



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 12/16/2025

ITEM NO: 18

DATE: December 12, 2025
TO: Mayor and Town Council
FROM: Gabrielle Whelan, Town Attorney
SUBJECT: **Adopt by Resolution “Statement and Findings” in Response to a Challenged Conduct Notice Submitted Regarding a Planning Application for the Proposed Project at 14288 Capri Drive.**

RECOMMENDATION: Adopt by resolution “Statement and Findings” in response to a Challenged Conduct Notice submitted regarding a planning application for the proposed project at 14288 Capri Drive.

FISCAL IMPACT:

Adoption of these findings will not have a fiscal impact.

STRATEGIC PRIORITY:

Responding to the Challenged Conduct Notice supports the strategic priority of Housing Element implementation.

BACKGROUND:

The Town has received a Challenged Conduct Notice from the applicant for a housing development project located at 14288 Capri Drive. This is a Builder’s Remedy project proposed by Los Gatos LLC (Applicant). It consists of 119 units in 13 stories (four parking levels, eight residential levels, and a rooftop level with amenities). The proposed project (Project) is 171 feet tall and is located on a 0.53-acre lot in the C-1 (Neighborhood Commercial) zone.

The state Housing Accountability Act (HAA), which is codified in Government Code Section 65589.5, addresses the processing of planning applications for housing development projects. The HAA was significantly amended by Assembly Bill 1893 (2024), which went into effect on January 1, 2025. A copy of the 2024 version and 2025 version of the HAA are attached as Attachments 1 and 2 hereto.

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

As amended, Section 65589.5(h)(6)(D) defines "disapproval of a housing development project" to include any instance in which a local agency "fails to cease a course of conduct undertaken for an improper purpose, such as to harass or cause unnecessary delay or needless increases in the cost of the proposed housing development project, that effectively disapproves the proposed housing development without taking final administrative action" if all of the conditions set forth in the subsection are met. Said conditions are as follows:

- 1) The project applicant must provide written notice detailing the challenged conduct and why it constitutes disapproval.
- 2) The notice must be posted to the local agency's website, provided to any person who has requested notice, and filed with the County Clerk.
- 3) The local agency must consider all objections, comments, evidence, and concerns about the project or the applicant's written notice for at least 60 days.
- 4) Within 90 days of receipt of the applicant's written notice, the local agency must issue a written statement that it will immediately cease the challenged conduct or issue written findings that comply with both of the following requirements:
 - a. The findings articulate an objective basis for why the challenged course of conduct is necessary; and
 - b. The findings 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.

DISCUSSION:

The Applicant for the housing development project at 14288 Capri Drive has submitted a "Challenged Conduct Notice," a copy of which is attached as Attachment 3. As required by statute, the Challenged Conduct Notice was posted to the Town's website and filed with the County Clerk. No persons have requested mailed notice of Challenged Conduct Notices.

The Applicant objects to requests for information received from Town staff on the Project. A copy of the most recent comments from the Town's Planning Division staff are attached as Attachment 4. The Challenged Conduct Notice alleges the following issues with the Town's processing of the planning application: request for information to determine eligibility for exemption from the California Environmental Quality Act (CEQA); requirement to apply for a Conditional Use Permit; requirement to pay a deposit fee for Town Arborist's peer review of report submitted by Applicant; requirement to pay a deposit fee for design review by Town's Consulting Architect; responses to outside agencies and recommendation to meet with neighbors; and request for additional information regarding how the Project will comply with the Town's Below Market Price (BMP) Program. In a separate letter, the Applicant also states that the Project is eligible for the AB 130 CEQA infill exemption.

Summary of Town’s Findings

Of importance here, the Project does not qualify as a Builder’s Remedy project under the 2025 statute because it is too dense. While the 2025 statute would allow 77 units with a density bonus (given the proposed affordable units), the Project proposes 119 units. A detailed calculation of the allowed versus proposed density is in the proposed findings (Attachment 5).

A. California Environmental Quality Act (“CEQA”)

The Applicant has taken the position that the Project is eligible for the new infill exemption for housing development projects created by Assembly Bill 130 (2025), codified in Public Resources Code Section 21080.66.

The Town met with the Applicant on September 17, 2025, to discuss, among other items raised by the Staff Technical Review Comments, the Project’s eligibility for the AB 130 exemption. Following the meeting and as requested by Town staff, the Applicant’s legal counsel emailed Town staff with a memorandum detailing the Applicant’s position that the Project is exempt from CEQA. The Town was reviewing this memorandum and had not reached a conclusion about whether the Project qualified for said exemption when the Applicant filed the Challenged Conduct Notice (which incorporates the September 17, 2025 correspondence) on October 2, 2025.

“A local agency’s action in furtherance of complying with [CEQA]...shall not constitute project disapproval” pursuant to a Challenged Conduct Notice. [Section 65589.5(h)(6)(D)(vi).]

Accordingly, all the issues raised by the Applicant regarding the Town’s actions in furtherance of complying with CEQA are not a proper subject for a Challenged Conduct Notice.

Moreover, the HAA establishes a specific procedure for an applicant to challenge a local agency if the applicant believes a project is eligible for a CEQA exemption. [Section 65589.5.1.] The Applicant has not invoked or followed this process.

B. Requirement for a Conditional Use Permit

The Challenged Conduct Notice objects to the Town’s requirement that the Applicant apply for a Conditional Use Permit (CUP). The proposed project is located in the C-1 zoning district. Multi-family residential is not a principally permitted use in the C-1 zone. Multi-family dwellings in a mixed-use project are permitted with a CUP. As a result, Town Code Section 29.20.185 requires that the applicant obtain a CUP.

The Applicant has challenged this requirement on the basis that the Town cannot require a CUP because the Project is a Builder’s Remedy project. Pursuant to the 2024 version of the HAA, the Town may require a Builder’s Remedy project to comply with any objective standards in effect

at the time the preliminary application for the project is filed, even if the Town may not be able to deny the project under Section 65589.5(d)(5) (2024) [Sections 65589.5(f)(1), (o)]. 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 [Town Code Sections 29.60.215; 29.20.185(8)(c).].

C. Town Consulting Arborist Fee

The Applicant objects to the Town's requirement that the Applicant pay a deposit of \$2,750 for a peer review of the arborist report by the Town's Consulting Arborist on the basis that "the standards of review for the Town Arborist are, by their very nature, discretionary."

As explained, under the 2024 HAA, the Town retains the ability to apply written, objective standards to Builder's Remedy projects. 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 (Town Code Sections 29.10.0950, et seq.). Relatedly, the requirement to pay a fee to have the submitted Arborist Report reviewed by the Town's Consulting Arborist may be found in the Town's Comprehensive Fee Schedule for Fiscal Year 2023/24. Because these requirements are written, objective standards, the Town may require the Applicant's compliance with these requirements.

D. Town Consulting Architect Fee

The Applicant also objects to the Town's requirement that the Applicant pay a deposit fee of \$8,250 for the Town's Consulting Architect to review the Project.

The Town retains the ability to apply written, objective standards to Builder's Remedy projects. The requirement that the Town's Consulting Architect review planning applications was established by Town Council Resolution No. 2002-25, dated February 28, 2002, which requires the Town's Consulting Architect to review planning applications against the Town's design standards. The requirement to pay a fee for the Town's Consulting Architect's review of planning applications can be found in the Town's Comprehensive Fee Schedule for Fiscal Year 2023/24. Because these requirements are written, objective standards, the Town may require the Applicant's compliance with these requirements.

E. Notification to Outside Agencies and Neighboring Properties

The Applicant objects to the Town's recommendations to (1) respond to comments received by outside agencies such as the Valley Transportation Authority and (2) meet with neighbors regarding the Project. While these items were included in the Town's consistency letter, they were just recommendations that were offered as a courtesy to the Applicant. Nothing in state law prohibits the Town from making suggestions or recommendations to applicants.

Nonetheless, neither the continued processing of the Project application nor scheduling the Project for public hearing are contingent upon the Applicant complying with or accepting said recommendations.

F. Request for Additional Information Regarding Below Market Price (BMP) Units

Finally, the Applicant challenges the Town’s request to specify in the Project plans which units are Below Market Price (BMP) units and to update the Project Description/Letter of Justification to explain how the Project will comply with the BMP Program requirements (or alternatively, if the Project will not comply any of the BMP requirements, a justification for any such deviation).

The Applicant challenges this requirement 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.] While this may be correct for projects that meet the 2025 definition of a Builder’s Remedy project, it is inapplicable to this project, which must be reviewed under the 2024 version of the statute. The 2024 version of the HAA requires that 20 percent of the total units be affordable to lower income households and contains no limits on local inclusionary requirements.

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 BMP Program is applicable to all residential projects that include five (5) or more residential units or parcels and requires that a project proposing at least 101 units provide BMP units in an amount equal to 20 percent of the market rate units. [Town Code Section 29.10.3025.] Because 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, the Town may require that the Applicant provide information regarding how the Project will comply with the Town’s BMP Program requirements.

Furthermore, state and federal law requirements, including California Health and Safety Code Section 17929, the California Fair Housing and Employment Act, and the federal Fair Housing Act, impose certain requirements on affordable housing units. The Town needs information regarding the size and location of the BMP units to confirm that the Project conforms with these state and federal requirements.

CONCLUSION:

Town staff has prepared the attached Resolution adopting a “Statement and Findings” in response to the Challenged Conduct Notice (Attachment 5). It explains why the Town’s conduct

is necessary and provides clear instructions on what the Applicant must submit or supplement so that the Town can set the date and time for a public hearing on the project. Staff recommends that the Town Council adopt the attached Resolution with a “Statement and Findings” in response to the Challenged Conduct Notice.

COORDINATION:

This report was coordinated with the Community Development Department and the Town Manager.

ENVIRONMENTAL ASSESSMENT:

Adoption of the attached Resolution is not a project defined under CEQA, and no further action is required.

Attachments:

1. Housing Accountability Act, Government Code Section 65589.5 (2024)
2. Housing Accountability Act, Government Code Section 65589.5 (2025)
3. Applicant’s Challenged Conduct Notice, dated October 2, 2025
4. Fifth Staff Technical Review Comments – Planning Division, dated September 17, 2025
5. Resolution with Statement and Findings in Response to Challenged Conduct Notice, including Exhibit A and associated Attachments A to G