



**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.msrlegal.com

Travis Brooks
travis.brooks@msrlegal.com

September 2, 2024

Erin Walters
Planner
Town of Los Gatos Planning
Department
110 E. Main Street
Los Gatos, CA 95030
EWalters@losgatosca.gov

Re: 15300 and 15330 Los Gatos Boulevard (Architecture and Site Application S-24-018; Conditional Use Permit U-24-007; Subdivision Application M-24-009)

Dear Ms. Walters:

As you know, this office represents Arya Properties, LLC (“Applicant”) in its housing development project application for 182 new residential condominium units and commercial space at the above-referenced location in the Town (“Project”). The Project application is subject to the robust protections of Senate Bill 330 and the Housing Accountability Act, including the Builder’s Remedy.¹ (“HAA”, Gov. Code § 65589.5.) With the materials enclosed with this letter, Arya Properties is timely responding to the Town’s June 5, 2024 notice that its Formal Application was incomplete.

We write specifically in response to the Town’s June 5 Technical Review Comments. In comments 7 and 8, the Town requests that the Applicant submit applications for a General Plan and Zoning Amendment. However, the Project is subject to the Builder’s Remedy, which provides that the Town *may not* disapprove the Project because of purported inconsistencies with the General Plan land use designation as specified in any element of the Town’s General Plan, or its zoning ordinance. (Gov. Code § 65589.5(d).) Accordingly, the Applicant is not required to, and will not be submitting applications for these legislative approvals.² We also note that the Town’s

¹ The Applicant also reserves its rights to invoke benefits under the state Density Bonus Law. (“DBL”, Gov. Code § 65915.) The Applicant also reserves its rights to rely on any forthcoming amendments to the HAA.

² See Letter of Technical Assistance from Shannan West to City of Beverly Hills, Department of Housing and Community Development, June 26, 2024, available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/beverly-hills->

June 5 notice also calls out a number of purported inconsistencies with its Objective Design Standards and other standards. The Applicant is not required to modify the Project to comply with these standards - especially when doing so would interfere with development of the Project at its proposed density as permitted pursuant to the Builder's Remedy. (Gov. Code § 65589.5(d),(f)(1).) Finally, although the Builder's Remedy should obviate the Applicant's need to do so, the Applicant reserves its right to request incentives/concessions or waivers/reductions in the Town's development standards pursuant to the Density Bonus Law. (Gov. Code §§ 65915-65918.)

As a brief reminder, the Builder's Remedy, found in subdivision (d)(5) of the HAA, prohibits a town 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 town's zoning ordinance and general plan land use designation as specified anywhere in its general plan. (Gov. Code § 65589.5(d)(5).) The HAA currently defines projects for very low, low-, or moderate-income households to include those that provide 20 percent of their units as affordable for lower-income households. (Gov. Code § 65589.5(h)(3).) Because the Town did not have a substantially compliant 6th Cycle Housing Element at the time the Applicant filed the Project's Preliminary Application and the Project is a housing development project that will provide 20 percent of its units at prices affordable to lower-income households, the Project is protected by the Builder's Remedy.

We look forward to working with the Town to deliver this housing development project which will deliver critically needed affordable and market rate homes to the community. If you have any questions about the above, please do not hesitate to contact me.

Very truly yours,

MILLER STARR REGALIA

Travis Brooks

Travis Brooks

TZB:tzb

[hau-1071-losta-062624.pdf](#) ["The HAA is clear that a project protected by the Builder's Remedy may not be disapproved for inconsistency with a jurisdiction's general plan and zoning ordinance. Accordingly, a jurisdiction that refuses to process or approve a project subject to the Builder's Remedy due to the applicant's refusal to submit a GPA/ZC requested or required by the jurisdiction to resolve such an inconsistency violates the intent of the HAA."]