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May 21, 2025

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Re: **143 and 151 East Main Street**

Dear Ryan:

Thank you and others on the Town staff team for the effort in processing the application for the project at 143 and 141 East Main Street ("Project"). I am writing on behalf of the applicant to address a few issues as we head into the Town Council hearing: the need for a one level parking garage; cumulative impacts; and health and safety issues.

I. The Project Must Include a One Level Parking Option

The first issue we wanted to address is the Planning Commission's stated preference for a two-level parking garage. To be clear, we are requesting a one-level parking garage with the option for a second level, not the other way around. The purpose of proposing two options is to ensure project feasibility. While the two-level configuration (Option 1) includes more stalls, the one-level configuration (Option 2) provides enough stalls to meet market demand and it also has the important additional benefit of being much more cost effective. During these times of high construction costs and price uncertainty, it is essential that the Project approval include a one-level configuration. We have discussed this with the Town Attorney and she has agreed that nothing prevents the Town from approving the Project with this optionality. The purpose of this letter is to be clear that we are seeking a Project with one level of parking; the second level option provides flexibility if the market supports that configuration in the future, but it is secondary to the one-level design.

II. Cumulative Impacts Have Been Addressed

During the Town's April 7, 2025 joint study session and in more recent correspondence, concerns have been raised over the potential cumulative environmental impacts of multiple Builder's Remedy projects being proposed across Los Gatos. Commissioners and Councilmembers questioned whether individual project-level CEQA reviews sufficiently accounted for broader, Town-wide effects. I am writing to explain why this Project does not raise such concerns. The Project stands apart in several legally and factually material respects – including its completed CEQA review, alignment with prior cumulative impact analyses, and its size and location.

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A. The Project's Mitigated Negative Declaration Adequately Analyzes Cumulative Impacts

The Town prepared a Mitigated Negative Declaration ("MND") for the Project, which included a comprehensive Initial Study that evaluated potential cumulative environmental impacts, as required by CEQA. The MND was presented to the Planning Commission, and it has already recommended that the Council adopt the MND. The analysis concluded that all potentially significant impacts, including cumulative impacts, would be mitigated to less-than-significant levels. The fact that there is a Planning Commission-recommended MND for the Project places it in a distinct position compared to other Builder's Remedy projects for which environmental review remains incomplete. With this legally compliant MND presented to the Town Council, the Town must act now and approve the Project without delay.

The reason the Town must adopt the MND is that, based on recent legislation (AB 1633), failure to adopt a legally adequate MND "effectively disapproves" a housing project and is a violation of the Housing Accountability Act. (Gov. Code § 65589.5(h)(6)(J); 65589.5.2.)

B. The 2040 General Plan EIR Studied Sufficient Buildout Capacity to Cover the Project and the Town's Current Development Pipeline

While the MND's cumulative impacts analysis is sufficient, we want to point out that the Town's 2040 General Plan Environmental Impact Report ("EIR") previously analyzed a maximum residential buildout that exceeds what is currently permitted under the Housing Element plus the total number of units contained in the currently proposed Builder's Remedy projects. That is, the 2040 General Plan EIR accounted for the cumulative impacts of the proposed Builder's Remedy projects. To understand this, a little background is required:

- In 2022, the Town adopted the 2040 General Plan, which was studied in the 2040 General Plan EIR. That EIR assumed that the 2040 General Plan would result in an increase of 3,738 new units.
- Subsequently, the Land Use Element of the 2040 General Plan was rescinded due to a referendum. Therefore, after the referendum, the 3,738 units that had been studied were no longer permitted.
- In 2024, the Town approved the 2023–2031 Housing Element, which planned for an additional 2,312 units. The Town prepared an Environmental Assessment confirming that the 2040 General Plan EIR, which assumed 3,738 units, also covered the Housing Element, which allowed for a lower number of units.
- Before HCD certification of the Housing Element, several Builder's Remedy projects were proposed at densities that exceed the underlying zoning. In total, these projects propose 931 more units than were planned for in the 2023–2031 Housing Element.
- Concerns have been raised that the Builder's Remedy units have not been accounted for because their density is greater than what is allowed. However, that is not true as the

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total units studied in the 2040 General Plan EIR did, in fact, cover these “excess” units: the General Plan EIR studied 3,738, which is more than 1,400 units greater than what is allowed under the new Housing Element. The Builder’s Remedy projects propose only 931 units that go beyond what was allowed by the Housing Element – leaving a remaining buffer of nearly 500 units. For reference, see **Exhibit 1**, which summarizes the Builder’s Remedy projects, their densities, and the unit calculations relative to the Housing Element’s and General Plan EIR’s buildout assumptions.

Although the 2040 General Plan Land Use Element was rescinded, the 2040 General Plan EIR remains valid and relevant. CEQA Guidelines Section 15168 authorizes the use of a program-level EIR to support later project decisions when cumulative impacts have already been reviewed at a broader level. To be clear, the MND completed a Project-specific analysis of cumulative impacts and that alone is adequate CEQA coverage. However, in addition, the Town can also look to the 2040 General Plan EIR as a secondary source for cumulative impacts analysis.

Although the 2040 General Plan EIR found that full build out would result in significant and unavoidable impacts, the Project does not have cumulatively considerable contribution to those impacts:

- **GHG-1 (Emissions):** The 2040 General Plan would result in 5.29 MT CO₂e per service population annually by 2040 – exceeding the 1.02 MT CO₂e efficiency threshold that was in effect at the time – even with mitigation. However, with implementation of Mitigation Measure GHG-1, the Project meets all four of the Bay Area Air Quality Management District’s performance standards and contributes its fair share toward achieving the State’s 2045 carbon neutrality goal. Further, BAAQMD has developed a new threshold of significance that is focused on ensuring that projects do not establish new infrastructure that would be inconsistent with long term GHG goals, such as by including natural gas. The Project will be all-electric and is otherwise consistent with the updated GHG threshold. Therefore, it does not contribute to this impact.
- **GHG-2 (Exceeding Targets):** According to the General Plan EIR, the General Plan’s construction and operational emissions would exceed State and Town GHG targets and conflict with the CARB 2017 Scoping Plan, SB 32, and EO B-55-18. In contrast, as described in the MND, the Project complies with all applicable performance-based standards and does not conflict with adopted GHG reduction plans. It also meets the updated BAAQMD recommended thresholds. It therefore does not have a cumulative GHG impact.
- **T-1 (Transit):** Although the General Plan anticipates significant and unavoidable impacts to transit due to increased demand and congestion, the Project would generate only 17 net new daily trips and reduced trips during AM and PM peak hours. This minor amount

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of additional trips did not even warrant a traffic study. This incremental contribution is negligible and will not result in a cumulatively considerable impact to transit.

- **T-4 (VMT):** According to the General Plan EIR., the General Plan's buildout would exceed VMT thresholds Townwide. However, this is not an issue contributed to by the Project. In comparison, the Project's VMT per service population is 20.1 – well below the Town's 26.1 threshold – and its total VMT contribution (1,577) is far less than 6.5% of the Countywide baseline (37,244,566). Accordingly, the Project does not have a cumulative VMT impact.

For these reasons, to the extent there are concerns about cumulative impacts, the Town can look to the 2040 General Plan EIR to confirm that the Project will not have significant cumulative impacts even when considering all proposed Builder's Remedy projects.

III. The Project Redevelops a Commercial Use and is Isolated from other Builder's Remedy Projects

While the above analysis shows that the Project's cumulative impacts have been addressed, we note that the severity of most cumulative impacts depend in large part on their size and proximity to other projects. In this regard, it is noteworthy that the Project is largely isolated from other Builder's Remedy projects. The Project is also comparatively modest in size and involves redevelopment of an existing site.

Many Builder's Remedy projects are occurring in proximity to each other in the northern portion of Town, particularly around the junction of Highway 17 and Highway 85 where there are over 700 Builder's Remedy units proposed. In contrast, the Project proposes only 30 units in an area of Town with few other Builder's Remedy projects, and therefore does not contribute to localized compounding of infrastructure or transit burdens that have been the focus of recent Town discussions. As a redevelopment project, the Project's impacts are further minimized as it is replacing existing uses, which is why it only has 17 net new trips and a reduction in AM and PM peak hour trips. Therefore, even if there are still concerns about the cumulative impacts posed by the various Builder's Remedy projects (notwithstanding the Project's MND or the prior analysis of the 2040 General Plan EIR, discussed above), such concerns should not be directed at the Project.

IV. The Health and Safety Exception is Very Narrow and Not Applicable

Some community members have raised the question of whether denial of the Project could be justified on the basis of health and safety concerns, particularly given the Project's location adjacent to Los Gatos High School. While we acknowledge the importance of these concerns, it is important to clarify that the health and safety exception under the Housing Accountability Act is limited in scope and is not applicable here.

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Such a denial is only permissible where the Town can demonstrate that the Project violates an objective, pre-existing health or safety standard, causes a specific, adverse impact that cannot be mitigated, and is supported by a preponderance of the evidence. The statute states that it is “the intent of the Legislature” that conditions supporting this standard would “arise infrequently.” (Gov. Code § 65589.5(a)(3).) That is, the Legislature directed a presumption that housing does not typically create a health or safety impact. This is a high legal threshold, and general community concerns do not satisfy it.

Any concerns raised do not meet that high legal threshold and, in any event, the applicant has taken great care to ensure that any safety issues are meaningfully addressed. The Project has undergone detailed environmental and safety review through its MND, which was recommended for adoption by the Planning Commission. The MND and Project Conditions of Approval (“COA”) include several measures that directly address concerns raised by the School District/High School in the May 8, 2025 letter, including:

- **Restriction on Time-of-Day Construction Deliveries:** COA #110 prohibits material delivery vehicles from parking or dropping-off along High School Court during school commute hours (7:00–9:00 AM and 2:00–4:00 PM) on days the school is in session. This condition addresses the concerns raised about construction conflicts with pedestrian, bicycle, and vehicle activity around the High School.
- **Safety Coordination with Los Gatos High School:** COA #105 requires that the Contractor develop a detailed Project Safety Plan in coordination with the School District specifically addressing traffic control, pedestrian detours, noise, and student safety during peak school hours. Additionally, the developer must prepare a Construction Management Plan (COA #22; MM AQ-1) and a Transportation Demand Management Plan (COA #84) to ensure ongoing coordination with Town staff and emergency services to maintain pedestrian safety and minimize vehicle conflicts.
- **Garage Safety Design:** COA #85 requires that the Project include audible and visual warnings at the Church Street garage entrance to aid pedestrians, particularly those with visual and hearing impairments.
- **Pedestrian and Traffic Safety at High School Court:** The School District expressed concern about potential sight line obstructions at the intersection of High School Court and East Main Street. However, the Project would actually improve sight lines compared to the existing condition. While both the existing and proposed buildings abut the sidewalk, the existing building is closer. In addition, based on feedback from Public Works and in compliance with Town Standard Drawing ST-232, the Project includes angled corners to address safety and sight line issues. Compliance with this standard directly addresses the sight line concern. The Hexagon study also evaluated sight lines

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at the Church Street garage entrance and found no safety impact. The Town has included COA #75, which requires ongoing compliance with this sight line standard.

We appreciate the concerns expressed by members of the community, including the School District. However, we believe that the Project as designed and conditioned responds to these concerns. And to be sure, none of the issues rise to the level of an objective, unmitigable public health or safety impact that would justify denial under State law. Instead, the Project's response demonstrates thoughtful, meaningful engagement and a commitment to safety-first development.

V. Conclusion

For all the reasons set forth above, the Project should not be delayed due to generalized cumulative impact concerns or speculative health and safety claims. We urge the Town to proceed with confidence in the existing legal and environmental framework and allow this well-considered, community-oriented Project to advance without further delay.

Very truly yours,



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Cc: Joel Paulson (jpaulson@losgatosca.gov)
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Exhibit 1

Summary of Town Builder's Remedy Projects and Comparison to General Plan and Housing
Element Buildout Capacity

	Property*	Project Name	Housing Element Buildout Assumptions**	Builder's Remedy Units Proposed***	Builder's Remedy Net Units (minus Housing Element assumptions)
1	101 S. Santa Cruz Ave	Post Office		58	58
2	14849 Los Gatos Blvd	North 40 - Single Building	27	120	93
3	15300 and 15330 Los Gatos Blvd	ACE Hardware	48	175	127
4	178 Twin Oaks Dr	Surrey Farms		12	12
5	14288 Capri Dr	Capri Fruitstand		119	119
6	15495 Los Gatos Boulevard	Newtown		238	238
7	980 University Ave	Cryptic		68	68
8	647 N Santa Cruz	State Farm		11	11
9	14789 Oka Road	Walnut Orchard	26	138	112
10	143-151 E. Main Street	Café Dio		30	30
11	101 Blossom Hill Road	Oswalt Building		63	63
TOTALS			101	1032	931

2023-2031 Housing Element	Builder's Remedy Net Units	Total Units	2040 GP Max Buildout	Remaining Capacity
2,312	931	3,243	3,738	495

* Although eligible for Builder's Remedy, the Los Gatos Lodge, Genuine Automotive, and the North 40 Phase II - Multi-Building projects do not invoke Builder's Remedy protections, and are not included above.

** See Housing Element pages D-38 (Site D-6), D-22 (Site C-1), and D-43 (Site E-2). This column conservatively assumes zero for all sites that are not Housing Element Sites, even though residential may be allowed. This overstates the "excess" number of Builder's Remedy units.

*** Current figures from City's "SB 330 Application Tracker" as of May 21, 2025.