



**MILLER STARR
REGALIA**

Vision. Strategy. Results. 60 Years and Counting.

1331 N. California Blvd.
Suite 600
Walnut Creek, CA 94596

T 925 935 9400
F 925 933 4126
www.msrllegal.com

Travis Brooks
travis.brooks@msrllegal.com

March 7, 2024

VIA ELECTRONIC SUBMITTAL

Community Development Department
City of Los Gatos
110 E. Main St.
Los Gatos, CA 95030

**Re: Formal Application for 14849 Los Gatos Blvd., Los Gatos
APN 424-07-064
File No. PRE23-01058**

To Whom it May Concern:

Our client, Los Gatos Boulevard Properties, LLC ("LGB Properties"), submitted a Preliminary Application pursuant to the provisions of Senate Bill 330 and the Builder's Remedy on September 12, 2023. As required by Senate Bill 330, we hereby timely file a Formal Application for the Project pursuant to Government Code section 65941.1(d). The Formal Application is also filed pursuant to the provisions of the Planning and Zoning Laws generally, and in particular Government Code sections 65940, 65941, and 65941.5. This is also an application for a development permit under Government Code section 65943.

The proposed project consists of 117 condominium units in one 8-story building, with approximately 246,494 square feet of residential building area and 19,621 square feet of commercial building area ("Project") on an approximately 0.9-acre infill property with one existing legal parcel (Assessor Parcel Number 424-07-064) at 14849 Los Gatos Blvd. in Los Gatos ("Project Site"). The Project would replace a residence, detached garage, and a shed.

Of the 117 condominiums, 94 will be market-rate and 24 (20%) will be affordable to lower-income households.

As a brief reminder to the Town, the Project is protected by the Housing Accountability Act (Gov. Code § 65589.5; “HAA”), a housing production statute that seeks “to significantly increase the approval and construction of new housing for all economic segments of California’s communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects” (§ 65589.5(a)(2)(K)). Moreover, the HAA expresses the state’s policy that this statute “be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.” (Gov. Code § 65589.5(a)(2)(L)).

As relevant here, subdivision (d)(5) of the HAA prohibits a city that does not have an adopted housing element that is substantially compliant with the Housing Element Law (Gov. Code § 65580 et seq.) from disapproving or conditioning in a manner that renders infeasible a housing development project “for very low, low-, or moderate-income households,” even where the project is inconsistent with both the city’s zoning ordinance and general plan land use designation. (Gov. Code § 65589.5(d)(5)). The HAA defines Projects for very low, low-, or moderate-income households to include projects that provide 20 percent of the units for lower-income households. (Gov. Code § 65589.5(h)(3)). Because the Town did not have a substantially compliant 6th Regional Housing Needs Assessment (“RHNA”) Cycle Housing Element at the time the Preliminary Application was filed and the Project is a housing development project that will provide 20 percent of its units for lower-income households, the Project is protected by the Builder’s Remedy. Therefore, the Town cannot deny or condition approval of the Project in a manner that would render it infeasible, notwithstanding any inconsistency of the Project with the zoning ordinance or General Plan land use designation of the Project Site.

Please note that we are including an example set of condominium CC&R’s given that it is entirely premature (indeed, impossible) to have the actual CC&R’s for a project that has not yet filed a development application much less had a hearing or been approved and thus does not have any conditions of approval. We will of course prepare more specific CC&R’s at the appropriate point in the development process, and we agree that having CC&R’s prior to occupancy would be an appropriate condition of approval.

Please also note that while we are signing the Town’s Community Development Process Agreement, we cannot and do not agree that the applications for this Project “are solely at the discretion” of the Town’s decision-making bodies. That statement is generally not true for any development project, and it is positively incorrect for a housing development project protected by state law. For example, as the Town presumably knows, the courts have explained that the HAA’s findings constitute the “only” grounds for a lawful disapproval of a housing development project. (*North Pacifica, LLC v. City of Pacifica* (N.D.Cal. 2002) 234 F.Supp.2d 1053, 1059-60, disapproved on other grounds in *North Pacifica LLC v. City of Pacifica* (2008) 526 F.3d 478; see also *Sequoiah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715-16). Moreover, the HAA creates

such a "substantial limitation" on the government's discretion to deny a permit that it amounts to a constitutionally protected property interest. (*North Pacifica, LLC v. City of Pacifica, supra*, 234 F.Supp.2d at 1059). Thus, at a minimum the Town's discretion here, if any, is substantially limited by state law and nothing in the Community Development Process Agreement limits or constitutes a waiver of our client's rights under state law.

Thank you for your prompt attention to this Formal Application. We look forward to working with you to expeditiously and successfully process this vital new housing development project in a community with significant unmet housing need, consistent with the mandatory provisions of state housing law.

Very truly yours,

MILLER STARR REGALIA

Travis Brooks

Travis Brooks

BWW/kli

cc: