



Builder's Remedy Law and CEQA

Town of Los Gatos Joint Town Council
and Planning Commission Study Session

April 7, 2025

Objective

This Study Session is to review updates to Builder's Remedy law and discuss CEQA analysis for Builder's Remedy projects.

Admonition

- No specific pending planning applications will be discussed.
- This is to avoid any challenges to future Town decisions on the basis that the decision-makers had pre-judged the applications.

The Builder's Remedy and New State Laws

Builder's Remedy

- Senate Bill 330 enacted legislation that authorizes applicants to submit a “**preliminary application**” and vest to the Town’s development standards **in place at the time of submittal**
- **A number of projects vested before HCD had certified the Town’s Housing Element**
- Those projects may be eligible for the “Builder’s Remedy” which may allow projects to avoid local zoning

Key Provision Pre-2025



Applied to “affordable” projects with:

- 20% of the **total** units affordable to lower-income households, *or*
- 100% of the units affordable to moderate-income households

The Builder's Remedy Provision

Additional finding to deny “affordable” projects:

- Town meeting RHNA numbers;
- “Specific adverse impact” to public health and safety that can’t be mitigated;
- Does not comply with state or federal law, and can’t comply;
- Proposed on agricultural land or water/sewer inadequate, OR
- **Inconsistent with Zoning Ordinance & GP land use designation; BUT must have a housing element in substantial conformance with state law, and not on a site designated in housing element for lower or moderate income housing if consistent with HE density.**

Key Changes Effective January 1, 2025

Reduced Affordability Requirements:

- 13% low, 10% very low, or 7% extremely low; calculated on **base density** only
- 10 or fewer units, on a site of less than one acre, at a minimum density of 10 units/acre
- 100% moderate income

Key Changes Effective January 1, 2025

Defines a “builder’s remedy project”:

- Meets affordability standards
- On or after preliminary application filed, Town did not have a housing element conforming with state law
- Meets minimum & maximum densities
 - In Los Gatos, allowed at least 80 du/acre + density bonus of up to 100%

Key Changes Effective January 1, 2025

If Project Meets Definition:

- Town must use zoning district allowing density and type of development if one exists; developer can identify standards if not
- Cannot make project infeasible or preclude project from being constructed as proposed
- BR projects are considered to conform with zoning and general plan “for all purposes”
- Existing projects can elect to opt into all or some provisions.

Key Changes Effective January 1, 2025

- HCD or Court approval required for Housing Element to be compliant; cannot “self-certify”
 - HCD found January 30, 2023 element not in compliance
- “Rebuttable presumption” that HCD findings are correct, whether positive or negative

Review of Builder's Remedy Projects under CEQA

CEQA

If project requires discretionary approval, CEQA still applies

- Is it a “project”?
- Is it exempt?
- If no, Initial Study
 - Either Negative Declaration or EIR



Possible Exemptions

- **Infill Exemption (Guidelines Section 15332)**
 - Under new laws, considered to conform with “applicable” general plan and zoning code provisions
 - No impacts on traffic, water and air quality, noise; adequately served by utilities and public services
 - BUT: can’t be used if may have impact due to “unusual circumstances”
 - OR if cumulative impact of projects of the same type in the same place (Section 15300.2)

Possible Exemptions

- **Section 15183: Projects Consistent with General Plan or Zoning**
 - Can be used if project is consistent with density examined in 2040 and 2020 General Plan EIRS
 - New review limited to impacts “peculiar to the project”

If Not Eligible for an Exemption:

- Initial Study Completed Resulting in:
 - Negative declaration or mitigated negative declaration; or
 - Environmental Impact Report

Cumulative Impacts

- Should Be Evaluated for Each Project
 - As part of eligibility for exemption or initial study
- May Be Most Efficient to Commission a Cumulative Impacts Analysis Used for All Projects

Thank You!