					
				A.11.1	The landscaped, private, and community recreation spaces listed below are required for all qualifying projects. Community recreation spaces and private recreation spaces are calculated independent of each other. Landscaped areas within community recreation spaces can contribute to required minimums for both landscaped area and community recreation space.	no sheet provided			
	X				a. Landscaped space: A minimum of 20 percent of the site area shall be landscaped.	PL-1, DGO.3 / Note 1	Project does not comply. PL-1 shows 16%.	Landscaped spaces: we do not comply with the 20% but have modified our plans to be at 16% landscape areas of the site. Again, the configuration of the site warrants the reduction in landscape area in addition to the loss of land at the proposed cul-de-sac.	
	X				b. Private recreation space: The minimum horizontal dimension is six feet in any direction and a minimum area of 60 square feet. The minimum vertical clearance required is eight feet. Private recreation space shall be directly accessible from the residential unit. Landscaped sections of private recreation space shall not count towards required landscaping requirements.	DGO.3 / Note 1, A10.0, A10.1	Project does not comply. The juliet balconies do not comply.	Juliet balconies: Our juliet balconies are 6'-5" wide but only 13 square feet. The remaining square feet required is in the community recreation space. We still comply with the total open area required.	
		X			i. Each ground floor dwelling unit shall have a minimum of 120 square feet of usable private recreation space.	no sheet provided	N/A. Ground units are not proposed.		
	X				ii. Each dwelling unit above the ground floor shall have a minimum of 60 square feet of usable private recreation space. Where multiple balconies are provided for a single unit, the 60-square-foot minimum can be an aggregate of all balconies, provide each balcony meets the requirements for minimum horizontal dimensions.	DGO.3 / Note 2	Project does not comply. The juliet balconies do not comply.	Juliet balconies: Our juliet balconies are 6'-5" wide but only 13 square feet. The remaining square feet required is in the community recreation space. We still comply with the total open area required.	
X					c. Community recreation space: The minimum dimensions are 10 feet by six feet. A minimum of 60 percent of the community recreation space shall be open to the sky and free of permanent solid-roofed weather protection structures. Community recreation space shall provide shading for a minimum 15 percent of the community recreation space by either trees or structures, such as awnings, canopies, umbrellas, or a trellis. Tree shading shall be calculated by using the diameter of the tree crown at 15 years maturity. Shading from other built structures shall be calculated by using the surface area of the overhead feature.	A6.0	Project appears to comply, but additional details required in plans. It appears that more than 60% of the area is open to the sky (8,256 sf / 12,134 sf = 68%). However, two vastly different numbers for proposed community open space are provided (12,134 sf vs 18,166 sf). It appears that at least 15% of this space is shaded, but no calculation was provided, and no details showing how many square feet is shaded.	Provide additional details in plans to show compliance (percentages).	
		X			i. Community recreation space shall be provided in Residential Mixed-Use developments at a minimum of 100 square feet per residential unit plus a minimum of two percent of the non-residential square footage.	no sheet provided	N/A. Not a mixed-use project.		
X					ii. Community recreation space shall be provided in multi-family residential development projects at a minimum of 100 square feet per residential unit.	A6.0, DGO.3 / Note 3	Project complies.		
		X			iii. A project with four or less residential units is exempt from community recreation space requirements.	no sheet provided	N/A. More than 4 residential units proposed.		
X					iv. Landscaped roof space can satisfy both required landscaping requirements and community recreation space requirements. Landscaped roof space may not be used to satisfy more than 50 percent of the required landscaping for the site.	PL-1	Project complies.		
				A.12. Building Placement					

X				A.12.1	To ensure buildings provide a continuous frontage along sidewalks, development in commercial zones shall place at least 75 percent of any ground floor street-facing façade on or within five feet of the setback line designated in the Town Code.	A2.0	Project complies.		
		X		A.12.2	A Residential Mixed-Use project with a ground-floor non-residential use shall provide site amenities on a minimum of 15 percent of the ground plane between the building and the front or street-side property line. The site amenities shall be comprised of <u>any</u> of the following elements:	no sheet provided	N/A. Not a mixed-use project.		
		X			a. Landscape materials or raised planters;	no sheet provided	N/A. Not a mixed-use project.		
		X			b. Walls designed to accommodate pedestrian seating, no higher than 36 inches;	no sheet provided	N/A. Not a mixed-use project.		
		X			c. Site furnishings, including fountains, sculptures, and other public art; or	no sheet provided	N/A. Not a mixed-use project.		
		X			d. Tables and chairs associated with the ground floor use.	no sheet provided	N/A. Not a mixed-use project.		

			B. BUILDING DESIGN			SHEETS (UPDATED 7/18/25)	STAFF RESPONSE (UPDATED BASED ON 7/18/25 RESUBMITTAL)	APPLICANT RESPONSE	STAFF RECOMMENDATION TO INCREASE JUSTIFICATION AND NEW STAFF COMMENTS BASED ON PLAN UPDATES
YES	NO	N/A			Objective Design Standard				
	X			B.1.1	Multiple-story building façades that face a street shall incorporate breaks in the building mass by implementing a <u>minimum of three</u> of the following solutions along the combined façade area of all primary buildings facing the street:	no sheet provided	Project does not comply. 3 or more solutions not used.	We are not in compliance, but we have placed multiple deck areas along the façade that are recessed into the building greater than the minimum two feet to create articulation in the massing of the building. The 5' second floor setback is not possible with the configuration and size of the parcel.	
	X				a. A minimum of 40 percent of the upper floor façade length shall step back from the plane of the ground-floor façade by at least five feet;	A16.0 Diagram #2	Project does not comply. The second floor does not step-back 5' from the ground floor.		
	X				b. Changes in the façade plane with a minimum change in depth of two feet for a minimum length along the façade of two feet at intervals of no more than 30 feet;	A16.0, A16.1	Project does not comply.	We are not in compliance, but we have placed multiple deck areas along the façade that are recessed into the building greater than the minimum two feet to create articulation in the massing of the building. The 5' second floor setback is not possible with the configuration and size of the parcel.	
X					c. Recessed façade plane to accommodate a building entry with a minimum ground plane area of 24 square feet. Where an awning or entry covering is provided, it can extend beyond the wall plane;	A16.0	Project complies.		
	X				d. An exterior arcade that provides a sheltered walkway within the building footprint with a minimum depth of eight feet. For a façade 50 feet or greater, the arcade must be a minimum length of 65 percent of the full building façade; for a facade less than 50 feet, the arcade must be a minimum of 80 percent of the full	no sheet provided	Project does not comply. No exterior arcade proposed.	This particular project does not lend itself to an arcade to be included in the design especially with the size and shape of the lot.	
	X				e. Ground floor open area abutting street-facing façade with a minimum area of 60 square feet; or	no sheet provided	Additional details required. This is marked as "yes" now, but not plan sheet reference is provided. It appears that the area near the main entrance (south-side of the building, facing Capri) would be close to meeting this, but not all of this is "open area" as bike parking is proposed.	Provide a sheet reference that shows compliance with this standard and update plans to include these details.	
	X				f. Vertical elements, such as pilasters or columns, that protrude a minimum of one foot from the façade and extend the full height of the building base or ground floor, whichever is greater.	no sheet provided	Project does not comply. Vertical elements are not proposed.	We do not comply because vertical columns do not blend with the architecture we have proposed. This is totally subjective and not appropriate on this project.	
	X			B.1.2	Upper floors above two stories shall be set back by a minimum of five feet from the ground-floor façade.	A16.1	Project does not comply. The upper floors do not step back 5' from the ground floor.	Provide justification. The updated ODS checklist says "see letter of justification", but no justification for this item is provided in your Letter of Justification.	
				B.2. Parking Structure Design					
X				B.2.1	The ground-floor façade of a parking structure facing a street or pedestrian walkway shall be fenestrated on a minimum of 40 percent of the façade.	A16.0, A16.1	Project complies.		
X				B.2.2	Façade openings on upper levels of a parking structure shall be screened at a minimum 10 percent and up to 30 percent of the opening to prevent full transparency into the structure.	A7.0, A7.1	Project complies.		
X				B.2.3	Parking structures facing a street and greater than 40 feet in length shall include landscaping between the building façade and the street, or façade articulation of at least 25 percent of the façade length. The façade articulation shall be implemented by <u>one</u> of the following solutions:	PL-1	Project complies.		

		X			a. An offset of the façade plane with a depth of at least 18 inches for a minimum of eight feet in horizontal length; or	A7.0, A7.1	N/A. Landscaping is used instead of façade articulation.		
		X			b. A different building material covering the entire façade articulation.	A7.0, A7.1	N/A. Landscaping is used instead of façade articulation.		
				B.3. Roof Design					
	X			B.3.1	At intervals of no more than 40 feet along the building façade, horizontal eaves shall be broken using <u>at least one</u> of the following strategies:		Project does not comply. No solutions are proposed.	The shape and size of the roof has been carefully designed to support solar panels and because of the height of the project, this design guideline for roofs is not appropriate.	
	X				a. Gables;	<i>no sheet provided</i>	Project does not comply. Gables are not proposed.		
	X				b. Building projection with a depth of a minimum of two feet;	A16.1	Project does not comply.		
	X				c. Change in façade or roof height of a minimum of two feet;	A7.0, A7.1, A10.0	Project does not comply.		
	X				d. Change in roof pitch or form; or	<i>no sheet provided</i>	Project does not comply.		
	X				e. Inclusion of dormers, parapets, and/or varying cornices.	A10.0, A10.1	Project does not comply.		
		X		B.3.2	Skylights shall have a flat profile rather than domed.	<i>no sheet provided</i>	N/A. Skylights are not proposed.		
		X		B.3.3	The total width of a single dormer or multiple dormers shall not exceed 50 percent of the total roof length at the street-facing façade. The dormer width shall be measured at dormer roof fascia, or widest part of the dormer.	<i>no sheet provided</i>	N/A. Dormers are not proposed.		
		X		B.3.4	Carport roof materials shall be the same as the primary building.	<i>no sheet provided</i>	N/A. Carports are not proposed.		
				B.4. Façade Design and Articulation					
X				B.4.1	Buildings greater than two stories shall be designed to differentiate the base, middle, and top of the building on any street-facing façade. Each of these elements shall be distinguished from one another using <u>at least two</u> of the following solutions:	A16.0, A16.1	Project complies. Solutions (d) and (e) are met.		
	X				a. Variation in building mass for a minimum of 60 percent of the length of the street-facing façade through changes in the façade plane that protrude or recess with a minimum dimension of two feet;	A16.0, A16.1	Project does not comply.		
	X				b. Balconies or habitable projections with a minimum depth of two feet for a minimum of 20 percent length of the street-facing façade;	A11.0 - A11.4	Project does not comply.		
	X				c. Variation in façade articulation, using shade and weather protection components, projecting a minimum of three feet for a minimum of 20 percent length from the street-facing façade;	<i>no sheet provided</i>	Project does not comply.		
X					d. The use of at least two different façade materials, each covering a minimum of 20 percent of the street-facing façade, or	DG0.3 / Note 5, A7.0, A7.1	Project complies.		
X					e. The upper floor shall implement a façade height that is a minimum of two feet greater than the façade height of the floor immediately below. The greater façade height shall be made evident by taller windows or arrangement of combined windows.	DG0.3 / Note 6	Project complies.		
X				B.4.2	All façade materials, such as siding, window types, and architectural details, used on the street-facing façade shall be used on all other building façades.	DG0.3 / Note 7	Project complies.		
	X			B.4.3	Variation in the street-facing façade planes shall be provided for buildings greater than one story by incorporating any combination of the following architectural solutions to achieve a <u>minimum of 16 points</u> :	A7.0, A7.1, A9.0, A10.0, A.10.1	Project does not comply. Not enough points achieved. See below.	Provide justification.	
					Architectural features, such as:				
	X				o Arcade or gallery along the ground floor;	8 points	<i>no sheet provided</i>	Project does not comply. Arcade or gallery is not proposed.	
		X			o Awnings or canopies on all ground floor windows of commercial space;	6 points	<i>no sheet provided</i>	N/A. Commercial space is not proposed.	You marked "yes"; however, there is no commercial space proposed so this cannot be met.
X					o Building cornice;	5 points	<i>no sheet provided</i>	Additional details required. This is now marked as "yes", but not plan sheet reference is provided. Staff sees a new "molding/band" on the elevations. Please confirm this is what you are referring to.	
	X				o Façade sconce lighting at a minimum of one light fixture per 15 linear feet.	3 points	E0.10	Project does not comply. Sheet E0.10 shows that light spacing does not meet this requirement.	

	X				▪ Bay or box windows projecting a minimum of 18 inches from the façade plane and comprising a minimum of 20 percent of the fenestration on the upper floors of the facade;	6 points	<i>no sheet provided</i>	Project does not comply. Bay windows are not proposed.		
	X				▪ Balconies or Juliet balconies provided on a minimum of 40 percent of the fenestration on the upper floors of the facade;	5 points	A10.0, A10.1	Additional details required. This is marked as "yes". The plans do not clearly show/state how this is complied with. Provide this diagram and/or calculation in the plans. Additionally, fix the sheet reference as Sheets A10.0 and A10.1 show building sections.		
	X				▪ Landscaped trellises or lattices extending across a minimum of 65 percent of any level of the facade;	5 points	<i>no sheet provided</i>	Project does not comply. Landscaped trellises or lattices are not proposed.		
X					▪ Materials and color changes;	3 points	A7.0, A7.1	Project complies.		
	X				▪ Eaves that overhang a minimum of two feet from the facade with supporting brackets;	3 points	<i>no sheet provided</i>	Additional details required. This is now marked as "yes". The plans do not clearly show/state how this is complied with. Provide this diagram and/or calculation in the plans. Additionally, provide a sheet reference that shows eaves with a 2' overhang on both street-facing facades.		
	X				▪ Window boxes or plant shelves under a minimum of 60 percent of the fenestration on the upper floors of the facade; or	3 points	<i>no sheet provided</i>	Project does not comply. Window boxes are not proposed.		
	X				▪ Decorative elements such as molding, brackets, or corbels	3 points	<i>no sheet provided</i>	Additional details required. This is now marked as "yes". The plans do not clearly show/state how this is complied with. Provide this diagram in the plans. Additionally, provide a sheet reference that shows the decorative elements "at all the railings", as you note in the ODS checklist.		
					TOTAL	8 points (16 needed)		Project does not comply. Not enough points achieved.	Provide justification.	
		X		B.4.4	Garage doors shall be recessed a minimum of 12 inches from the façade plane and		<i>no sheet provided</i>	N/A. Garage doors are not proposed.		
X				B.4.5	Changes in building materials shall occur at inside corners.		DGO.1 / Note 5	Project complies.		
X				B.4.6	A primary building entrance shall be provided facing a street or community recreation space. Additionally, all development shall meet the following requirements:		<i>no sheet provided</i>	Project complies.		
X					a. Pedestrian entries to ground-floor and upper-floor non-residential uses shall meet at least one of the following standards:		A3.0, A4.0	Project complies.		
X					i. The entrance shall be recessed in the façade plane at least three feet in depth; or		A5.0, A2.0, A3.0, A4.0	Project complies.		
X					ii. The entrance shall be covered by an awning, portico, or other architectural element projecting from the façade a minimum of three feet.		A5.1, A3.0, A4.0	Project complies.		
		X			b. For ground-floor commercial uses, façades facing a street shall include		<i>no sheet provided</i>	N/A. Commercial space is not proposed.		
X				B.4.7	Pedestrian entries to buildings shall meet minimum dimensions to ensure adequate access based on use and development intensity. Building entries inclusive of the doorway and the facade plane shall meet the following minimum dimensions:		A10.0, A10.1	Project complies.		
		X			a. Individual residential entries: five feet in width		<i>no sheet provided</i>	N/A. Individual entries on ground floor not proposed.		
X					b. Single entry to multiple residential unit building, including Residential Mixed-Use buildings: eight feet in width		A3.0, A2.0	Project complies.		
X					c. Storefront entry: six feet in width		A3.0, A2.0	Project complies.		
X				B.4.8	Mirrored windows are prohibited.		A7.0	Project complies.		
X				B.4.9	Awnings shall be subject to the following requirements:		A7.0, A7.1	Project complies.		
X					a. A minimum vertical clearance of eight feet measured from the pedestrian pathway;		A7.0	Project complies.		
		X			b. Shall not extend beyond individual storefront bays; and		<i>no sheet provided</i>	N/A. Individual storefront bays are not proposed.		
X					c. Shall not be patterned or striped.		A9.0	Project complies.		

	X			B.4.10	For buildings abutting a single-family zoning district or existing single-family use, no part of a rooftop or upper floor terrace or deck shall be closer than five feet from the facade plane of the lower floor, to prevent views into adjacent residential uses.	no sheet provided	Project does not comply. The proposed balconies along the northern elevation do not comply. Provide a sheet reference and justification. The response says that the balconies would face a commercially zoned parcel to the north. This is true, however, the standard says "or existing single-family use." The property to the north is zoned C-1 but is used as a single-family residence.	Provide justification.	
	X			B.4.11	Balconies are allowed on facades facing the street and those facades facing existing non-residential uses on abutting parcels. Such balconies shall be without any projections beyond the building footprint.	DG0.3 / Note 8	Project does not comply. The proposed balconies would face the existing adjacent residential use to the north.	Provide justification.	
		X		B.4.12	Residential Mixed-Use buildings shall provide <u>at least one</u> of the following features along street-facing façades where the façade exceeds 50 feet in length:	no sheet provided	N/A. Residential mixed-use is not proposed.		
		X			a. A minimum five-foot offset from the façade plane for a length of at least 10 feet;	no sheet provided	N/A. Residential mixed-use is not proposed.		
		X			b. Multiple pilasters or columns, each with a minimum width of two feet; or	no sheet provided	N/A. Residential mixed-use is not proposed.		
		X			c. Common open space, such as a plaza, outdoor dining area, or other spaces.	no sheet provided	N/A. Residential mixed-use is not proposed.		
X				B.4.13	Continuous blank façades on any floor level shall not exceed 25 percent of the entire façade length along any street.	DG0.3 / Note 9, A9.0	Project complies.		

Sec. 29.20.185. Table of conditional uses.

An "X" indicates that an activity is allowed in a zone if a conditional use permit is issued. Activities listed in this table are only allowed where a conditional use permit is issued, or where the activity is specifically listed in the permitted uses for the zone.

TABLE OF CONDITIONAL USES				RC	HR	R1	RD	R-M	R-1D	RMH	O	C-1	C-2	CH	LM	CM
(1)	Commercial															
	a.	Banks										X	X	X		
	b.	Reserved														
	c.	Drive-up window for any business										X	X	X		
	d.	Supermarket										X	X	X		
	e.	Super drugstore										X	X	X		
	f.	Department store										X	X	X		
	g.	Shopping center										X	X	X		
	h.	Motel											X	X		
	i.	Hotel											X	X		
	j.	Restaurant including those with outdoor dining areas or takeout food										X	X	X	X	X
	k.	Establishment selling alcoholic beverages for consumption on-premises														
		1.	In conjunction with a restaurant or specialty food retail use									X	X	X	X	
		2.	Without food service (bar)										X			
		3.	Tap/tasting room									X	X	X	X	
	l.	Establishment selling alcoholic beverages for consumption off-premises (this provision only applies to establishments commencing or expanding off-premises sales after April 23, 1981)											X	X	X	
		1.	In conjunction with a specialty food retail use									X	X	X	X	
	m.	Convenience market										X	X	X		
	n.	Reserved														
	o.	Formula retail business greater than 10,000 s.f										X	X	X	X	
	p.	Reserved														
	q.	New office building approved or constructed after May 1, 2006										X	X	X		
	r.	New retail sales of firearms, ammunition													X	

Created: 2025-06-09 15:45:24 [EST]

(Supp. No. 97)

		and/or destructive devices as set forth in section 29.70.100													
(2)	Recreation														
	a.	Commercial recreation and amusement establishment								X	X	X	X		
	b.	Theater									X				
	c.	Outdoor entertainment									X				
	d.	Swimming pool for non-incidental use	X	X	X	X	X	X		X	X	X	X	X	X
	e.	Private sports recreation club	X	X	X	X	X	X		X	X	X	X		
	f.	Golf course	X	X	X	X	X								
(3)	Community Services														
	a.	Public building; police, fire, community center, library, art gallery, museum	X	X	X	X	X	X		X	X	X	X	X	X
	b.	Club, lodge, hall, fraternal organization			X	X	X	X		X	X	X	X	X	X
	c.	Church, monastery, convent, and other institutions for religious observance	X	X	X	X	X	X		X	X	X	X	X	
	d.	Mortuary, columbarium, mausoleum						X				X	X	X	
	e.	Public transportation and parking facilities	X	X	X	X	X	X		X	X	X	X	X	X
	f.	Park, plaza, playground	X	X	X	X	X	X		X	X	X	X	X	X
	g.	Nonprofit youth groups	X												
(4)	Schools														
	a.	Public schools or college not otherwise specified	X	X	X	X	X	X		X	X	X	X	X	
	b.	Private school or college not otherwise specified; including a new private school or college to be located on grounds or within buildings formerly occupied by a public school	X	X	X	X	X	X		X	X	X	X	X	
	c.	Nursery school/day care center, provided that each shall be on a site not less than 20,000 square feet in area and in a building not less than 2,000 square feet in floor area	X	X	X	X	X	X		X	X	X	X	X	
	d.	Family daycare home								X	X	X	X		
	e.	Reserved													
	f.	Vocational or trade school										X	X	X	
	g.	Business or professional school or college								X	X	X	X	X	
	h.	Art, craft, music, dancing school, group classes										X			
(5)	Health Services														

	a.	Hospital								X					
	b.	Convalescent hospital			X		X	X		X	X	X	X		
	c.	Residential care facility-small family home								X	X	X	X		
	d.	Residential care facility-large family home	X	X	X	X	X	X		X	X	X	X		
	e.	Residential care facility-group home	X	X	X	X	X	X		X	X	X	X		
(6)	Transmission Facilities/Utilities														
	a.	Public utility service yard, station, transmission lines, storage tank, drainage or communication facilities	X	X	X	X	X	X		X	X	X	X	X	X
	b.	Antenna facilities operated by a public or private utility for transmitting and receiving cellular telephone and other wireless communications	X	X	X	X	X	X		X	X	X	X	X	X
	c.	Radio and/or broadcast studios								X	X	X	X	X	X
(7)	Automotive (Vehicle sales, service and related activities)														
	a.	Vehicle sales and rental										X	X	X	
	b.	Reserved													
	c.	Vehicle tires and accessories, sales, servicing, recapping											X	X	
	d.	Vehicle body repair and painting											X	X	
	e.	Vehicle repair and service (garage)											X	X	
	f.	Service station									X	X	X	X	
	g.	Parking lots or storage garages, not accessory to another use										X	X		
	h.	Car wash											X		
	i.	Truck terminal												X	X
	j.	Recreational vehicle and equipment storage yard											X	X	X
	k.	Temporary auto storage for automobile dealers	X	X	X	X	X	X		X	X	X	X	X	X
	l.	Parking lots that serve a nearby commercial use located on a previously unimproved property in the R-1:12 zone on an arterial street			X										
	m.	>Sales, service, and repair of electric vehicles as set forth in Section 29.10.020										X	X	X	
(8)	Residential Uses														
	a.	One-family dwelling (in a mixed-use project)								X	X		X		
	b.	Two-family dwelling (in a mixed-use project)								X	X		X		

	c.	Multiple-family dwelling (in a mixed-use project)								X	X	X	X		
	d.	Mobile home park					X								
	e.	Caretaker residence	X	X											
	f.	Reserved													
	g.	Conversion of a mobile home park to any other use					X		X						
	h.	Live/work units								X	X	X	X	X	
(9)	Agriculture and Animal Services														
	a.	Botanical nursery	X	X	X	X	X	X		X	X	X	X	X	X
	b.	Dairying	X	X											
	c.	Veterinary hospital (without kennel)									X	X	X	X	
	d.	Kennel	X	X											X
	e.	Commercial and private stables and riding academies	X	X	X	X	X								
	f.	Wineries that have been legally and continuously operating for at least 50 years or is operated in conjunction with a vineyard	X												
	g.	Aviaries and other wholesaling animal-raising facilities	X	X	X										
	h.	Vineyards, orchards, and agricultural or farming activities greater than 3,000 s.f.	X	X	X										
(10)	Light Industrial														
	a.	Large recycling collection facilities												X	X
	b.	Large recycling collection facilities operated by a public agency	X	X	X	X	X	X	X	X	X	X	X	X	X
	c.	Equipment rental yard										X	X	X	
	d.	Construction materials yard												X	X
	e.	Bulk fuel storage and sales												X	X
	f.	Dry cleaning plants									X	X	X		
	g.	Hazardous waste management facility													X
(11)	Other														
	a.	Outdoor storage											X	X	X
	b.	Changing the activity in a nonconforming building	X	X	X	X	X	X		X	X	X	X	X	X
	c.	24 hour businesses or businesses open between the hours of 2:00 a.m. and 6:00 a.m.								X	X	X	X	X	X

(Ord. No. 1316, § 5.20.205, 6-7-76; Ord. No. 1363, 8-1-77; Ord. No. 1367, 9-19-77; Ord. No. 1369, 10-3-77; Ord. No. 1375, 11-21-77; Ord. No. 1405, 9-5-78; Ord. No. 1417, 2-20-79; Ord. No. 1476, 9-15-80; Ord. No. 1483, 12-2-80;

Ord. No. 1493, 3-17-81; Ord. No. 1506, 7-6-81; Ord. No. 1531, 4-20-82; Ord. No. 1546, 8-16-82; Ord. No. 1555, 10-25-82; Ord. No. 1571, 3-7-83; Ord. No. 1596, 10-24-83; Ord. No. 1654, 4-22-85; Ord. No. 1667, 12-2-85; Ord. No. 1701, 12-15-86; Ord. No. 1724, 5-18-87; Ord. No. 1725, 6-1-87; Ord. No. 1729, 6-15-87; Ord. No. 1732, 7-20-87; Ord. No. 1737, § V, 11-2-87; Ord. No. 1746, 3-21-88; Ord. No. 1835, § III, 7-16-90; Ord. No. 1842, § II, 4-1-91; Ord. No. 1896, § I, 4-6-92; Ord. No. 1961, § I, 11-15-93; Ord. No. 1993, § I, 1-3-95; Ord. No. 2006, § IIA, 11-6-95; Ord. No. 2011, § I, 3-4-96; Ord. No. 2107, § II, 11-4-02; Ord. No. 2115, § III, 9-15-03; Ord. No. 2131, § I, 5-3-04; Ord. No. 2132, § II, 5-17-04; Ord. No. 2149, § I, 5-1-06; Ord. No. 2220, § I(Exh. A), 10-7-13; Ord. No. 2222, §I(Exh. A), 10-21-13; Ord. No. 2233, § I(Exh. A), 8-5-14; Ord. No. 2273, § I, 5-1-18; Ord. No. 2280, § I, 3-19-19; Ord. No. 2304, § II, 2-18-20; Ord. No. 2306, § I, 4-21-20; Ord. No. 2310, § I, 8-4-20; Ord. No. 2342, §§ X, XI, 8-1-23)

- CODE
Chapter 29 - ZONING REGULATIONS
ARTICLE I. - IN GENERAL
DIVISION 2. TREE PROTECTION

DIVISION 2. TREE PROTECTION¹

Sec. 29.10.0950. Intent.

This division is adopted because the Town of Los Gatos is forested by many native and non-native trees and contains individual trees of great beauty. The community of the Town benefit from preserving the scenic beauty of the Town, preventing erosion of topsoil, providing protection against flood hazards and risk of landslides, counteracting pollutants in the air, maintaining climatic balance, and decreasing wind velocities. It is the intent of this division to regulate the removal of trees within the Town in order to retain as many trees as possible consistent with the purpose of this section and the reasonable use of private property. While trees provide multiple benefits, it is also the intent of this division to acknowledge that a portion of the Town is located in a Very High Fire Hazard Severity Zone, as defined by the California Department of Forestry and Fire Protection (CAL FIRE) and the associated wildfire threat that exists for the community. It is the intent of this division to preserve as many protected trees as possible throughout the Town through staff review and the development review process. Special provisions regarding hillsides are included in section 29.10.0987 of this division in recognition of the unique biological and environmental differences between the hillside and non-hillside areas of the Town. This section does not supersede the provisions of Chapter 26 of this Code.

(Ord. No. 2240, § I(Exh. B), 6-2-15; Ord. No. 2303, § II, 2-4-20)

Sec. 29.10.0955. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section:

Building envelope means the area of a parcel (1) upon which, under applicable zoning regulations, a structure may be built outside of required setbacks without a variance or; (2) that is necessary for the construction of primary access to structures located on the parcel, where there exists no feasible means of access which would avoid protected trees. On single-family residential parcels, the portion of the parcel deemed to be the building envelope access shall not exceed ten (10) feet in width.

Certified or consulting arborist means an individual in the profession of arboriculture who, through experience, education, and related training, possesses the competence to provide a tree report, tree survey or supervise the care and maintenance of trees; and who is certified by the International Society of Arboriculture, a member of the American Society of Consulting Arborists or approved by the director.

Damage means any action undertaken intentionally or negligently which causes short-term or long-term injury, death, or disfigurement to a tree. This includes but is not limited to mechanical injury, cutting of roots or limbs, poisoning, over-watering, relocation or transplanting a tree, or trenching, grading, compaction, excavating, paving, or installing impervious surface within the root zone of a protected tree.

¹Ord. No. 2240, § I(Exh. B), adopted June 2, 2015, amended Div. 2 to read as herein set out. Former Div. 2, §§ 29.10.0950—29.10.1045, pertained to similar subject matter, and derived from Ord. No. 2114, §§ I, II, adopted Aug. 4, 2003.

Dead tree means a tree that cannot be restored to good health and has at least one (1) of the following characteristics:

- (1) Is completely devoid of life;
- (2) Has no leaves at a time when it should;
- (3) Exhibits no buds if dormant;
- (4) Is incapable of translocating food and water between leaves and roots; or
- (5) Has a high likelihood of imminent death in the opinion of the Town Arborist.

Destroy means to cause the premature decline of tree health or life as evaluated and determined by the Town Arborist.

Defensible Space means an area around the perimeter of a structure in which vegetation, debris, and other types of combustible fuels are treated, cleared, or reduced to slow the rate and intensity of potentially approaching wildfire or fire escaping from structures.

Development means any work upon any property in the Town which requires a subdivision, rezoning, planning permit, variance, use permit, building permit, demolition permit, grading permit or other Town approval or which involves survey work, story pole placement, excavation, landscaping, construction, etc., or clearing and grubbing within the dripline or any area that would affect a protected tree.

Diameter means measurement of the trunk diameter for the purpose of applying this section shall be made four and one-half (4.5) feet (fifty-four (54) inches) above natural grade. Measurement of multi-trunked trees shall be determined by the sum of all trunk diameters measured at four and one-half (4.5) feet (fifty-four (54) inches) above natural grade.

Director means the Director of Community Development or the Director's designated representative.

Dripline area means the area around the trunk of the tree extending out a distance ten (10) times the diameter of the trunk, or the perimeter of the tree canopy, whichever is greater.

Heritage tree means a tree or grouping of trees specifically designated by action of the Town Council, upon the recommendation of the Historic Preservation Commission, that possess exceptional aesthetic, biological, cultural, or historic value and is expected to have a continuing contribution to the community,

Hillside means all properties located within the area defined by the hillside area map as contained in the Town of Los Gatos Hillside Development Standards and Guidelines.

Large protected tree means any oak (*Quercus*), California buckeye (*Aesculus californica*), or Pacific madrone (*Arbutus menziesii*) which has a 24-inch or greater diameter (75-inch circumference); or any other species of tree with a 48-inch or greater diameter (150-inch circumference).

Mechanical injury means injury done to a tree either intentionally or negligently that leads to deviation from normal growth or physical damage or death to the tree. Common causes of mechanical injury are landscape maintenance equipment, staking damage, vehicles, or vandalism.

Multi-trunk tree means a tree that has more than one (1) major supporting stem or trunk growing from a single root mass located at ground level or just above the trunk flare.

Native means any tree that is found in the immediate natural habitat. For instance, redwood trees are native to the Santa Cruz Mountains but they are not native to the oak woodlands and chaparral areas of Los Gatos.

Pollarding means a pruning technique where the ends of the branches of a tree are terminated with a heading cut to a predetermined length, and then resultant epicormic shoots that emerge from just below the heading cut are cut back on an annual basis, forming an enlarging "knob" or knuckle" at the end of the remaining branches over time. Pollarding should be done on small branches no more than two (2) inches in diameter and is

only allowed without a permit on fruitless mulberry trees (*Morus alba*) or other species approved by the Town Arborist.

Protected tree means a tree regulated by the Town of Los Gatos as set forth in Section. 29.10.0960, Scope of protected trees.

Pruning means the selective removal of plant parts to meet specific goals and objectives, including but not limited to: safety and risk reduction; clearance; health maintenance; aesthetic improvement; growth control; and to enhance performance or function by developing and preserving tree structure and health. All pruning shall be in accordance with the current version of the International Society of Arboriculture Best Management Practices-Tree Pruning and ANSI A300-Part 1 Tree, Shrub and Other Woody Plant Management-Standard Practices, (Pruning).

Public nuisance, means any tree, shrub, plant or part thereof growing in, or overhanging, a public street or right-of-way, interfering with the use of any public street or public place in the Town, or tree which, in the opinion of the Director, endangers the life, health, safety, comfort or property of any persons using such public street, or in such public place, because of the tree's or shrub's location, condition of its limbs, roots or trunk, or because of its diseased condition, is hereby declared to be a public nuisance.

Public place means any road or street, or public school, or place of public assemblage, or real property, building, or other space or area which is open to public access, and which is under public control, or maintained at public expense, or which the Town or the County of Santa Clara, or the State of California, or the United States, as the case may be, owns some or all interest or which it leases.

Public street means all or any portion of territory within the Town set apart and designated for the use of the public as a thoroughfare for travel, including the sidewalks, curb and gutter.

Remove means any of the following: (1) Complete removal, such as cutting to the ground or extraction, of a protected tree or one (1) of its multi-trunks; (2) Taking any action foreseeably leading to the death of a tree or permanent damage to its health; including but not limited to severe pruning, cutting, girdling, poisoning, overwatering, unauthorized relocation or transplanting of a tree, or trenching, excavating, altering the grade, or paving within the dripline area of a tree.

Severe pruning means topping or removal of foliage or significant scaffold limbs or large diameter branches so as to cause permanent damage and/or disfigurement of a tree, and/or which does not meet specific pruning goals and objectives as set forth in the current version of the International Society of Arboriculture Best Management Practices-Tree Pruning and ANSI A300-Part 1 Tree, Shrub and Other Woody Plant Management-Standard Practices, (Pruning). Severe Pruning shall also include pruning as described in section 29.10.1010(3) of this chapter.

Shrub means a bushy, woody plant, usually with several permanent stems, and usually not over fifteen (15) feet high at maturity.

Significant impact on a property from a tree means an unreasonable interference with the normal and intended use of the property. In determining whether there is a significant impact, the typical longevity of the subject tree species, the size of the tree relative to the property, and whether the condition can be corrected shall be considered. Normal maintenance, including but not limited to pruning not requiring a permit under this division, and leaf removal and minor damage to paving or fences shall not be considered when making a determination of significant impact.

Street tree means a tree in a public place, or along or within a public street or right-of-way.

Topping means the practice of cutting back large diameter branches of a tree, including but not limited to cutting of a central leader, to some predetermined lower height to reduce the overall height of the tree, where the remaining buds, stubs or lateral branches are not large enough to assume a terminal role.

Tree means a woody perennial plant characterized by having a main stem or trunk, or a multi stemmed trunk system with a more or less definitely formed crown, and is usually over ten (10) feet high at maturity.

Tree canopy replacement standard means a replacement tree formula to mitigate removal of a protected tree. The standard is based on measuring the widest distance across the canopy of a tree for the purpose of determining the mitigating size and number of replacement trees.

Tree protection zone (TPZ) means the area of a temporary fenced tree enclosure under the tree's dripline or as specified in a report prepared by a certified or consulting arborist. The TPZ is a restricted activity zone before and after construction where no soil disturbance is permitted unless approved and supervised by the certified or consulting arborist.

Tree Risk Rating means a categorization of risk based on an assessment of the likelihood of failure and impact and the consequences such failure and impact would have on life, property, utilities, or essential transportation systems. For purposes of this division, Tree Risk Rating shall be the rating of tree risk as provided for in the International Society of Arboriculture (ISA) Tree Risk Assessment Best Management Practices Tree Risk Rating Matrix, which categorizes risk as Extreme, High, Moderate or Low.

Tree value standard means the method of appraising a tree's value to a property using the Trunk Formula Method or Replacement Cost Method as described in the most recent edition of the Guide for Plant Appraisal published by the Council of Tree and Landscape Appraisers (CTLA) and the Species Classification and Group Assignment by the Western Chapter of the International Society of Arboriculture (ISA).

Trunk means the primary structural woody part of the tree beginning at and including the trunk flare and extending up into the crown from which scaffold branches grow.

Trunk flare means the area at the base of the plant's trunk where it broadens to form roots and is the transition area between the root system and the trunk.

(Ord. No. 2240, § I(Exh. B), 6-2-15; Ord. No. 2303, § II, 2-4-20; Ord. No. 2331, § 1, 5-3-22)

Sec. 29.10.0960. Scope of protected trees.

This division shall apply to every property owner and to every person, corporation, partnership, sole proprietorship or other entity responsible for removing, maintaining or protecting a tree. The trees protected by this division are:

- (1) All trees which have a twelve-inch or greater diameter (thirty-seven and one-half-inch circumference) of any trunk or in the case of multi-trunk trees, a total of eighteen inches or greater diameter (fifty-six and one-half-inch circumference) of the sum of all trunks, where such trees are located on developed residential property.
- (2) All trees which have an eight-inch or greater diameter (twenty-five-inch circumference) of any trunk or in the case of multi-trunk trees, a total of eight inches or greater diameter (twenty-five-inch circumference) of the sum of all trunks, where such trees are located on developed Hillside residential property.
- (3) All trees of the following species which have an eight-inch or greater diameter (twenty-five-inch circumference) located on developed residential property:
 - a. Blue Oak (*Quercus douglasii*);
 - b. Black Oak (*Quercus kelloggii*);
 - c. California Buckeye (*Aesculus californica*);
 - d. Pacific Madrone (*Arbutus menziesii*).

-
- (4) All trees which have a four-inch or greater diameter (twelve and one half-inch circumference) of any trunk, when removal relates to any review for which zoning approval or subdivision approval is required.
 - (5) Any tree that existed at the time of a zoning approval or subdivision approval and was a specific subject of such approval or otherwise covered by subsection (6) of this section (e.g., landscape or site plans).
 - (6) Any tree that was required by the Town to be planted or retained by the terms and conditions of a development application, building permit or subdivision approval in all zoning districts, tree removal permit or code enforcement action.
 - (7) All trees, which have a four-inch or greater diameter (twelve and one half-inch circumference) of any trunk and are located on property other than developed residential property.
 - (8) All publicly owned trees growing on Town lands, public places or in a public right-of-way easement, which have a four-inch or greater diameter (twelve and one-half-inch circumference) of any trunk.
 - (9) A protected tree shall also include a stand of trees, the nature of which makes each dependent upon the other for the survival of the stand.
 - (10) The following trees shall also be considered protected trees and shall be subject to the pruning permit requirements set forth in section 29.10.0982 and the public noticing procedures set forth in section 20.10.0994:
 - a. Heritage trees;
 - b. Large protected trees.

(Ord. No. 2240, § I(Exh. B), 6-2-15)

Sec. 29.10.0965. Prohibitions.

Except as provided in section 29.10.0970, it shall be unlawful:

- (1) To remove or cause to be removed any protected tree in the Town without first obtaining a permit pursuant to this chapter.
- (2) To prune, trim, cut off, or perform any work, on a single occasion or cumulatively, over a three-year period, affecting twenty-five (25) percent or more of any protected tree without first obtaining a permit pursuant to this chapter.
- (3) To prune, trim, or cut any branch or root greater than four (4) inches in diameter (twelve and one-half (12.5) inches in circumference) of a Heritage tree or large protected tree without first obtaining a permit pursuant to this chapter.
- (4) To conduct severe pruning as defined in section 29.10.0955 without first obtaining a permit pursuant to this chapter.
- (5) For any person or business entity engaged in the business of removing trees or tree care to perform work requiring a permit under this division without first obtaining a permit under this division. The permit shall be posted on-site at all times during the removal or permitted pruning of a tree and must be made available upon request from the Chief of Police, Code Compliance Officer, Director of Parks and Public Works Department, or their designee. After a second violation, the Los Gatos business license of the violating person or entity shall be suspended for a period of one (1) year.

(Ord. No. 2240, § I(Exh. B), 6-2-15; Ord. No. 2331, § 1, 5-3-22)

Sec. 29.10.0970. Exceptions.

The following trees are excepted from the provisions of this division and may be removed or severely pruned without Town approval or issuance of a tree removal permit:

- (1) A fruit or nut tree that is less than eighteen (18) inches in diameter (fifty-seven-inch circumference).
- (2) Any of the following trees that are less than twenty-four (24) inches in diameter (seventy-five (75) inches in circumference):
 - a. Black Acacia (*Acacia melanoxylon*)
 - b. Tulip Tree (*Liriodendron tulipifera*)
 - c. Tree of Heaven (*Ailanthus altissima*)
 - d. Blue Gum Eucalyptus (*E. globulus*)
 - e. Red Gum Eucalyptus (*E. camaldulensis*)
 - f. Other Eucalyptus (*E. spp.*)-Hillsides only
 - g. Palm (except *Phoenix canariensis*)
 - h. Privet (*Ligustrum lucidum*)
- (3) Any removal or maintenance of a tree to conform with the implementation and maintenance of Defensible Space per Chapter 9 - Fire Prevention and Protection with the exception of any tree listed in subcategories (3) and (10) of Section 29.10.0960 - Scope of Protected Trees.

(Ord. No. 2240, § I(Exh. B), 6-2-15; Ord. No. 2303, § II, 2-4-20)

Sec. 29.10.0975. Emergency action.

A protected tree may be removed or severely pruned without a permit where it presents an imminent danger to life, property, utilities or essential transportation systems and a Tree Risk Rating of Extreme or High is present. In such event, the property owner or representative shall be responsible for the following:

- (1) Notify the Town Parks and Public Works Department during business hours or the Police Department after business hours and request authorization of the proposed emergency action, including removal or severe pruning.
- (2) Emergency action may be authorized by the Director, Town Manager, Parks and Public Works Director, Town Arborist or their designees, or a member of the police or fire department or other emergency personnel when the situation and conditions warrant immediate action to protect life or property and other Town officials are unavailable.
- (3) No later than seventy-two (72) hours after the emergency action has been taken the property owner shall submit photo documentation and written verification to the Town confirming the emergency condition and describing the action taken.

If the Director determines that the condition was not reasonably determined to have been an emergency requiring immediate action, the person responsible for removing or damaging the protected tree shall be subject to fines and penalties as set forth in section 29.10.1025.

(Ord. No. 2240, § I(Exh. B), 6-2-15)

Sec. 29.10.0980. Applications for a tree removal or severe pruning permit.

Applications for a protected tree removal or severe pruning permit for trees on private property shall be available from and filed with the Town as indicated on the application. Application submittals for the removal of trees on public property (street trees) are provided for in section 26.10.060 of the Town Code. Applications for tree removal or severe pruning on private property may be granted, denied or granted with conditions. Application submittals for removal or severe pruning of trees on private property shall include the following minimum information for staff review:

- (1) A completed tree removal application form, signed by the property owner.
- (2) A written explanation of why each tree(s) should be removed or pruned and how it meets the Town's Standards of Review.
- (3) Photograph(s) of the tree(s).
- (4) If required by the Director, a certified or consulting arborist's written assessment of the tree's disposition shall be provided for review by the Town. The report shall be signed by the arborist and include tree size (diameter, height, crown spread); location on the site; numbered on a site plan or arborist's tree survey (if there is more than one (1) tree); condition of health; condition of structure; and if tree risk findings apply, a Tree Risk Assessment and Rating must be completed using the most recent version of the Tree Risk Assessment Best Management Practices or any successor document published by the International Society of Arboriculture. Other information, images, etc. may be included in the report.
- (5) If structural damage to a building, major landscape feature, or appurtenance, including utilities is the basis for the request, a report from a licensed architect or engineer may also be required in addition to an arborist report. This additional report shall describe what modifications to buildings, structures, improvements or utilities would be required to mitigate the damage(s) directly caused by the tree.
- (6) Payment of permit fee, as established by Town resolution.

(Ord. No. 2240, § I(Exh. B), 6-2-15)

Sec. 29.10.0982. Applications for heritage and large protected tree pruning permit.

A pruning permit is required where pruning of branches or roots greater than four (4) inches in diameter is proposed for any Heritage tree or large protected tree. Applications shall be available from and filed with the Town. Applications for pruning may be granted, denied or granted with conditions. Application submittals under this section shall include the following minimum information for staff review:

- (1) A completed pruning permit application, signed by the property owner.
- (2) A written description of the proposed pruning including the pruning objectives and pruning methods to be used consistent with International Society of Arboriculture Best Management Practices-Tree Pruning and ANSI A300-Part 1 Tree, Shrub and Other Woody Plant Management-Standard Practices, (Pruning).
- (3) Photographs of the tree indicating as best possible where pruning is to occur.
- (4) If required by the Director, a certified or consulting arborist's written report describing the proposed pruning.
- (5) If structural damage to a building, major landscape feature, or appurtenance, including utilities is the basis for the request, a report from a licensed architect or engineer may be required in addition to an

arborist report. This additional report shall describe what modifications to buildings, structures, improvements or utilities would be required to mitigate the damages directly caused by the tree.

- (6) Payment of permit fee, as established by Town resolution.

(Ord. No. 2240, § I(Exh. B), 6-2-15)

Sec. 29.10.0985. Determination and conditions of permit.

The Director shall determine whether to grant a permit. The Director may consult with other Town departments or outside agencies at his/her discretion. When a development application for any zoning approval, or subdivision of land, including lot line adjustment, is under consideration by the Planning Commission, the determination on the tree removal permit shall be made concurrently by the Planning Commission with the related matter. The Director or the deciding body may impose, except when removal is permitted if the tree is dead or a Tree Risk Rating of Extreme or High is present, as a condition on which a protected tree removal permit is granted that two (2) or more replacement trees of a species and a size designated by the Director or designee, shall be planted in the following order of preference:

- (1) Two (2) or more replacement trees, of a species and size designated by the Director, shall be planted on the subject private property. Table 3-1, Tree Canopy-Replacement Standard shall be used as a basis for this requirement. The person requesting the permit shall pay the cost of purchasing and planting the replacement trees.
- (2) If a tree or trees cannot be reasonably planted on the subject property, an in-lieu payment in an amount set forth by the Town Council by resolution shall be paid to the Town Tree Replacement Fund to:
 - a. Add or replace trees on public property in the vicinity of the subject property; or
 - b. Add or replace trees or landscaping on other Town property; or
 - c. Support the Town's urban forestry management program.

Table 3-1 — Tree Canopy — Replacement Standard

Canopy Size of Removed Tree¹	Replacement Requirement^{2, 4}	Single Family Residential Replacement Option^{3, 4}
10 feet or less	Two 24-inch box trees	Two 15-gallon trees
More than 10 feet to 25 feet	Three 24-inch box trees	Three 15-gallon trees
More than 25 feet to 40 feet	Four 24-inch box trees; or Two 36-inch box trees	Four 15-gallon trees
More than 40 feet to 55 feet	Six 24-inch box trees; or Three 36-inch box trees	Not Available
Greater than 55 feet	Ten 24-inch box trees; or Five 36-inch box trees	Not Available

Notes

¹ To measure an asymmetrical canopy of a tree, the widest measurement shall be used to determine canopy size.

² Often, it is not possible to replace a single large, older tree with an equivalent tree(s). In this case, the tree may be replaced with a combination of both the Tree Canopy Replacement Standard and in-lieu payment in an amount set forth by Town Council resolution paid to the Town Tree Replacement Fund.

³ Single Family Residential Replacement Option is available for developed single family residential lots under n thousand (10,000) square feet that are not subject to the Town's Hillside Development Standards and Guidelines. All fifteen-gallon trees must be planted on-site. Any in-lieu fees for single family residential shall be based on twenty-four-inch box tree rates as adopted by Town Council.

⁴ Replacement Trees shall be approved by the Town Arborist and shall be of a species suited to the available planting location, proximity to structures, overhead clearances, soil type, compatibility with surrounding canopy and other relevant factors. Replacement with native species shall be strongly encouraged but is required for Hillside properties, as per section 29.10.0987, Special Provisions Hillside, with tree species per Hillside Development Standards and Guidelines Appendix A.

(Ord. No. 2240, § I(Exh. B), 6-2-15; Ord. No. 2331, § 1, 5-3-22)

Sec. 29.10.0987. Special provisions-hillside

The Town of Los Gatos recognizes its hillside as an important natural resource and sensitive habitat which is also a key component of the Town's identity, character and charm. In order to maintain and encourage restoration of the hillside environment to its natural state, the Town has established the following special provisions for tree removal and replacement in the hillside:

- (1) All protected trees located thirty (30) or more feet from the primary residence that are removed shall be replaced with native trees listed in Appendix A Recommended Native Trees for Hillside Areas of the Town of Los Gatos Hillside Development Standards and Guidelines (HDS&G).
- (2) All protected trees located within thirty (30) feet of the primary residence that are removed shall be replaced as follows:
 - (a) If the removed tree is a native tree listed in Appendix A of the HDS&G, it shall only be replaced with a native tree listed in Appendix A of the HDS&G.
 - (b) If the removed tree is not listed in Appendix A, it may be replaced with a tree listed in Appendix A, or replaced with another species of tree as approved by the Director.
 - (c) Replacement trees listed in Appendix A may be planted anywhere on the property.
 - (d) Replacement trees not listed in Appendix A may only be planted within thirty (30) feet of the primary residence.
- (3) Replacement requirements shall comply with the requirements in Table 3-1, Tree Canopy—Replacement Standard of this Code.
- (4) Property owners should be encouraged to retain dead or declining trees where they do not pose a safety or fire hazard, in order to foster wildlife habitat and the natural renewal of the hillside environment.

(Ord. No. 2240, § I(Exh. B), 6-2-15)

Sec. 29.10.0990. Standards of review.

The Director or deciding body shall review each application for a tree removal permit required by this division using the following standards of review. The standards of review are intended to serve as criteria for evaluating tree removal requests and the basis upon which the Director or the deciding body will subsequently determine whether or not one (1) or more of the Required Findings listed in section 29.10.0992 can be made.

-
- (1) The condition of the tree or trees with respect to: (a) disease, (b) imminent danger of falling, (c) structural failure, (d) proximity to existing or proposed structures, (e) structural damage to a building, or (f) a public nuisance caused by a tree. The International Society of Arboriculture (ISA) Best Management Practices for Tree Risk Assessment shall be used where appropriate in determining a Tree Risk Rating.
 - (2) The condition of the tree giving rise to the permit application cannot be reduced to a less than significant level by the reasonable application of preservation, preventative measures or routine maintenance.
 - (3) The removal of the tree(s) will not result in a density of trees or tree cover that is inconsistent with the neighborhood.
 - (4) The number of trees the particular parcel can adequately support according to good urban forestry practices, or whether a protected tree is a detriment to or crowding another protected tree.
 - (5) In connection with a proposed subdivision of land into two (2) or more parcels, the removal of a protected tree is unavoidable due to restricted access to the property or deemed necessary to repair a geologic hazard (landslide, repairs, etc.).
 - (6) Except for properties located within the hillsides, the retention of a protected tree would result in reduction of the otherwise-permissible building envelope by more than twenty-five (25) percent.
 - (7) The Hillside Development Standards and Guidelines.
 - (8) Removal of the protected tree(s) will not result in a substantial adverse change in the site's aesthetic and biological significance; the topography of the land and the effect of the removal of the tree on erosion, soil retention, or diversion or increased flow of surface waters.
 - (9) Whether the Protected Tree has a significant impact on the property. Significant impact from a tree is defined in section 29.10.0955. Definitions.
 - (10) The species, size (diameter, canopy, height), estimated age and location on the property of the protected tree.

(Ord. No. 2240, § I(Exh. B), 6-2-15)

Sec. 29.10.0992. Required findings.

The Director, Director's designee, or deciding body shall approve a protected tree removal permit, severe pruning permit, or pruning permit for Heritage trees or large protected trees only after making at least one (1) of the following findings:

- (1) The tree is dead, severely diseased, decayed or disfigured to such an extent that the tree is unable to recover or return to a healthy and structurally sound condition.
- (2) The tree has a tree risk rating of Extreme or High on the ISA Tree Risk Rating Matrix as set forth in the ISA Tree Risk Assessment Best Management Practices, or successor publication.
- (3) The tree is crowding other protected trees to the extent that removal or severe pruning is necessary to ensure the long-term viability of adjacent and more significant trees.
- (4) The retention of the tree restricts the economic enjoyment of the property or creates an unusual hardship for the property owner by severely limiting the use of the property in a manner not typically experienced by owners of similarly situated properties, and the applicant has demonstrated to the satisfaction of the Director or deciding body that there are no reasonable alternatives to preserve the tree.

-
- (5) The tree has, or will imminently, interfere with utility services where such interference cannot be controlled or remedied through reasonable modification, relocation or repair of the utility service or the pruning of the root or branch structure of the tree; or where removal or pruning is required by a public utility to comply with California Public Utility Commission (CPUC) or Federal Energy Regulatory Commission (FERC) rules or regulations.
 - (6) The tree has caused or may imminently cause significant damage to an existing structure that cannot be controlled or remedied through reasonable modification of the root or branch structure of the tree.
 - (7) Except for properties within the hillsides, the retention of the protected tree would result in reduction of the otherwise-permissible building envelope by more than twenty-five (25) percent.
 - (8) The removal of the tree is unavoidable due to restricted access to the property.
 - (9) The removal of the tree is necessary to repair a geologic hazard.
 - (10) The removal of the tree and replacement with a more appropriate tree species will enhance the Town's urban forest.
 - (11) The removal of the tree is necessary to conform with the implementation and maintenance of Defensible Space per Chapter 9 - Fire Prevention and Protection per direction by the Fire Chief or his/her designee.

(Ord. No. 2240, § I(Exh. B), 6-2-15; Ord. No. 2303, § II, 2-4-20)

Sec. 29.10.0994. Additional procedures for heritage and large protected tree removal or pruning permits.

- (1) These procedures are established for the review of Heritage tree and large protected tree removal or pruning permit applications where a permit is requested for a tree that is not dead, severely disfigured, profoundly diseased, or an Extreme or High Risk on the ISA Tree Risk Rating Matrix, and where findings (1) or (2) above cannot be made.
- (2) In addition to the fee and application materials required by section 29.10.0980 or section 29.10.0982, the applicant will be required to submit one (1) set of stamped, addressed envelopes for neighboring residents and property owners. The Planning Department will assist the applicant in determining the properties to be notified (all properties abutting the applicant's parcel, properties directly across the street and the two (2) parcels on each side of it).
- (3) The Director shall review the application using the Standards of Review set forth in section 29.10.0990 and the Required Findings set forth in section 29.10.0992.
- (4) If the Director intends to approve the application, a "Notice of Pending Issuance of Tree Removal or Pruning Permit" will be mailed to neighboring residents and property owners including any applicable conditions, and required tree replacement requirements. The notice will describe the proposed tree removal or pruning, and that the permit will be issued unless there is an objection. Any interested party shall have ten (10) days from the date of the "Notice of Pending Issuance of Tree Removal or Pruning Permit" to notify the Director in writing of any concerns or problems.
- (5) If a written objection is not filed within the ten-day period, the permit will be issued. If a written objection is filed and a resolution is found that meets all parties' concerns then the permit will also be issued.
- (6) If an objection is filed in a timely manner and a mutually acceptable resolution cannot be agreed upon with the Director within ten (10) days, the objecting party shall be so advised and shall be provided an additional five (5) days to file a formal appeal of the tree removal or pruning permit with the Town, which shall be

scheduled for consideration by the Planning Commission. All property owners and residents notified under section 29.10.0994(4) shall be notified of the Planning Commission meeting.

- (7) Trees removed illegally or damaged shall require the issuance of a retroactive tree removal permit. Once this retroactive permit is issued, and all conditions fulfilled, along with any assessed monetary penalties paid and replacement requirements completed, then any Stop Work Order shall be removed.

(Ord. No. 2240, § I(Exh. B), 6-2-15; Ord. No. 2331, § 1, 5-3-22)

Sec. 29.10.0995. Disclosure of information regarding existing trees.

- (a) Any application for a discretionary development approval, or for a building, grading or demolition permit where no discretionary development approval is required, shall be accompanied by a signed tree disclosure statement by the property owner or authorized agent which discloses whether any protected trees exist on the property which is the subject of the application, and describing each such tree, its species, size (diameter, canopy dripline area, height) and location. This requirement shall be met by including the following information on plans submitted in connection with the development application.
- (b) The location of all trees on the site and in the adjacent public right-of-way which are within thirty (30) feet of the area proposed for development, and trees located on adjacent property with canopies overhanging the project site, shall be shown on the plans, identified by species, size (diameter, canopy, dripline area, height), and location.
- (c) Within the dripline area or area that would affect a protected tree, the location of shrubs and other vegetation subject to development shall be shown on the plans.
- (d) The director may require submittal of such other information as is necessary to further the purposes of this division including but not limited to photographs.
- (e) Disclosure of information pursuant to this section shall not be required when the development for which the approval or permit is sought does not involve any change in building footprint nor any grading, trenching or paving.
- (f) Knowingly or negligently providing false or misleading information in response to this disclosure requirement shall constitute a violation of this division.

(Ord. No. 2240, § I(Exh. B), 6-2-15)

Sec. 29.10.1000. New property development.

- (a) A tree survey shall be conducted prior to submittal of any development application proposing the removal of or impact to one (1) or more protected trees. The development application shall include a Tree Survey Plan and Tree Preservation Report based on this survey. The tree survey inventory numbers shall correspond to a numbered metal tag placed on each tree on site during the tree survey. Tree survey inventory number tags in place from previous tree surveys, if easily visible, shall be retained and used in any new tree survey report. The tree survey plan shall be prepared by a certified or consulting arborist, and shall include the following information:
 - (1) Location of all existing trees on the property as described in section 29.10.0995;
 - (2) Identify all trees that could potentially be affected by the project (directly or indirectly-immediately or in long term), such as upslope grading or compaction outside of the dripline;
 - (3) Notation of all trees classified as protected trees;

-
- (4) In addition, for trees four (4) inches in diameter or larger, the plan shall specify the precise location of the trunk and crown spread, and the species, size (diameter, height, crown spread) and condition of the tree.
- (b) The tree survey plan shall be reviewed by the Town's consulting arborist who shall, after making a field visit to the property, indicate in writing or as shown on approved plans, which trees are recommended for preservation (based on a retention rating of high/moderate/low) using, as a minimum, the Standards of Review set forth in section 29.10.0990. This plan shall be made part of the staff report to the Town reviewing body upon its consideration of the application for new property development;
- (c) When development impacts are within the dripline of or will affect any protected tree, the applicant shall provide a tree preservation report prepared by a certified or consulting arborist. The report, based on the findings of the tree survey plan and other relevant information, shall be used to determine the health and structure of existing trees, the effects of the proposed development and vegetation removal upon the trees, recommendations for specific precautions necessary for their preservation during all phases of development (demolition, grading, during construction, landscaping); and shall also indicate which trees are proposed for removal. The tree preservation report shall stipulate a required tree protection zone (TPZ) for trees to be retained, including street trees, protected trees and trees whose canopies are hanging over the project site from adjacent properties. The TPZ shall be fenced as specified in section 29.10.1005:
- (1) The final approved tree preservation report shall be included in the building permit set of development plans and printed on a sheet titled: Tree Preservation Instructions (Sheet T-1). Sheet T-1 shall be referenced on all relevant sheets (civil, demolition, utility, landscape, irrigation) where tree impacts from improvements may be shown to occur;
- (2) The Town reviewing body through its site and design plan review shall endeavor to protect all trees recommended for preservation by the Town's consulting arborist. The Town reviewing body may determine if any of the trees recommended for preservation should be removed, if based upon the evidence submitted the reviewing body determines that due to special site grading or other unusual characteristics associated with the property, the preservation of the tree(s) would significantly preclude feasible development of the property as described in section 29.10.0990;
- (3) Approval of final site or landscape plans by the appropriate Town reviewing body shall comply with the following requirements and conditions of approval:
- a. The applicant shall, within ninety (90) days of final approval or prior to issuance of a grading or building permit, whichever occurs first, secure an appraisal of the condition and value of all trees included in the tree report affected by the development that are required to remain within the development using the Tree Value Standard methodology as set forth in this Chapter. The appraisal of each tree shall recognize the location of the tree in the proposed development. The appraisal shall be performed in accordance with the current edition of the Guide for Plant Appraisal published by the Council of Tree and Landscape Appraisers (CTLA) and the Species and Group Classification Guide published by the Western Chapter of the International Society of Arboriculture. The appraisal shall be performed at the applicant's expense, and the appraisal shall be subject to the Director's approval.
- b. The site or landscape plans shall indicate which trees are to be removed. However, the plans do not constitute approval to remove a tree until a separate permit is granted. The property owner or applicant shall obtain a protected tree removal permit, as outlined in section 29.10.0980, for each tree to be removed to satisfy the purpose of this division.
- (d) Prior to acceptance of proposed development or subdivision improvements, the developer shall submit to the Director a final tree preservation report prepared by a certified or consulting arborist. This report shall consider all trees that were to remain within the development. The report shall note the trees' health in relation to the initially reported condition of the trees and shall note any changes in the trees' numbers or

physical conditions. The applicant, or their successors, will then be responsible for the removal or loss of any tree at any time during development that was not previously approved for removal. For protected trees which were removed, the developer shall pay a penalty in the amount of the appraised value of such tree in addition to replacement requirements contained in section 29.10.0985 of this Code. The applicant shall remain responsible for the health and survival of all trees within the development for a period of five (5) years following acceptance of the public improvements of the development or certificate of occupancy.

- (e) Prior to issuance of any demolition, grading or building permit, the applicant or contractor shall submit to the Building Department a written statement and photographs verifying that the required tree protection fence is installed around street trees and protected trees in accordance with the tree preservation report.
- (f) If required by the Director and conditioned as part of a discretionary approval, a security guarantee shall be provided to the Town. Prior to the issuance of any permit allowing construction to begin, the applicant shall post cash, bond or other security satisfactory to the Director, in the penal sum of five thousand dollars (\$5,000.00) for each tree required to be preserved, or twenty-five thousand dollars (\$25,000.00), whichever is less. The cash, bond or other security shall be retained for a period of one (1) year following acceptance of the public improvements for the development and shall be forfeited in an amount equal to five thousand dollars (\$5,000.00) per tree as a civil penalty in the event that a tree or trees required to be preserved are removed, destroyed or severely damaged.
- (g) An applicant with a proposed development which requires underground utilities shall avoid the installation of said utilities within the dripline of existing trees whenever possible. In the event that this is unavoidable, all trenching shall be done using directional boring, air-spade excavation or by hand, taking extreme caution to avoid damage to the root structure. Work within the dripline of existing trees shall be supervised at all times by a certified or consulting arborist.
- (h) It shall be a violation of this division for any property owner or agent of the owner to fail to comply with any development approval condition concerning preservation, protection, and maintenance of any protected tree.

(Ord. No. 2240, § I(Exh. B), 6-2-15; Ord. No. 2331, § 1, 5-3-22)

Sec. 29.10.1005. Protection of trees during construction.

- (a) Protective tree fencing shall specify the following:
 - (1) Size and materials. Six (6) foot high chain link fencing, mounted on two-inch diameter galvanized iron posts, shall be driven into the ground to a depth of at least two (2) feet at no more than ten-foot spacing. For paving area that will not be demolished and when stipulated in a tree preservation plan, posts may be supported by a concrete base.
 - (2) Area type to be fenced. Type I: Enclosure with chain link fencing of either the entire dripline area or at the tree protection zone (TPZ), when specified by a certified or consulting arborist. Type II: Enclosure for street trees located in a planter strip: chain link fence around the entire planter strip to the outer branches. Type III: Protection for a tree located in a small planter cutout only (such as downtown): orange plastic fencing shall be wrapped around the trunk from the ground to the first branch with two-inch wooden boards bound securely on the outside. Caution shall be used to avoid damaging any bark or branches.
 - (3) Duration of Type I, II, III fencing. Fencing shall be erected before demolition, grading or construction permits are issued and remain in place until the work is completed. Contractor shall first obtain the approval of the project arborist on record prior to removing a tree protection fence.

-
- (4) Warning sign. Each tree fence shall have prominently displayed an eight and one-half-inch by eleven-inch sign stating: "Warning—Tree Protection Zone—This fence shall not be removed and is subject to penalty according to Town Code 29.10.1025."
- (b) All persons, shall comply with the following precautions:
- (1) Prior to the commencement of construction, install the fence at the dripline, or tree protection zone (TPZ) when specified in an approved arborist report, around any tree and/or vegetation to be retained which could be affected by the construction and prohibit any storage of construction materials or other materials, equipment cleaning, or parking of vehicles within the TPZ. The dripline shall not be altered in any way so as to increase the encroachment of the construction.
 - (2) Prohibit all construction activities within the TPZ, including but not limited to: excavation, grading, drainage and leveling within the dripline of the tree unless approved by the Director.
 - (3) Prohibit disposal or depositing of oil, gasoline, chemicals or other harmful materials within the dripline of or in drainage channels, swales or areas that may lead to the dripline of a protected tree.
 - (4) Prohibit the attachment of wires, signs or ropes to any protected tree.
 - (5) Design utility services and irrigation lines to be located outside of the dripline when feasible.
 - (6) Retain the services of a certified or consulting arborist who shall serve as the project arborist for periodic monitoring of the project site and the health of those trees to be preserved. The project arborist shall be present whenever activities occur which may pose a potential threat to the health of the trees to be preserved and shall document all site visits.
 - (7) The Director and project arborist shall be notified of any damage that occurs to a protected tree during construction so that proper treatment may be administered.

(Ord. No. 2240, § I(Exh. B), 6-2-15)

Sec. 29.10.1010. Pruning and maintenance.

Tree pruning must not be done in a manner that is detrimental to the tree. Any action undertaken which intentionally or recklessly causes or tends to cause injury, death, or disfigurement to a tree is considered to be detrimental. Examples of actions which are detrimental to trees may include excessive cutting, poisoning, burning, over-watering, relocating, or transplanting a tree.

All tree pruning shall be in accordance with the current version of the International Society of Arboriculture Best Management Practices-Tree Pruning and ANSI A300-Part 1 Tree, Shrub and Other Woody Plant Management-Standard Practices, (Pruning) and any special conditions as determined by the Director. For developments, which require a tree preservation report, a certified or consulting arborist shall be in reasonable charge of all activities involving protected trees, including pruning, cabling and any other work if specified.

- (1) Any public utility installing or maintaining any overhead wires or underground pipes or conduits in the vicinity of a protected tree shall obtain written permission from the Director before performing any work, including pruning, which may cause injury to a protected tree (e.g. cable TV/fiber optic trenching, gas, water, sewer trench, etc.).
- (2) Pruning for clearance of utility lines and energized conductors shall be performed in compliance with the current version of the American National Standards Institute (ANSI) A300 (Part 1)-Pruning, Section 5.9 Utility Pruning. Using spikes or gaffs when pruning, except where no other alternative is available, is prohibited.
- (3) No person shall prune, trim, cut off, or perform any work, on a single occasion or cumulatively, over a three-year period, affecting twenty-five percent or more of the crown of any protected tree without

first obtaining a permit pursuant to this division except for pollarding of fruitless mulberry trees (*Morus alba*) or other species approved by the Town Arborist. Applications for a pruning permit shall include photographs indicating where pruning is proposed.

- (4) No person shall remove any Heritage tree or large protected tree branch or root through pruning or other method greater than four (4) inches in diameter (twelve and one-half (12.5) inches in circumference) without first obtaining a permit pursuant to this division.

(Ord. No. 2240, § I(Exh. B), 6-2-15; Ord. No. 2331, § 1, 5-3-22)

Sec. 29.10.1015. No limitation of authority.

Nothing in this division limits or modifies the existing authority of the Town under Division 29 of Title 29 (Zoning Regulations), Title 26 (Public Trees) or the Hillside Development Standards and Guidelines to require trees and other plants to be identified, retained, protected, and/or planted as conditions of the approval of development. In the event of conflict between provisions of this division and conditions of any permit or other approval granted pursuant to Chapter 29 or Chapter 26 of the Town Code or the Hillside Development Standards and Guidelines. The more protective requirements shall prevail.

(Ord. No. 2240, § I(Exh. B), 6-2-15)

Sec. 29.10.1020. Responsibility for enforcement.

The Town shall vigorously enforce the provisions of this Chapter. All officers and employees of the Town shall report violations of this division to the Director of Community Development. Whenever an Enforcement Officer as defined in section 1.30.015 of the Town Code determines that a violation of this Code has occurred, the Enforcement Officer shall have the authority to issue an administrative citation pursuant to the provisions of section 1.30.020 of the Town Code.

Whenever an Enforcement Officer charged with the enforcement of this Code determines that a violation of that provision has occurred, the Enforcement Officer shall have the authority to issue an administrative citation to any person responsible for the violation.

(Ord. No. 2240, § I(Exh. B), 6-2-15; Ord. No. 2331, § 1, 5-3-22)

Sec. 29.10.1025. Enforcement—Remedies for violation.

In addition to all other remedies set forth in this code or otherwise provided by law, the following remedies shall be available to the Town for violation of this division. While these remedies can be levied against any person, property owner, firm or corporation who intentionally or negligently violates any of the provisions of this chapter or any permit issued pursuant to it, or who fails to comply with any condition of any discretionary permit which relates to protected tree preservation, it is not the Town's intention to pursue such remedies against homeowners who unintentionally have minor violations of this chapter. These remedies are reserved for those entities who should have knowledge of such regulations from previous interactions or activity with the Town, such as information given during a previous or current application, and have nevertheless intentionally violated this chapter:

- (1) *Tree removals in absence of or in anticipation of development.*
 - a. If a violation occurs in the absence of or prior to proposed development, then discretionary applications and/or building permit applications will not be accepted or processed by the Town until the violation has been remedied to the reasonable satisfaction of the Director. Mitigation

measures as determined by the Director may be imposed as a condition of any subsequent application approval or permit for development on the subject property. A mitigation plan shall include specific measures for the protection of any remaining trees on the property, and shall provide for the replacement of each hillside tree that was removed or damaged illegally with a new tree(s) in the same location(s) as those illegally removed or damaged tree(s). In-lieu fees shall not be an option for this violation. The replacement ratio shall be at a greater ratio than that required in accordance with the standards set forth in section 29.10.0985 of this division. If the court or the Director directs a replacement tree or trees to be planted as part of the remedy for the violation, the trees shall be permanently maintained in a good and healthy condition. The property owner shall execute a five-year written maintenance agreement with the Town. For those trees on public property, replacement is to be determined by the Director of Community Development or by the Director of Parks and Public Works.

- b. The second violation of any provisions in this division during the conduct by any person or business of a tree removal, landscaping, construction, or other business in the Town shall constitute grounds for a one (1) year suspension of any business license issued to such entity. The Town shall require the property owner to disclose the name and address of the violating business as a necessary condition for removal of any Stop Work Order issued by the Town.

(2) *Pending development applications.*

- a. Incomplete applications will not be processed further until the violation has been remedied. If an application has been deemed complete, it may be denied by the Director or forwarded to the Planning Commission with a recommendation for denial at the Director's discretion. Mitigation measures as determined by the director may be imposed as a condition of approval. A mitigation plan shall include specific measures for the protection of any remaining trees on the property, and shall provide for the replacement of each hillside tree that was removed or damaged illegally with a new tree(s) in the same location(s) as those illegally removed tree(s). In-lieu fees shall not be an option for this violation. The replacement ratio shall be at a greater ratio than that required in accordance with the standards set forth in section 29.10.0985 of this division. If the court or the Director directs a replacement tree or trees to be planted as part of the remedy for the violation, the trees shall be permanently maintained in a good and healthy condition. The property owner shall execute a five-year written maintenance agreement with the Town. For those trees on public property, replacement is to be determined by the Director of Community Development or by the Director of Parks and Public Works.
- b. The second violation of any provisions in this division during the conduct by any person or company of a tree removal, landscaping, construction, or other business in the Town shall constitute grounds for a one (1) year suspension of any business license issued to such entity. The Town shall require the property owner to disclose the name and address of the violating business as a necessary condition for removal of any Stop Work Order issued by the Town.

(3) *Projects under construction.*

- a. If a violation occurs during construction, the Town may issue a stop work order suspending and prohibiting further activity on the property pursuant to the grading, demolition, and/or building permit(s) (including construction, inspection, and issuance of certificates of occupancy) until a mitigation plan has been filed with and approved by the Director, agreed to in writing by the property owner(s) or the applicant(s) or both, and either implemented or guaranteed by the posting of adequate security in the discretion of the Director. A mitigation plan shall include specific measures for the protection of any remaining trees on the property, and shall provide for the replacement of each hillside tree that was removed illegally with a new tree(s) in the same location(s) as those illegally removed tree(s). In-lieu fees shall not be an option for this violation. The replacement ratio shall be at a greater ratio than that required in accordance with the

standards set forth in section 29.10.0985 of this division. If the court or the Director directs a replacement tree or trees to be planted as part of the remedy for the violation, the trees shall be permanently maintained in a good and healthy condition. The property owner shall execute a five-year written maintenance agreement with the Town. For those trees on public property, replacement is to be determined by the Director of Community Development or by the Director of Parks and Public Works.

- b. The second violation of any provisions in this division during the conduct by any person or company of a tree removal, landscaping, construction, or other business in the Town shall constitute grounds for a one (1) year suspension of any business license issued to such entity. The Town shall require the property owner to disclose the name and address of the violating business as a necessary condition for removal of any Stop Work Order issued by the Town
- (4) *Criminal penalties.* Notwithstanding section 29.20.950 relating to criminal penalty, any person who violates any provision of this chapter and is convicted of a misdemeanor shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment of not more than six (6) months or by both such fine and imprisonment. Each person convicted may be deemed guilty of a separate offense for every day and for every violation, as defined in Sec. 29.10.1031, during any portion of which any violation is committed.
- (5) *Civil penalties.* Notwithstanding section 29.20.950 and Section (4) above, relating to criminal penalty, any person, property owner, firm, or corporation who intentionally or negligently violates any of the provisions of this chapter or any permit issued pursuant to it, or who fails to comply with any condition of any discretionary permit which relates to protected tree preservation, shall be liable to pay the Town a civil penalty as prescribed in subsections a. through d.
- a. As part of any administrative and/or civil action brought by the Town, a hearing officer and/or court may assess against any person who commits, allows, or maintains a violation of any provision of this division an administrative and/or civil penalty in an amount not to exceed five thousand dollars (\$5,000.00) per violation. For damaged trees, in addition to civil penalties, the property owner will be required to obtain the services of an ISA certified arborist to determine the future viability of the tree and if salvageable, create a maintenance plan to restore the tree.
 - b. Where the violation has resulted in removal of a protected tree, the civil penalty shall be in an amount not to exceed five thousand dollars (\$5,000.00) per tree unlawfully removed, or the replacement value of each such tree, whichever amount is higher. If the tree removal is related to any development or subdivision then the civil penalties shall be the value of the tree times four, plus all related staff costs. Such amount shall be payable to the Town and deposited into the Tree Replacement Fund. Replacement value for the purposes of this section shall be determined utilizing the most recent edition of the Guide for Plant Appraisal, as prepared by the Council of Tree and Landscape Appraisers and the Species and Group Classification Guide published by the Western Chapter of the International Society of Arboriculture.
 - c. If the court or the Director directs a replacement tree or trees to be planted as part of the remedy for the violation, the trees shall be permanently maintained in a good and healthy condition. The property owner shall execute a five-year written maintenance agreement with the Town.
 - d. The cost of enforcing this division, which shall include all costs, staff time, and attorneys' fees.
- (6) *Injunctive relief.* A civil action may be commenced to abate, enjoin, or otherwise compel the cessation of such violation.
- (7) *Costs.* In any civil action brought pursuant to this division in which the Town prevails, the court shall award to the Town all costs of investigation and preparation for trial, the costs of trial, reasonable

expenses including overhead and administrative costs incurred in prosecuting the action, and reasonable attorney fees.

- (8) *Remedies not exclusive.* To the maximum extent permitted by law, administrative remedies specified in this chapter are in addition to and do not supersede or limit any and all other provided for herein shall be cumulative and not exclusive.

(Ord. No. 2240, § I(Exh. B), 6-2-15; Ord. No. 2331, § 1, 5-3-22)

Sec. 29.10.1030. Fees.

The fee, as adopted by Town Resolution, prescribed therefore in the municipal fee schedule shall accompany the removal or pruning permit application submitted to the Town for review and evaluation pursuant to this division.

(Ord. No. 2240, § I(Exh. B), 6-2-15)

Sec. 29.10.1031. Fees schedule for remediation of tree protection ordinance violations.

These monetary fines are in addition to any remediations described elsewhere in this section. Any person, firm or corporation, whether as principal, agent, employee or otherwise, violating any of the provisions of this chapter is guilty of a violation of the Town Code. Such person, firm or corporation shall be deemed to be guilty of a separate offense for each and every day during any portion of which any violation of this chapter is committed, continued, or permitted by such person and shall be punishable as herein provided. To expand, violating any portion of this chapter for any tree will count as one (1) violation. For instance, if a tree is excessively trimmed using illegal spikes, then two (2) violations are committed. If two (2) such violations were committed to two (2) trees, then that totals to four (4) separate violations. Violations would also include those remediations required by a Town's Consulting Arborist, to be accrued at the rate of one (1) violation/day for each and every requirement.

Each violation is subject to a fine of five hundred dollars (\$500.00). For continuing violations, the fee schedule is five hundred dollars (\$500.00) for the first day and one thousand dollars (\$1,000.00) for each subsequent day.

(Ord. No. 2331, § 1, 5-3-22)

Sec. 29.10.1035. Severability.

If any provision of this division or the application thereof to any person or circumstance is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect any other provision of this division which can be given effect without the invalid provision or application, and to this end the provisions of this division are declared to be severable.

(Ord. No. 2240, § I(Exh. B), 6-2-15)

Sec. 29.10.1040. Notices.

All notices required under this division shall conform to noticing provisions of the applicable Town Code.

(Ord. No. 2240, § I(Exh. B), 6-2-15)

Sec. 29.10.1045. Appeals.

Any interested person, as defined in section 29.10.020 of the Town Code, may appeal a decision of the director, including the one-year suspension of a business license, pursuant to this division in accordance with the procedures set forth in section 29.20.260 of the Town Code. All appeals shall comply with the public noticing provisions of section 29.20.450 of the Town Code.

(Ord. No. 2240, § I(Exh. B), 6-2-15; Ord. No. 2331, § 1, 5-3-22)

Sec. 29.10.1050. No liability upon the town.

Nothing in this chapter shall be deemed to impose any liability upon the Town or upon any of its officers or employees, nor to relieve the owner or occupant of any private property from the duty to keep in safe condition any trees and shrubs upon that private property or upon sidewalks and planting areas in front of that property.

(Ord. No. 2331, § 1, 5-3-22)

RESOLUTION 2002-25

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
GOVERNING THE DESIGN REVIEW PROCESS AND CLARIFYING
THE ROLES AND RESPONSIBILITIES OF THE TOWN PLANNING COMMISSION
AND ARCHITECTURAL CONSULTANT**

WHEREAS, the Town of Los Gatos Town Council has determined that there is a need to modify the Town's design review process; and

WHEREAS, a goal of the Town is to streamline the planning process; and

WHEREAS, the use of an architectural consultant will improve customer service while evolving projects to achieve architectural excellence; and

WHEREAS, Cannon Design Group (herein referred to as the "architectural consultant") has been hired to review the architecture for development proposals;

WHEREAS, the architectural consultant is highly qualified to review and critique architecture and will work with applicants to design projects that are compatible with their site and surroundings; and

RESOLVED, by the Town Council that the following policies shall govern the architectural review process:

- A. The architectural consultant will review plans and provide guidance to applicants to ensure plans are in compliance with applicable design standards and guidelines, specific plans and the General Plan. Reports on projects that are reviewed by the Planning Commission will include the recommendations of the architectural consultant and plans that have been revised to incorporate those recommendations.
- B. The Planning Commission must make one of the following findings to modify the consulting architect's recommendations:

- That the recommendations of the consulting architect were made based on erroneous information provided by the applicant.
 - That the consulting architect made a mistake of fact.
 - That there is compelling evidence, received through public testimony that there is a privacy or other neighborhood impact to warrant plan modification.
- C. The Planning Commission should give courteous regard and respect to the professional expertise of the consulting architect. Rather than focus on the design detail of proposed projects, the Planning Commission should look for trends in the design of proposed projects that reflect the need for changes to the design standards. When changes to design standards are needed, the Planning Commission should request that staff initiate changes as appropriate and return to the Planning Commission with revised design standards that address the areas of concern.
- D. Whenever possible, the Planning Commission should develop conditions of approval to address issues that surface during a public hearing rather than continuing an application and requiring an applicant to return with revised plans.

PASSED AND ADOPTED at a regular meeting of the Town Council held on the 4th day of March, 2002, by the following vote:

COUNCIL MEMBERS:

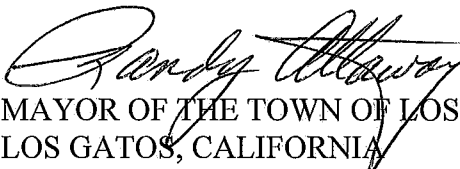
AYES: Steven Blanton, Sandy Decker, Steve Glickman, Joe Pirzynski,
Mayor Randy Attaway.

NAYS: None


ABSENT: None

ABSTAIN: None

SIGNED:


MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:


CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into on July 1, 2022 by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and Larry Cannon, CANNON DESIGN GROUP, ("Consultant"), whose address is 700 Larkspur Landing Circle, Suite 199, Larkspur, CA 94939. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desires to engage Consultant to review architecture and site design for development applications; revise design standards and guidelines as needed; consult with and meet with staff, applicants, and decision makers; and attend public meetings as needed.
- 1.2 The Consultant represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Consultant acknowledges Town has relied upon these warranties to retain Consultant.

II. AGREEMENTS

- 2.1 Scope of Services. Consultant shall provide services as described in the certain services listed below.

Administrative Duties

When needed by Town, provide architecture and site design review for development applications and make recommended changes as needed based on the Town's approved design standards and guidelines. This shall include evaluating plans for development proposals, reviewing site layout and architectural plans, conducting site visits, and/or identifying design recommendations and conditions of approval.

- a. When needed by Town, conduct site design review and review and critique the architecture for development applications, including additions, remodels, and new buildings.
- b. When needed by Town, conduct field investigations and develop recommendations for compliance with applicable design standards and guidelines, specific plans, and the General Plan, and prepare reports summarizing findings and recommendations (typically with a 10 to 15 day turnaround).

- c. When needed by Town, consult with staff and/or applicants to discuss recommendations or project specific issues.
- d. When needed by Town, conduct special studies or projects including but not limited to: updating the Town's design standards and guidelines; and preparation of a checklist for content of architectural plans for application packets.
- e. When needed by Town, attend meetings with Town staff, public officials, community leaders, developers, contractors, and the general public.
- f. When needed by Town, advise, support, and assist Town departments, committees, commissions, and Town Council. In addition, act as a liaison between Town and federal, state, and regional agencies.
- g. When needed by Town, attend Town Council, Planning Commission, and special study session meetings when: project applications with architectural or design issues are being considered; and architectural review processes or a design related document is being discussed.
- h. As requested by Town, provide copies of draft and final draft work products of reports and studies prepared for Town. Consultant shall provide electronic file copies of these documents as needed.

Other Miscellaneous Services

The Town may occasionally have the need for other services not specifically listed in this document that the Consultant has the necessary experience and capabilities to provide. Town may authorize Consultant to perform such selected services on an as-needed basis.

- 2.2 Term and Time of Performance. The services of Consultant are fixed for a five-year period that will commence upon the execution of the contract. At the end of this period, should the Town not renew the contract, the contract shall automatically expire. The individual time of performance schedule for each project referred to the Consultant is required to be performed as outlined in the scope of services section of this Agreement.
- 2.3 Compliance with Laws. The Consultant shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state, and local laws. Consultant represents and warrants to Town that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 Sole Responsibility. Consultant shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.

- 2.5 Information/Report Handling. All documents furnished to Consultant by the Town and all reports and supportive data prepared by Consultant under this Agreement are the Town's property and shall be delivered to the Town upon the completion of Consultant's services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Consultant shall not make any of these documents or information available to any individual or organization not employed by the Consultant or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Consultant pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Consultant in connection with other projects shall be solely at Town's risk, unless Consultant expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Consultant which is and has been confirmed in writing by Consultant to be a trade secret of Consultant.
- 2.6 Compensation. Compensation for Consultant's professional services shall not exceed the established hourly rates, as set forth in the Fee Schedule (Exhibit A), which is attached hereto and incorporated herein by reference. Payment shall be based upon Town approval of each task.
- 2.7 Billing. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

Payment shall be net thirty (30) days. All invoices and statements to the Town shall be addressed as follows:

Invoices:

Town of Los Gatos

Attn: Accounts Payable

P.O. Box 655

Los Gatos, CA 95031-0655

- 2.8 Availability of Records. Consultant shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Consultant shall make these records available to authorized personnel of the Town at the Consultant's offices during business hours upon written request of the Town.

- 2.9 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Consultant. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
- 2.10 Independent Contractor. It is understood that the Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the Town. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Consultant may perform some obligations under this Agreement by subcontracting, but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Consultant agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Consultant shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Consultant or is based on allegations of Consultant's negligent performance or wrongdoing.
- 2.11 Conflict of Interest. Consultant understands that its professional responsibilities are solely to the Town. The Consultant has and shall not obtain any holding or interest within the Town of Los Gatos. Consultant has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Consultant warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Consultant shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person, Consultant discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.
- 2.12 Equal Employment Opportunity. Consultant warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Consultant nor its subcontractors do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act.

III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

- i. Consultant agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.
- ii. Consultant agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- iii. Consultant shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Consultant agrees that all certificates and endorsements are to be received and approved by the Town before work commences.
- iv. Consultant agrees to have and maintain, for the duration of the contract, professional liability insurance in amounts not less than one million dollars (\$1,000,000) which is sufficient to insure Consultant for professional errors or omissions in the performance of the particular scope of work under this Agreement.

General Liability:

- i. The Town, its officers, officials, employees, and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of Consultant; and premises owned or used by the Consultant. This requirement does not apply to the professional liability insurance required for professional errors and omissions.
- ii. The Consultant's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees, and volunteers. Any insurance or self-insurances maintained by the Town, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees, or volunteers.

- iv. The Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- 3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.
- 3.3 Workers' Compensation. In addition to these policies, Consultant shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further, Consultant shall ensure that all subcontractors employed by Consultant provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Indemnification. The Consultant shall save, keep, hold harmless, and indemnify and defend the Town its officers, agent, employees, and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Consultant, or any of the Consultant's officers, employees, or agents or any subconsultant.

IV. GENERAL TERMS

- 4.1 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 4.2 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 4.3 Termination of Agreement. The Town and the Consultant shall have the right to terminate this agreement with or without cause by giving not less than fifteen (15) days written notice of termination. In the event of termination, the Consultant shall deliver to the Town all plans, files, documents, and reports performed to date by the Consultant. In the event of such termination, Town shall pay Consultant an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.

- 4.4 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Consultant.
- 4.5 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 4.6 Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

Town of Los Gatos
Attn: Town Clerk
110 E. Main Street
Los Gatos, CA 95030

Larry Cannon
Cannon Design Group
700 Larkspur Landing Circle, Suite 199
Larkspur, CA 94939

Or personally delivered to Consultant to such address or such other address as Consultant designates in writing to Town.

- 4.7 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.
- 4.8 Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Consultant. No terms, conditions, understandings, or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

IN WITNESS WHEREOF, the Town and Consultant have executed this Agreement.

Town of Los Gatos by:

Consultant, by:

DocuSigned by:

5035A0B32FE1477...
Laurel Prevetti, Town Manager

DocuSigned by:

7F9A11EB0581428...
Larry L. Cannon, AIA, AICP
Cannon Design Group

Recommended by:

DocuSigned by:


5035A0B32FE1477...
Joel Paulson,
Community Development Director

Approved as to Form:

DocuSigned by:

EFD6738A5534428...
Gabrielle Whelan, Town Attorney

Attest:

DocuSigned by:

BF6EBCBE2C214F8...
Wendy Wood, CMC
Town Clerk

TOTAL NUMBER OF STAFF PROVIDING SERVICES

Larry Cannon personally has provided all design review services to the Town of Los Gatos as well as to all other design review clients throughout his long career. This has provided objectivity and consistency to all reviews, with familiarity and easy access to the thousands of personal digital images of examples to clearly convey recommendations.

ABILITY TO PERFORM ON SHORT NOTICE AND UNDER TIME CONSTRAINTS

I have consistently provided review letters within two to three weeks of receiving drawings and authorization from staff to proceed. When projects are needed sooner, Los Gatos projects are given priority.

STATEMENT OF UNDERSTANDING

The Town of Los Gatos is a very special place with residents and elected and appointed officials who are acutely aware of the Town's unique scale and character. When I was selected to provide design review services in 2002, I met individually with each member of the Planning Commission and Town Council. Each told me that the two highest review priorities were in this order:

- Neighborhood Compatibility
- Design Excellence

I have been guided by those two priorities in all reviews since that time.

SERVICES APPROACH

I implement a disciplined and consistent approach for all projects that emphasizes neighborhood compatibility and design excellence. It is a highly graphic approach that utilizes a review and recommendations letter including the following:

- **Neighborhood Context**

Aerial photo with identification of the site location and photos of the site and surrounding structures gathered from Google Earth Pro and other photos from previous project reviews.

- **Issues and Concerns**

Annotated applicant drawings with issues and concerns graphically called out

- **Recommendations**

Recommended changes over annotated applicant drawings showing recommendations along with photo images illustrating similar solutions within the Town of Los Gatos and other locations

ESTIMATED HOURS AND FEE ESTIMATES

\$150 per hour for time actually spent plus limited actual expenses at cost plus 15% up to the Town's authorized maximum deposit. Most projects are accomplished within an initial authorization of \$2,500. Follow up reviews utilize any funds left from the initial authorization plus additional hours billed at the hourly rate above.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 06/21/2022

ITEM NO: 8

DATE: June 16, 2022
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute an Agreement for Consultant Services with Larry Cannon, Cannon Design Group to Provide Services as Architectural Consultant to the Town.

RECOMMENDATION:

Authorize the Town Manager to execute an Agreement for Consultant Services with Larry Cannon, Cannon Design Group to provide services as Architectural Consultant to the Town.

BACKGROUND:

In 2005, the Town Council approved a contract with Larry Cannon of Cannon Design Group to serve as Architectural Consultant to the Town. Since that time, the architectural peer review consultant process continues to be a successful component of the planning process.

The Town distributed a Request for Qualifications in April 2022 and received three proposals from: Larry Cannon, Cannon Design Group (Attachment 1); Mammarella Architecture; and Lindsay Toscano Architect. Staff determined that Larry Cannon of Cannon Design Group is the most qualified to serve as the Architectural Consultant to the Town, based on the quality of the proposal and past services provided.

DISCUSSION:

The Architectural Consultant serves in a similar capacity to other Town development peer review consultants such as arborist, geotechnical, and environmental consultants. Typical tasks that the Architectural Consultant may provide include the following:

PREPARED BY: Tania Maheu
Administrative Analyst

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

PAGE 2 OF 3

SUBJECT: Larry Cannon, Cannon Design Group

DATE: June 16, 2022

DISCUSSION (continued):

- Architecture and site design peer review and critique for development applications, including residential and non-residential additions, remodels, and new buildings;
- Evaluation of architecture and site design for neighborhood compatibility and compliance with applicable design standards and guidelines, specific plans, and the General Plan;
- Development of design recommendations and preparation of reports summarizing findings and recommendations;
- Consultation with staff and/or applicants to discuss recommendations or project specific issues;
- Special studies or projects, including, but not limited to: preparation of a checklist for content of architectural plans for application packets; and
- Attendance at public meetings as needed.

CONCLUSION:

Cannon Design Group was determined to be the best candidate to continue serving as the Town's Architectural Consultant for the following reasons:

- Extensive experience and specialization providing architecture and site design peer review and preparing design guidelines;
- Successful provision of architectural review services to the Town since 2005;
- Strong use of graphics to make reports user-friendly and easy to understand;
- Larry Cannon, principal, is both a registered architect and a certified planner;
- Good understanding of the Town's codes, policies, and design guidelines (contributing author of the Commercial and Residential Design Guidelines); and
- Experience with historic preservation.

COORDINATION:

The draft Agreement for Consultant Services (Attachment 2) was prepared in coordination with the Town Attorney.

FISCAL IMPACT:

Architectural review for development proposals are paid for by the project applicant. The typical consultant review deposit for a single-family home is \$2,500. The actual cost is based on the scope of work and the consultant's fee schedule (see Attachment 1). An administrative fee of 10 percent is also charged by the Town. The purpose of the administrative fee is to reimburse the Town's cost of administering the peer review.

From: [REDACTED]
To: [Ryan Safty](#)
Subject: Re: New Review - 14288 Capri Drive - Estimate Requested
Date: Friday, September 6, 2024 9:44:31 AM

[EXTERNAL SENDER]

Hi Ryan,
It doesn't look like an inordinate number of trees. I think \$2500 to \$3000 for the life of the project would be sufficient.
Rick

Richard Gessner - Consulting Arborist
Monarch Consulting Arborists LLC
[REDACTED]

On Sep 5, 2024, at 1:43 PM, Ryan Safty <RSafty@losgatosca.gov> wrote:

<image001.png>

Hi Rick,

The Town has received a formal SB 330 application that is invoking builders remedy for a new multi-family development at 14288 Capri Drive. Project documents can be found here: <https://www.losgatosca.gov/2216/Pending-Planning-Projects>

The proposed project consists of a 120 unit apartment building, which would be 13 stories tall, with approximately 275,197 square feet of residential building area (including 5 stories of garage area). The site is approximately 0.53 acres. This would replace the existing small commercial building (which appears to previously have been a residence).

Staff's initial review will be completed by September 18th.

Please provide an estimated deposit to complete a review on this proposal. They would be removing all existing trees on the site.

Respectfully,

Ryan Safty • Associate Planner

Community Development Department • 110 E. Main Street, Los Gatos CA 95030

Ph: 408.354.6802 • rsafety@losgatosca.gov

www.losgatosca.gov • <https://www.facebook.com/losgatosca>

COMMUNITY DEVELOPMENT HOURS:

Counter Hours: 8:00 AM – 1:00 PM, Monday – Friday/

Phone Hours: 8:00 AM – 5:00 PM, Monday – Friday

All permit submittals are to be done online via our Citizen's Portal platform. All other services can be completed at the counter. For more information on permit submittal, resubmittal, and issuance, please visit the [Building](#) and [Planning](#) webpages.

CONFIDENTIALITY DISCLAIMER

This e-mail is intended only for the use of the individual(s) named in this e-mail. If you receive this e-mail and are not a named recipient, any use, dissemination, distribution or copying of the e-mail is strictly prohibited. If you have received this communication in error, please immediately notify us at the above e-mail address.



Think Green, please consider the environment before printing this e-mail.