



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 04/07/2025

ITEM NO: 1

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DATE: April 4, 2025  
TO: Mayor and Town Council  
Chairperson and Planning Commission  
FROM: Gabrielle Whelan, Town Attorney  
SUBJECT: Receive Information on and Discuss Recent Updates to State Builder's  
Remedy Law and the California Environmental Quality Act

**RECOMMENDATION:**

Conduct a Joint Study Session with the Planning Commission to receive information on and discuss recent updates to the state Builder's Remedy law and CEQA review for Builder's Remedy projects.

**BACKGROUND AND DISCUSSION:**

The purpose of this Study Session is for the Town Council, the Planning Commission, and members of the public to receive and discuss information regarding:

- Recent updates to the state Builder's Remedy law, which is codified at Government Code Section 65589.5; and
- An overview of the California Environmental Quality Act ("CEQA") and its application to Builder's Remedy projects.

There will be a presentation by Barbara Kautz with the law firm of Goldfarb & Lipman followed by time for questions and answers.

This will not be a forum for the discussion of individual planning applications. Individual planning applications must be discussed at noticed public hearings that are specific to those projects.

**Summary of SB 330, the Builder's Remedy, and CEQA**

1) Senate Bill 330

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Reviewed by: Community Development Director

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Senate Bill 330 (2019) enacted Government Code Section 65941.1 (Attachment 1) to authorize a "vesting" process for housing development applicants. If applicants submit a Preliminary Application with the information required by the statute, the applicants vest to the Town standards in place at the time the Preliminary Application was submitted. In cities and towns without HCD-approved housing elements, applicants have submitted SB 330 Preliminary Applications and are "vested" to the jurisdiction's status of not having a certified Housing Element.

## 2) The Builder's Remedy

The Builder's Remedy is codified in Government Code Section 65589.5 (Attachment 2). This law was not commonly referenced by applicants until recently. Government Code Section 65589.5(d) sets forth five grounds on which a city or town can disapprove or condition a qualifying housing development project.

Per Government Code Section 65589.5(d)(5), one of those grounds is that the city or town has an adopted Housing Element that substantially complies with state law and the project is inconsistent with the zoning ordinance and general plan designation. Subsection (d)(1) is known as the "Builder's Remedy," because, if a city or town does not have an adopted Housing Element complying with state law, this finding cannot be made to deny a project that is inconsistent with the general plan and zoning.

While the Town did adopt a Housing Element on January 30, 2023, the state Housing and Community Development Department ("HCD") has opined that the January 30<sup>th</sup> Housing Element did not substantially comply with state Housing Element law. In addition, the state's Builder's Remedy law has been revised to provide that local jurisdictions do not have the ability to "self-certify" their Housing Elements and that approval by either a court or HCD is required to have an adequate Housing Element. This provision states that it is "declaratory of existing law." HCD's findings are presumed to be correct.

Subsequent to HCD's letter, Town staff worked with HCD to revise the Housing Element and adopted a substantially compliant Housing Element on June 4, 2024. Based on HCD's letter and state law, SB 330 Preliminary Applications that were submitted prior to June 4, 2024, referencing the Builder's Remedy have been accepted for processing.

Government Code Section 65589.5(d) also sets forth four additional grounds upon which cities or towns can deny or modify projects. One of those grounds is that a proposed project causes a "specific, adverse impact" because it does not conform with an adopted, objective "public health and safety" standard, and the impact cannot be mitigated. Other grounds include a violation of state or federal law that cannot be mitigated, and inadequate water or sewer service.

3) Recent Amendments to State Builder's Remedy Law

The Legislature substantially modified the Builder's Remedy provisions effective January 1, 2025. Key provisions include:

- Reduced required affordability from 20 percent of total units to 13 percent of "base density."
- Defined a "Builder's Remedy project." The chief change was specifying allowed densities. Now at least 80 units/acre (plus density bonus) are allowed in Los Gatos.
- If project meets definition of Builder's Remedy project::
  - Town must use zoning district allowing density and type of development; if none, developer can select standards in other districts.
  - Town cannot take actions to make project infeasible or impose standards that preclude the project from being constructed as proposed by the applicant.
  - Projects considered to conform with zoning and general plan "for all purposes."
  - Existing projects can elect to opt into all or some provisions.

4) CEQA

CEQA sets forth the method by which local jurisdictions analyze the environmental effects of proposed projects. In sum, the process is as follows:

- Identify the project.
- Determine whether there are any applicable exemptions.
- If there are no exemptions, a CEQA consultant prepares an Initial Study.
- Based on the Initial Study, the local jurisdiction prepares one of the following:
  - Negative Declaration, finding that there will be no significant impacts.
  - Mitigated Negative Declaration, finding that there are potential significant impacts but that they will be mitigated to less than significance.
  - Environmental Impact Report, analyzing the significant impacts of the project.

With regard to the cumulative impacts of proposed Builder's Remedy projects, staff proposes to retain a CEQA consultant to prepare a cumulative impacts analysis that can be considered along with the individual CEQA reviews.

COORDINATION:

This report was coordinated with the Community Development Department.

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SUBJECT: Study Session Regarding Recent Updates to State Builder's Remedy Law and  
CEQA

DATE: April 4, 2025

FISCAL IMPACT:

There is no fiscal impact associated with this Study Session.

ENVIRONMENTAL ASSESSMENT:

This Study Session is not a project subject to CEQA, because no action will be taken.

Attachments:

1. SB 330 Preliminary Application Statute
2. Builder's Remedy Statute