



Cox, Castle & Nicholson LLP

50 California Street, Suite 3200
San Francisco, California 94111-4710
P: 415.262.5100 F: 415.262.5199

Arielle O. Harris
415.262.5104
aharris@coxcastle.com

October 31, 2025

VIA E-MAIL

Jocelyn Shoopman, Senior Planner
Community Development Department
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030
Email: jshoopman@losgatosca.gov

Re: Updated Letter of Justification for 980 University Avenue, Los Gatos

Dear Ms. Shoopman:

This updated Letter of Justification is provided on behalf of Toll Brothers (the “Applicant”) in support of its formal development application for a proposed housing development project (“Project”) at 980 University Avenue (“Property”), in the Town of Los Gatos (“Town”). The Applicant previously submitted a Preliminary Application pursuant to SB 330 and the Builder’s Remedy on April 5, 2024 (“Preliminary Application”). In a letter dated April 9, 2024, the Town confirmed receipt of the Preliminary Application. Pursuant to section 65589.5 of the Government Code, the Project is subject only to the ordinances, policies, and standards adopted and in effect when the Preliminary Application was submitted. The Applicant submitted its Formal Development Application on September 24, 2024, in compliance with the 180-day deadline provided in Government Code section 65941.1(d)(1).¹ The Formal Development Application was determined to be complete on February 12, 2025.

This updated Letter of Justification provides additional information regarding recent adjustments to the Project’s site plan, a copy of which is enclosed herewith.

I. PROJECT SUMMARY

The Applicant proposes to develop 68 multiple-family (townhouse) units on the approximately 4.04-acre Property (APNs 424-31-028 and 027), with associated amenities including an approximately 1,268 square foot play area, landscaping, utilities, and other infrastructure improvements. The townhouses all contain 4 bedrooms and 3.5 bathrooms.² All units will have two-car garages. In addition, 13 guest parking spaces are proposed. The proposed multiple-family units would be located within 12 building groups (10 – six-unit buildings and 2 – four-

¹ For additional information on the Applicant’s use of SB 330 and the Housing Accountability Act (“HAA”), including the Builder’s Remedy, please refer to the previous letter from Cox Castle dated September 24, 2024.

² The prior site plan included 44 three-bedroom units and 24 four-bedroom units.

unit buildings) as shown on the enclosed site plan. The proposed living area of the individual units ranges from approximately 1,940 to 2,279 square feet. The boundaries of individual units will be established through a condominium plan, and the community will be governed by a professionally managed homeowners association.

Since submittal of the Preliminary Application, the Applicant has modified the building configuration and other elements of the site plan, however the change in the number of units (66 to 68) and the square footage of construction of the Project as revised are each less than 20 percent; the revisions therefore do not affect the SB 330 vesting of the Project. (Gov. Code, § 65941.1(c).)

The Property is currently developed with a 66,400 square foot office/R&D development that was constructed in 1968 and remodeled and expanded in 1986.

II. BELOW MARKET RATE UNITS

The Project will provide a total of 57 market rate units and 11 below market rate (“BMR”) units for sale to lower income households, which slightly exceeds the number of affordable units required under the Town’s formula.³ (Los Gatos Municipal Code (“LGMC”), § 29.10.3025.) These BMR units are shown on the Project plans on Sheet 3.0 and the floor plans for these units are provided at Sheets A05, A06, A07. Toll Brothers will provide a final plan for the location of the BMR units when it enters into the Affordable Housing Agreement with the Town, following tentative map approval. However, Toll Brothers reserves its right to determine the location of the BMR units within the Project. (See Gov. Code, § 65589.5(f)(6)(G)(i).)

The number of BMR units provided by the Project also exceeds what is required under the Builder’s Remedy. Under the HAA, as revised by the amendments in Assembly Bill 1893 that went into effect on January 1, 2025, a Builder’s Remedy project meets the definition of “housing for mixed-income households” by providing “at least 13 percent of the total units . . . to lower income households,” which would be nine units as applied to the Project. (Gov. Code, § 65589.5(h)(3)(C)(III).) “Each affordable unit dedicated” by a Builder’s Remedy project “shall count toward satisfying a local affordable housing requirement” and “[e]ach affordable unit dedicated pursuant to a local affordable housing requirement that meets” the HAA criteria for Builder’s Remedy projects “shall count towards satisfying” the Builder’s Remedy requirement. (Gov. Code, § 65589.5(f)(6)(G)(iii).) The Project’s BMR units will provide the same bedroom and bathroom count as the market rate units, in compliance with the requirement in the HAA. (Gov. Code, § 65589.5(f)(6)(G)(ii).) The BMR unit mix is proportional to the Project’s overall unit mix as summarized below:

- Plan 1 - Overall 24 units (35.3%) — BMR 4 units (36.3%)
- Plan 2 – Overall 20 units (29.4%) — BMR 3 units (27.3%)
- Plan 3 - Overall 24 units (35.3%) — BMR 4 units (36.4%)

³ The Town’s formula results in a 10-unit BMR requirement.

While the Town’s higher percentage of BMR units may be imposed on the Project, under the Builder’s Remedy provisions of the HAA the Town *may not* require the Project to “comply with any other aspect of the [Town’s] local affordable housing requirement.” (Gov. Code, § 65589.5(f)(6)(G)(i)(I).) While the Town’s requirements pertaining to the size, location, and finish of the units, or the access to facilities and amenities, do not apply, the Project’s BMR units nevertheless comply with these requirements.

III. REQUESTED APPROVALS

The Applicant is requesting architecture and site approval, a vesting tentative map, a tree removal permit, as well as waivers, incentives/concessions, and parking reductions pursuant to the State Density Bonus Law (“DBL”).

A. General Plan and Zoning

As previously provided in the cover letter to the Applicant’s Preliminary Application, the Project is protected by the Builder’s Remedy provisions of HAA. These provisions prohibit 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. The Town did not have a substantially compliant 6th RHNA Cycle Housing Element on April 5, 2024, when the Preliminary Application was submitted. 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 and General Plan land use designation of the Property.

The Town “may only require the project to comply with the objective, quantifiable, written development standards, conditions, and policies that would have applied to the project *had it been proposed on a site with a general plan designation and zoning classification that allow the density and unit type proposed by the applicant*. If the local agency has no general plan designation or zoning classification that would have allowed the density and unit type proposed by the applicant, the development proponent may identify any objective, quantifiable, written development standards, conditions, and policies associated with a different general plan designation or zoning classification within that jurisdiction, that facilitate the project’s density and unit type, and those shall apply. (Gov. Code, § 65589.5(f)(6)(A).) However, under no circumstance can a local agency impose any objective development standards, conditions, or policies that would render the project infeasible. (Gov. Code, § 65589.5(f)(6)(B)(i).)

Based on the above, the CM Zoning District standards (setbacks, height, and lot coverage), *do not apply*. The Town’s Multiple-Family (R-M) Zoning District standards are the “best fit.” The Project is consistent with the R-M Zoning District’s density range of 5-20 dwelling units per acre. (LGMC, § 29.40.630.) Provided below is additional information pertaining to the

Applicant's requested waivers, incentives, and concessions under the DBL as to those standards, as applicable and necessary for the Project.

B. Architecture and Site Approval

The Applicant requests that the Town grant architecture and site approval for the Project. The purpose of architecture and site approval is to regulate the height, width, shape, proportion, siting, exterior construction and design of buildings to ensure that they are architecturally compatible with their surroundings. Section 29.20.150 of the Town's Municipal Code lists the matters that must be considered when reviewing applications for architecture and site approval, however none of the listed matters constitute objective standards for residential projects, and therefore do not apply to the proposed Project under either SB 330 (Gov. Code, § 66300) or the HAA (Gov. Code, § 65589.5). As a result, the matters listed in Section 29.20.150 may not serve as grounds to disapprove the project or condition approval of the Project in a manner that renders the project infeasible. The Project will incorporate appropriate designs and measures into the Project as needed to comply with the Town's Objective Design Standards For Qualifying Multi-Family and Mixed-Use Developments in the areas of transportation, landscaping, drainage, lighting, and ADA requirements, unless otherwise noted in the Project's requests for waivers, concessions and incentives, and reductions in parking.

C. Vesting Tentative Map

The Applicant requests Town approval of a vesting tentative subdivision map for the Project to create separate legal parcels for the residential units and the subdivision common areas and to establish appropriate access, utility and service easements. The proposed vesting tentative map complies with the design standards and improvement standards in Chapter 24 of the Town's Municipal Code with the exception of minimum right-of-way width for alleys as described below under requested DBL waivers. The Applicant will separately prepare and record condominium plans to define exclusive use areas and areas of separate undivided interests for the individual units. Following approval of the vesting tentative map, the Applicant will prepare a final map for Town approval.

D. Tree Removal Permit

The Applicant requests Town approval of a tree removal permit pursuant to Section 29.10.0992 of the Town's Municipal Code. The tree removal permit will allow for the removal of up to 81 trees, 77 of which are protected trees.

E. State Density Bonus Law

By designating 11 units as BMR units (16%) affordable to Low Income households the Project qualifies for an incentive or concession, unlimited waivers or reductions of development standards, and parking reductions under the DBL. (Gov. Code, § 65915(b)(1) [10% lower income qualifies project].) Because the Project is a Builder's Remedy Project and it additionally qualifies for the DBL, the Project is entitled to "receive two incentives or concessions *in addition* to those granted" under the DBL, which means the Project is entitled to a total of three incentives or concessions. (Gov. Code, § 65589.5(f)(6)(C)(i) (emphasis added).) For additional information on the benefits and protections available under the DBL, please refer to the prior letter from the Applicant's legal counsel dated September 24, 2024.

1. *Waiver - Subdivision Ordinance*

To the extent that the Town takes the position that the Town's Subdivision ordinance contains objective standards that apply to the Project, the Applicant intends to utilize a waiver to reduce the minimum right-of-way widths for alleys from 30 feet to 24 feet. (LGMC, § 24.50.020.) The Project does comply with the minimum roadway width for alleys. Application of the right-of-way width standard would result in a direct loss in the number of units that could be accommodated on the Project site by reducing the overall developable space for residential units. The Applicant may utilize additional waivers to certain requirements of Chapter 24, Subdivision Regulations, of the Town's Municipal Code except to the extent compliance with a requirement is required under state or federal law.

2. *Waiver - Objective Design Standards For Multi-Family Residential Development*

To the extent that the Town takes the position that the Town's Objective Design Standards and Guidelines For Qualifying Multi-Family and Mixed-Use Residential Development ("ODS") contain objective standards that apply to the Project, the Applicant requests the waivers identified below.

(1) Waiver of ODS B.1.2. This standard requires upper floors above two stories to be set back by a minimum of five feet from the ground-floor façade. Compliance with this standard would require an increase in the width of lower-level floor plans, resulting in a loss of units.

(2) Waiver for ODS B4.4.4. As written, this ODS requires both that garage doors be recessed 12" (which the Project meets), and that garage doors to be less than 40% of the overall length of the street-facing facades, which the Project does not meet. If the Town determines that the private internal alleys in a multi-family project are in fact streets, a waiver for this standard would be necessary as meeting the standard would require either fewer garage doors or longer facades, either one of which would result in a direct loss of units.

(3) Waiver for ODS A.8.1. This standard requires at least 50% of the front setback area to be landscaped. The Town indicated that the Project does not meet this standard. Compliance with this standard would result in a direct loss of units.

As the Project applications progress, the Applicant may identify additional waivers or reductions in development standards under the DBL in addition to those listed here.

3. *Waivers – Residential Condominium Zoning Standards*

The Applicant is seeking a waiver of the requirement for private open space in Zoning Code section 29.10.065(1).⁴ This standard requires “each ground floor dwelling unit to have a minimum of two hundred (200) square feet of outdoor usable open space in the form of a single enclosed patio or deck essentially located at the level of the main living area.” (LGMC, § 29.10.065(1).) This standard *directly conflicts* with ODS A11.1, which provides that “[e]ach ground floor dwelling unit shall have a minimum of 120 square feet of usable private recreation space.” The Project complies with the ODS by providing 142.6 square feet per ground floor unit for a total of 9,700 square feet. To the extent that the Town takes the position that the Zoning Code standard applies, the Applicant seeks a waiver of that standard. Meeting the Zoning Code standard for 200 square feet per unit would require larger porch and deck areas, which are already amply sized. Designing larger units to accommodate the necessary dimensions to achieve this standard would result in a direct loss of units.

4. *Waiver - Multiple-Family (R-M) Zone District Standards*

As discussed in Section III.A. above, the Town’s Multiple-Family (R-M) Zoning District standards are the “best fit” and the CM Zoning District standards do not apply under the Builder’s Remedy provisions of the HAA. To the extent that the Town takes the position that the Town’s Multiple-Family (R-M) Zoning District contains objective standards that apply to the Project, the Applicant intends to utilize a waiver of the following standards:

- (1) The Project seeks a waiver of the 30-foot maximum height requirement to allow the Project’s building height of 37’4.” First, under the HAA, application of this height standard would render the project infeasible. (Gov. Code, § 65589.5(f)(6)(B)(i).) In addition, a waiver of this height limit is needed to facilitate the Project’s compliance with ODS B.3.1 pertaining to horizontal eave breaks.

⁴ Section 29.10.065 was amended through Ordinance 2370 on February 4, 2025. Because the Project is vested as of the date of the Preliminary Application submittal in April 2024, the changes made under Ordinance 2370 do not apply to the Project.

(2) The Project seeks a reduction in the front, rear and side setbacks for the R-M Zoning District. (LGMC, § 29.40.645.) The Project complies with the required side and rear setbacks. As proposed the Project provides a 5-foot front setback, instead of a 25-foot front setback. Application of the front setback requirement would preclude the Project from constructing the Project at the proposed and allowed density as it would result in a direct loss of units.

(3) The Project seeks a reduction in building-to-building distances from 24 feet to 15 feet. (LGMC, § 29.40.640.) Application of this standard would result in a direct loss of units. The proposed project density would not be achievable with the larger building to building distance.

(4) To the extent that the Town interprets the lot coverage requirement as applying to each *individual townhome lot*, the Project seeks a waiver of the lot coverage requirement as it would directly result in a loss of units. (LGMC, § 29.40.655.) If this standard is applied to the existing Project site, then the Project is in compliance with the standard.

As the Project applications progress, the Applicant may identify additional waivers or reductions in development standards under the DBL in addition to those listed here.

5. *Waiver - Bicycle and Pedestrian Master Plan*

To the extent that the Town takes the position that the Town's Bicycle and Pedestrian Master Plan contains objective standards that apply to the Project, the Applicant may utilize waivers under the DBL for certain requirements.

6. *Parking Reduction*

The version of Section 29.10.150 of the Town's Municipal Code applicable to this Project⁵ requires 1.5 parking spaces per multiple-unit dwelling, as well as one visitor parking space for each residential unit. As applied to the Project, this would total 102 spaces for the Project's 68 units, in addition to 68 guest parking spaces (170 total spaces). After submittal of the Project's SB 330 Preliminary Application, the Town amended its zoning code to eliminate the separate visitor parking requirement in Section 29.10.150. The Project complies with the Town's current parking standard.

The Project will provide 136 covered parking spaces in the 2-car garages and 13 additional guest parking spaces (149 total spaces). Under the DBL, the Applicant is entitled to "request parking incentives or concessions beyond those provided" in subdivision (p) of Section 65915. Because the Project does not comply with the parking standard in effect at the time of the SB 330

⁵ Section 29.10.150 was amended through Ordinance 2372 on February 4, 2025. Because the Project is vested as of the date of the Preliminary Application submittal in April 2024, the changes made under Ordinance 2372 do not apply to the Project.

Preliminary Application submittal, the Applicant will use one of its three available incentives and concessions to reduce the required visitor parking for the Project. (Gov. Code, § 65915(p).)

7. *Incentives or Concessions*

Because the Project would include a minimum of 11 lower income units, and the Project is a Builder's Remedy Project, it is eligible for three incentives or concessions. (Gov. Code, § 65589.5(f)(6)(C)(i).) As described above, the Applicant will use once incentive/concession for the reduction of visitor parking. At this time our clients reserve the right to utilize the two remaining incentives or concessions with respect to requirements of the Town's Subdivision and Property Development ordinances, BMP ordinance and guidelines, ODS, R-M Zone standards, and/or Bicycle and Pedestrian Master Plan where such incentives or concessions would provide identifiable and actual cost reductions to provide for affordable housing costs, except to the extent compliance with a requirement is required by state law.

IV. CEQA REVIEW

The Project is eligible for the California Environmental Quality Act statutory exemption under Assembly Bill 130 ("AB 130") and is submitting herewith an AB 130 Exemption Environmental Analysis Memorandum prepared by First Carbon Solutions.

V. CONCLUSION

The Applicant looks forward to working in cooperation with the Town to provide much needed housing, including affordable housing, to the community pursuant to critical state laws that are designed to facilitate housing production. Please let us know if you need any additional information in order to schedule the Project for a public hearing.

Sincerely,

Cox, Castle & Nicholson LLP



Arielle O. Harris

cc: Nick Kosla, Toll Brothers
Robert Connolly, Toll Brothers
Alicia Guerra, Buchalter