



# 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

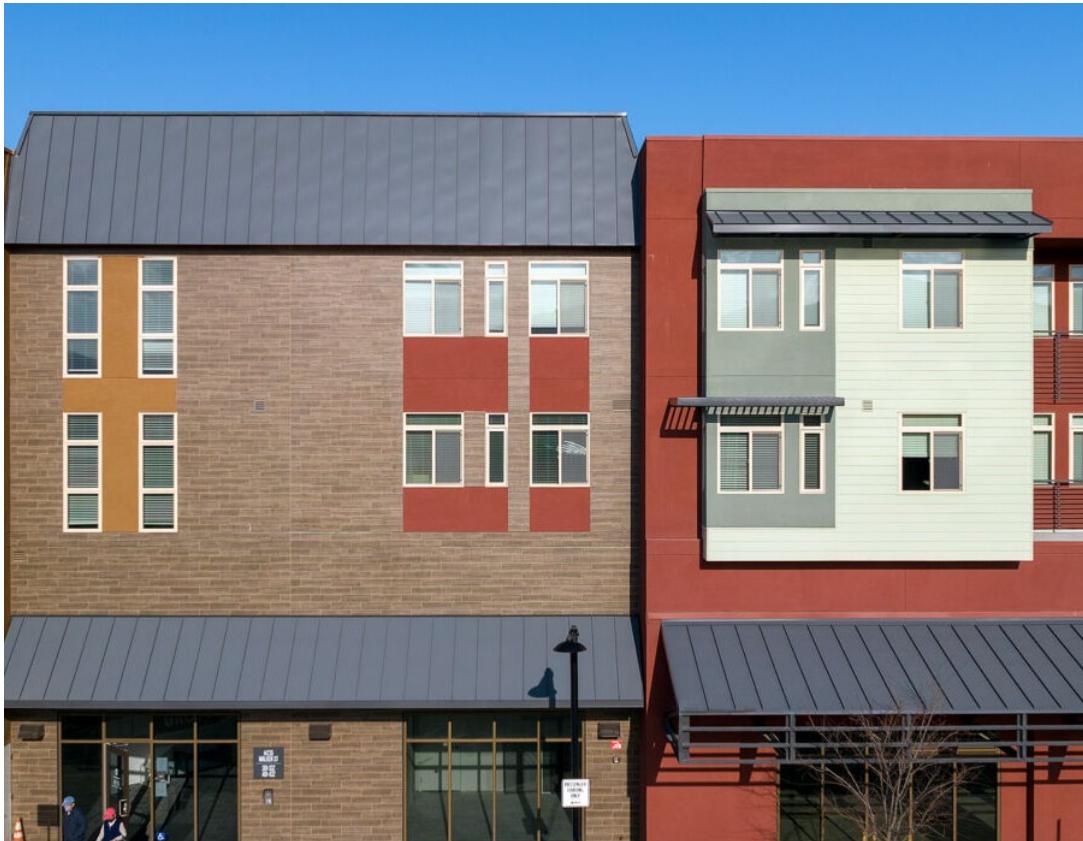
- No specific pending planning applications will be discussed.
- This is to avoid any challenges to future Town decisions on the basis that the decision-makers had pre-judged the applications.

# 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!