# SB 330 Builder's Remedy Questions and Answers

**from April 7, 2025, Town Council & Planning Commission Study Session**

**Q: What are the fundamental differences between Builder's Remedy applications and SB 330 applications that do not invoke Builder's Remedy?**

A: There's not much difference because, if a project meets the definition of a Builder's Remedy project, the project may utilize provisions of state law applying to Builder's Remedy projects at the time that the Town makes its ultimate decision on the project. If a project meets the definition of a Builder's Remedy project, it can only be denied or conditioned if it meets one of the following criteria, summarized below:

1) The Town has satisfied its Regional Housing Needs Allocation for the income categories included in the project.
2) The denial or imposition of a condition is necessary in order to prevent a "specific adverse impact" to public health and safety that can't be mitigated.
3) The project does not comply with state or federal law, and there is no feasible way to comply; or
4) The project is proposed on agricultural land or water or sewer service are inadequate.

**Q: Is there a list of current applications that meet the standard for Builder's Remedy?**

Yes, the list is below:

| Project # | Address (1) | Nickname/Previous Use | Housing Element Site? | Res Units Studied du/a | Residential Units | BMR Market Units (% Affordable) | Stories | Acreage | d/u per Acre | % of Total Acreage |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 101 S. Santa Cruz Ave | Post Office - Proposal 1*** | No | N/A | 58 | 12 (21%) | 7 | 0.82 | 71.00 | 2.80% |
| 2 | 178 Twin Oaks Dr | Surrey Farms*** | No | N/A | 12 | 3 (25%) | 2 | 17.91 | 0.67 | 61.33% |
| 3 | 14288 Capri Dr | Capri Fruitstand - Proposal 3*** | No | N/A | 120 | 24 (20%) | 13 | 0.53 | 225.00 | 1.83% |
| 4 | 15495 LG Boulevard | Newtown*** | No | N/A | 238 | 48 (20%) | 7 | 3.86 | 61.70 | 13.21% |
| 5 | 980 University Ave | Cryptic*** | No | N/A | 68 | 11 (16%) | 3 | 4.02 | 16.90 | 13.78% |
| 6 | 647 N Santa Cruz | State Farm*** | No | N/A | 11 | 3 (27%) | 3 | 0.57 | 19.30 | 1.95% |
| 7 | 143-151 E Main Street | Cafe Dio - Proposal 2*** | No | N/A | 30 | 6 (20%) | 4 | 0.42 | 71.00 | 1.45% |
| 8 | 101 Blossom Hill Road | Oswalt Building*** | No | N/A | 63 | 13 (21%) | 7 | 1.07 | 58.90 | 3.66% |
| Totals | | | | | 600 | | | 29.2038 | 524.47 | 100.00% |
| Total BMR and Average du/a | | | | | | 120 | | | 65.56 | |
| Number of Buildings Exceeding LG Height Limit | | | | | | | 5 | | | |
| 9 | 14859 Los Gatos Blvd | North 40 Phase II-Multi-Bldg*** | Yes | 464<br>30 du/a | 450 | 90 (20%) | 7 | 14.47 | 31.10 | 56.00% |
| 10 | 14849 Los Gatos Blvd | North 40 Single Bldg*** | Yes | 27<br>30 du/a | 120 | 24 (20%) | 9 | 0.91 | 132.20 | 3.51% |
| 11 | 15300 and 15330 Los Gatos Blvd | ACE Hardware Property*** | Yes | 48<br>30 du/a | 175 | 35 (20%) | 9 | 1.90 | 92.00 | 7.36% |
| 12 | 15349-15367 LG Blvd | Genuine Automotive | Yes | 86<br>30 du/a | 55 | 11 (20%) | 3 | 1.54 | 35.70 | 5.96% |
| 13 | 14789 Oka Road | Walnut Orchard*** | Yes | 27<br>4 du/a | 138 | 28 (20%) | 3 | 6.70 | 20.60 | 25.93% |
| 14 | 15171 LG Blvd (N40 Specific Plan) | Union 76 | Yes | ??<br>?? du/a | 23 | | 4 | 0.32 | 72.30 | 1.23% |
| Totals | | | | | 961 | | | 25.84 | 383.90 | 100.00% |
| Total BMR and Average du/a | | | | | | 188 | | | 63.98 | |
| Total Average du/a - 14 Builder's Remedy Projects | | | | | | | | | 64.88 | |
| Number of Buildings Exceeding LG Height Limit | | | | | | | 4 | | | |
| Total Number of Buildings Exceeding LG Height Limit | | | | | | | 9 | | | |

**Q: The CEQA exemption for infill development is inapplicable when there are "unusual circumstances." What is an example of such "unusual circumstance?"**

A: To date, case law involving "unusual circumstances" has upheld the finding based on hazardous wastes; size, scale and density of a large office project; or large amount of water needed for a casino and hotel project. Generally, the view of the courts is that a Town's determination regarding whether a circumstance is unusual or not will be upheld if the Town has substantial evidence to support its determination.

*Update: The Governor has signed legislation, effective 7/1/25, that 1) enacts a statutory infill exemption that is not subject to exceptions for "unusual circumstances;" and 2) requires local agencies to approve or disapprove projects within 60 days of the conclusion of a tribal consultation. The Town Attorney is currently analyzing this legislation to determine its impact on pending projects.*

**Q: Public commenters have referenced the Save Our Neighborhood decision with regard to when additional environmental review is needed. Could you elaborate on that?**

A: The Save Our Neighborhood case was overruled by the California Supreme Court in another case called Friends of the College of San Mateo Gardens v. San Mateo Community College. The standard upheld was the standard for doing supplemental or subsequent EIR'S. Supplemental environmental review will be required if:

1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted shows any of the following:
   (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
   (B) Significant effects previously examined will be substantially more severe that shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but he project proponents decline to adopt the mitigation measure or alternative.

**Q: What approach from a CEQA standpoint should the Town consider on projects that are not within the scope of our 2040 general plan EIR? I am specifically speaking of eight projects that are shown up here that range from 59 dwelling units per acre to 225 dwelling units per acre. Our EIR did not study anything above 40 dwelling units per acre.**

A: The Town will utilize the standards described in the previous question to determine if supplemental environmental review is needed, including review of cumulative impacts.

**Q: Can you comment on the "fair argument standard?"**

A: The Town has to first determine if a project is eligible for any CEQA exemption. A project is entitled to an exemption if there's substantial evidence to support the exemption. Recent amendments to the Housing Accountability Act require that the Town grant an exemption if an applicant presents substantial evidence that a project is eligible, and a recent case held that a city must grant an exemption if a project is eligible for it.

If a project is not eligible for an exemption, there's a very low threshold for doing an EIR which is why it may be easier to challenge a negative declaration than to challenge an exemption. The standard for preparation of an EIR is whether there is substantial evidence of a "fair argument" that a project may cause an environmental impact. It doesn't need to be shown that the project **will** have an environmental impact, it only needs to be shown, based on substantial evidence, that it may have an environmental impact. To give an example of how these standards are different: In a standard for an exemption, there may be two noise reports from experts: One saying that there is no noise impact, and one saying there is a noise impact. If the report saying there's no noise impact is based on substantial evidence, then the project may be eligible for an exemption. However, if no exemption applies, there would be a "fair argument" that an EIR should be prepared based on the differing opinions.

**Q: What will happen with these bigger projects requiring more from our service providers like West Valley Sanitation and Valley Water?**

A: The Town has the ability to apply mitigation measures if they are needed in order to mitigate environmental impacts. It would depend on the facts regarding whether, for instance, the sewer line is adequate and what the cost would be to enlarge it and how the cost should be shared. If the environmental review showed that there were inadequate sewer lines, then the Town could require some kind of mitigation.

**Q: Service Provider Issues would not be grounds to turn the project down?**

A: Projects can be turned down if there are inadequate water or sewer facilities.

**Q: If an area is under water restriction, meaning that the water that you're allowed to use has been reduced, does that signify that there's inadequate water?**

A: The language is that the water or sewer facilities are inadequate. One would have to demonstrate that the facilities are inadequate.

**Q: Is a municipality's Housing Element considered compliant when the Town or City declares it compliant or when the state Housing and Community Development Department declares it compliant?**

A: Under legislation effective January 1, 2025, the Housing Element is compliant when HCD or a court says it is compliant.

**Q: Can you share just a little bit more about what that part of AB1886 means for the Housing Element in Los Gatos?**

A: There's disagreement about whether this rule applied before January 1st despite the language in AB 1886 saying it is declaratory of existing law. There's one case right now at the Court of Appeal. It involves Redondo Beach. It's a Builder's Remedy case and there are a number of issues in the case that don't involve Los Gatos (like violations of the Local Coastal Plan), but one of the issues is that the developer submitted a preliminary application between the time the City adopted a Housing Element and the time that HCD approved it and in that particular case the trial court held that the Housing Element was adequate when adopted. There are also trial court cases in LA which came to a contrary

conclusion, but the trial court upheld Redondo Beach's position, particularly because HCD had already said that the Housing Element was adequate before it was adopted.

**Q: A cumulative impact analysis, as I understand it, would -- rather than evaluate each project individually -- take all the 14 Builder's Remedy projects and analyze for -- by way of example traffic -- how all those projects together would impact the Town. Is that a fair kind of summary of what that would do?**

A: Yes.

**Q: How long would it take to prepare such a project? What would the expense be? Who would pay for that? Is that shifted to the developers and then divided among the developers?**

A: We don't know how long it would take or how much it would cost. The law does provide that applicants do need to pay for the cost of the environmental study. There's one Builder's Remedy project that has already gone to the Planning Commission. As a general rule the applicant pays for the analysis.

**Q: If there was a cumulative impact analysis, then what happens with those results? Does it just mean that there will be more included in the mitigated negative declarations? Or what happens next after a cumulative analysis?**

A: It would become part of the record and the grounds for denial or conditioning of a Builder's Remedy project would remain the same under the Housing Accountability Act. It would still be those four factors but the environmental analysis might inform whether or not any of those four factors are present. Typically mitigation measures are applied as the result of an EIR.

**Q: Let's say that we have an application before us, before we get it before us for a hearing, can we suspend the application until a cumulative impact analysis is complete?**

A: That would be part of the environmental analysis. A decision can't be made until the decision maker has the environmental analysis before them.

**Q: We don't know how long it might take to get an environmental analysis done -- so it could be months?**

A: I think that's a reasonable assumption.

**Q: Can you give us a little more information concerning the base density calculation under the Builder's Remedy as it relates to Los Gatos?**

A: A project is entitled to a minimum of one and a half times what's called the default density, which is 30 units an acre in Los Gatos. An applicant then gets at least 45 units an acre. Then, if the project is located in a high opportunity or very high opportunity area, based on maps that the Tax Credit Allocation Commission has prepared, sites are entitled to an additional 35 units per acre. The entire Town of Los Gatos is a high opportunity or very high opportunity area, so any site gets an additional 35 units an acre, or 80 units per acre. That's the minimum density in the Town for a Builder's Remedy project. However, if a site is already zoned at 30 units an acre it gets three times the density -- 90 units per acre --plus 35 units per acre, or 125 units per acre total. But every site in Los Gatos gets at least 80 units an acre under the Builder's Remedy.

**Q: Could you talk about the legal exposure to pursuing the cumulative impacts analysis path? If the Town chose to delay holding a public hearing an applicant could take legal action against the Town? Is that a possibility?**

A: It's always a possibility. The Permit Streamlining Act does impose deadlines on local agencies to consider applications, but those deadlines apply at the point that CEQA is complete. Recent legislation also contains a definition of "effective disapproval" where if the Town doesn't approve an exemption to which a project is entitled, then an applicant has to go through certain steps to do establish "effective disapproval" and that is another form of potential litigation.

**Q: There could be a dispute over whether or not an applicant is entitled to that exemption?**

A: Correct, also somebody could challenge the Council's determination that a supplemental EIR needs to be done. The Town needs substantial evidence that there may be additional impacts to justify a supplemental EIR.

**Q: Who authorized our staff to begin taking SB 330 applications invoking Builder's Remedy? What was the trigger for that to take place because clearly we were going on record that we were in substantial compliance with housing law?**

A: The Builder's Remedy applies at the point at which the decision makers are deciding whether to approve, deny or condition a project. It's not grounds for a local agency to refuse to process an application, but it is a basis for the ultimate decision that gets made. The Town has no authority to refuse to accept an application.

**Q: Even at this date we could challenge Builder's Remedy, or we could challenge that that we were substantially compliant with the state Housing Element and we would no longer be processing those applications under Builder's Remedy if we prevailed?**

A: The Town would always process the applications but the grounds for denial apply at the time that the Town is making its decision on the project. It's not grounds to say "I'm sorry we can't accept your application." The Town could determine that the Housing Element was adequate when the preliminary application was filed, and the project is not a Builder's Remedy project.

**Q: Has there been any judicial history on municipalities challenging a HCD finding that their Housing Element did not comply with state law?**

A: There are a couple of recent court cases, particularly the La Canada Flintridge and Beverly Hills cases, where a city tried to argue that its Housing Element was in compliant with state law but the trial court didn't agree.

**Q: There's just one case or are there other municipalities that are challenging that?**

A: I'm not aware of any other cases where someone has recently challenged HCD's decision. There are older cases, but the Legislature has changed the standards and determined that there is a "rebuttable presumption" that HCD is correct.

**Q: When are traffic studies supposed to be conducted and what does it mean to have no impact?**

A: The state changed the whole way that cities are allowed to do traffic studies under the California Environmental Quality Act. Rather than looking at congestion, cities are

supposed to look at impacts by what's called VMT (vehicle miles traveled). Since multi-family buildings generally have fewer trips per capita, this tends to favor multifamily buildings. You can also look at various traffic safety issues. But traffic congestion, which is what most of us experience, is not considered an environmental impact anymore under the California Environmental Quality Act.

**Q: Do the people in the Town have the ability to comment on and request aspects that they would like to see in the CEQA process?**

A: When the Town does an environmental impact report and when other cities do environmental impact reports, there's often a scoping session. At the scoping session members of the public will talk about information they would like to see included. With regard to whenever an exemption is used or when an initial study leads to the conclusion that there will be a negative declaration or a mitigated negative declaration, the negative declaration does get circulated for review and then there's an opportunity at the meeting at which the project is being considered for members of the public to come and speak about the particular project that was reviewed. Regarding projects in general, members of the public can always email the project planner that's working on that particular project with their concerns.

**Q: What can be done about State imposition of mandates?**

A: These laws were primarily passed by elected officials. Many of us complain about HCD and their interpretations but all this really comes from the state's legislators, including those representing the Town. Our local elected senator and assembly member voted for these laws.

**Q: What's considered unusual with the number of stories on buildings? Would a 13-story building adjacent to single family homes not be unusual?**

A: Generally, the courts will uphold a city's decision on whether circumstances are unusual if based on substantial evidence. Substantial evidence is reasonable assumptions based on facts or expert opinion supported by facts. The Town would need to make findings demonstrating that the project is unusual.

**Q: Is there a way that we can focus on what we can do?**

A: CEQA is one area where the Town has some control and then also those four findings that are the permissible grounds for denying or conditioning a Builder's Remedy project. We do have a couple of areas in Town that are agricultural. One of them was in the first phase of the North 40. The consultants will do an evaluation and make a determination as to whether or not the project would have an environmental impact. Any other sites in Town that are agricultural based on state or federal maps or the Town's zoning will go through that analysis.

**Q: When commercial and residential sewer lines may be in parallel who is responsible for paying that when they are damaged in the course of construction? Also, regarding damaged trees?**

A: A condition of approval would require the developer to repair any damage that they cause.

**Q: How does Governor Newsom's new pausing CEQA affect all of the projects?**

A: I think that was specific to the property that was affected in the LA wildfires and so it doesn't change the Town CEQA processes. Note that there are bills in the Legislature that would change the "fair argument" standard and significantly expand CEQA exemptions.

**Q: Are evacuation routes a consideration?**

A: Yes, this would fall under safety. There is a question about evacuation routes in the initial study checklist.

**Q: How does the Town make sure the traffic report analysis is not biased?**

A: The developer funds the studies and then the Town contracts with the consultants and so the Town is reviewing the work product. There are two paths depending on which consultants we're talking about. Sometimes the developer prepares their own study, and in that case it is peer-reviewed by our consultant and that is the case for those technical studies and that that's how we eliminate bias.

**Q: What are the egress and ingress considerations, particularly if there is something related to safety having to do with one way in and one way out? Would that be a CEQA consideration or would that be a consideration of the project itself?**

A: County Fire is reviewing all of these applications. I want to say in 2019 October there was some discussion of things like evacuation routes and County Fire may be creating an evacuation plan, but to my knowledge that has not been done. I think that gets back to previous comments of adopted standards from a health and safety standpoint that are objective so I'm not aware of those but evacuation routes is one of the items that's addressed in the initial study checklist.

**Q: Is County Fire looking at cumulative impacts or are they looking at only individual applications?**

A: County Fire has reviewed at a minimum one time all the current 14 projects. If and when they bring up an issue related to that then we would have the applicants address it. There haven't been any issues other than again the case by case as with the ingress egress that was required of a project that was recently approved. Staff will also check in with County Fire and get some input from them on the cumulative question.

**Q: Ability to evacuate and routes for evacuation, are those things that can be evaluated with an application and do they require a simulation or a study or is there any method for looking at safe evacuation from wildfire?**

A: We don't have an evacuation plan adopted so I think that's the key component. Many people are familiar with the model from Mill Valley. We need to ultimately get direction from the Council as far as what next steps might look like and what that effort would entail.

**Q: Could you help us understand these competing risks that the Town is weighing here?**

A: The legal landscape is frankly very tilted toward the approval of housing projects. CEQA remains something that the Town can use to try to understand the impacts of the projects. Possibly being able to attach mitigation measures -- it's unclear what the ultimate result would be. CEQA is basically an informational tool. Every court decision that you read regarding every CEQA case starts with a statement that an EIR is an informational document and the point is to give people all the information. If there are issues now where

the Town doesn't have adequate information it can get it. What the ultimate result will be in terms of each individual project is hard to predict.

**Q: Talking about the cumulative impact analysis you shared that the Town needs to prove that this analysis is necessary. What does that process look like?**

A: It involves an initial study. That's usually what the substantial evidence is in this case because there's already some CEQA that has been done on the Town's General Plan. The Town would need to demonstrate that the existing analysis is not adequate.

**Q: Who decides which projects have scoping sessions? Is there a way to require developments to have scoping sessions so that there is more public input and information at earlier stages?**

A: A scoping session is pretty typical if an EIR is being done. If the Town decides to do a supplemental EIR, say on cumulative impacts, a scoping session would be pretty routine. The states put a limit on the number of hearings that cities can have, five hearings per project. For individual projects, a scoping session is typically only required if the project requires an EIR.

**Q: A cumulative study was multiple projects -- it's not tied to one specific development and that the Town was taking. Would that count as one of the hearings for a project if it's more of a cumulative study that we're doing over multiple projects?**

A That would need to be reviewed when the hearing is scheduled.

**Q: If we tested the January 30th resolution in the courts and against all odds we were to prevail, what impact would that have on the applications that we have in process right now?**

A: That would mean that the Town could deny a project that doesn't comply with the general plan and zoning, although projects would still be entitled to waivers of development standards under density bonus law.

**Q: Is there any examples or record of testing the January 30th resolution within the courts?**

A: I'm not aware aside from the La Canada case. I'm not aware of anybody challenging recently. Remember, not all the projects rely on the very high densities that the Builder's Remedy allows and for those that don't need that density, the density bonus laws also allow those kinds of height increases that you've seen.

**Q: Are there some examples of health and safety issues that have come up that have resulted in a denial or modification and have those been sustained through the process, particularly regarding Builder's Remedy?**

A: There are some old cases where those were sustained but the Legislature has really tightened up the language. There were three trial court cases in LA where cities made health and safety findings, none of which were upheld. To make a health and safety finding you need to have an objective health and safety standard, you need to show that the project violated the standard, you need to show that the violation created a health and safety impact, and you need to show that it can't be mitigated. In two of the cases, the court said you're not citing any objective standard and in the third case there was a Fire Code standard but in that one the court disagreed with the Fire Chief about whether the standard was in fact violated. Also in each of the cases the courts complained that the city hadn't made findings that the impact could not be mitigated. You have to have all four of those factors in order to have a case stand up.

**Q: Some examples of objective standards? Would that be something like setbacks?**

A: That's an objective standard, but it would be hard to define it as a health and safety standard.

**Q: Adopted objective public health and state safety standards? Does that include not only local objective standards but state and federal standards as well?**

A: There's a separate finding you can make if a project doesn't conform with state or federal law. Cities can make a finding that the denial is required to comply with specific state or federal law and there's no feasible method to comply without rendering the development unaffordable to low and moderate-income households.

**Q: Does the Town of Los Gatos have any objective standards in writing around health and safety that we would be able to utilize?**

A: The only objective standards the Town would have would be in the Fire Code or the Building Code. It's fair to say that some of those safety standards were put in place for safety reasons.

**Q: What would happen right now because we clearly have a certified Housing Element on the state side? If a project came in that looked like it didn't fit anything, does staff process that?**

A: Right now, we're processing the applications we have and we would continue to do that but we would also be seeking the advice of legal counsel as well for other options. Generally under state law, there have been cases stating that the refusal to even process an application is viewed as an effective moratorium or effective denial. If somebody came in let's say with 300 units an acre and a 30 story building and filed a preliminary application they could do it, but it would effectively be meaningless because they would just be vesting your standards which don't allow that. At some point, if they actually chose to come in with a formal planning application, you could decide how you wanted to handle it.

**Q: We've certainly had projects that seemed like they were Builder's Remedy, but it turns out they didn't need to use the Builder's Remedy to get what they wanted because of density. There certainly can be projects coming forward in the future that don't necessarily align with what we envisioned when we created our Housing Element but because of state density bonus and other things are going to exceed what we planned, correct?**

A: Yes.

**Q: Are there any circumstances under which additional Builder's Remedy applications could be legitimately processed?**

A: The language about the definition of a Builder's Remedy project is that the Town's Housing Element was inadequate either at the time the application was made or after. HCD periodically threatens to decertify a City's Housing Element and then if somebody had come in with a preliminary application that hadn't yet expired, they could change it to be a Builder's Remedy project. That's a serious threat if HCD should make it.

**Q: The Town of Los Gatos recently filed declaratory relief with Superior Court to resolve uncertainty around aspects of state housing law. Could you share a little bit about the implications of this action and how this could impact what we're talking about here?**

A: We talked a little bit about SB 330 which authorizes applicants to submit a preliminary application and that the preliminary application vests those applicants to the standards that were in effect at the time the application was submitted. The state law provides that after you've submitted a preliminary application, you have 180 days to file your formal planning application and that after that you have an additional 90-day period in which to make your planning application complete. In Los Gatos there are certain projects that did vest to two 90-day periods. The statute further provides that if that period has been exceeded the vesting expires and so the project would no longer be vested to the earlier preliminary application before the Town's Housing Element was approved, and the projects would no longer be eligible for the Builder's Remedy. Many cities and towns read the statute to provide for a single 90-day period in which to render the application complete based on the use of the word 'the;' however there are others who read it to apply to provide for recurring 90-day periods for an indefinite period of time, and so the purpose of the litigation is to get resolution on that question.

**Q: The Town rendered an opinion about cumulative impacts as being dependent on a third party CEQA expert. What sequence of events would be necessary to get to that point?**

A: We've only recently started discussing this possibility internally. We can follow up on this.

*Update: Projects that are not tiering off of the Program EIR will do individual CEQA analysis, which will include an analysis of the cumulative impacts of all proposed SB 330 projects. Projects for which the environmental review has already started will continue with the approved scope, which was an analysis of the cumulative impact of all approved projects. Staff is currently preparing a list of projects with approved scopes of environmental work.*

**Q: The importance of having an updated objective design guideline especially how it pertains to the density bonus law -- could you speak about that because we are working on our objective design guidelines?**

A: Unfortunately, there have been court decisions which basically really undermine city's objective design standards. They can be useful in terms of giving applicants a sense of what this Town really wants. There was a case about density bonus waivers which you might know are waivers of development standards and they're unlimited. The court said that you must grant waivers for a building as designed, so effectively it allows somebody if they choose to ignore many of the objective standards. However, they can give applicants a sense of how to make their approval process easier.

**Q: Could some of the objective standards address health and safety issues?**

A: Yes.

**Q: What power does the Town of Los Gatos have to negotiate with developers and how does that process work? How can those discussions legally be initiated? What sort of tools do we have?**

A: Any staff member can talk to the member of the applicant team that they're working with about the project and how certain decisions were made. If a Council Member was talking to an applicant, it wouldn't be out of bounds to ask why certain decisions were made about the project. There's always a conversation that can happen between the applicant and Town representatives. In terms of tools: A tolling agreement, or referring people to the density bonus law. Any kind of litigation for the developers whether from the Town or from the community really delays a project and makes it much more difficult to build. If the developer is serious about wanting to proceed with the project, some kind of compromise might be in the developer's interest.

**Q: Are those tools -- the development agreement and the tolling agreement -- are those really the ones we have to introduce certainty? Do we have anything else?**

A: A development agreement of course is referendable and is a legislative act. A developer may or may not view that as desirable. There's also something called a vesting tentative map which has some of the advantages of a development agreement.

**Q: What is the governing CEQA review for the set of Builder's Remedy projects that we have? Is it the 2040 general plan EIR? Is it the 2015 Housing Element? Is it the sites under the current Housing Element? What is our view on what is the governing CEQA review?**

A: The 2040 Land Use and Community Design Elements were rescinded by the Council and so the 2020 Land Use and Community Design Elements are in effect. For any issues that are covered in those two Elements, it would be the environmental document for the 2020 general plan and for all the other elements it would be the 2040 general plan EIR.

*CORRECTION: This will depend upon which provision of CEQA is being used. Thus far, the Town has used CEQA Guidelines Section 15168 and 15183. If it is CEQA Guidelines Section 15168 (reliance on a program EIR), the EIR that was done for the 2040 General Plan will be used. If it is CEQA Guidelines Section 15183 (for projects that are consistent with the density established by existing zoning, community plan, or general plan policies for which an EIR was certified), the EIR for whichever zoning or general plan policy is being relied upon will be used. The environmental review for the Housing Element determined that the impacts of the Element were adequately reviewed in the 2040 General Plan EIR. If the project is consistent with the density in the Housing Element, the Town will determine if the 2040 General Plan EIR adequately covered the impacts of the project. There may be other provisions of CEQA that apply to future projects.*

**Q: The numbers of units studied in the land use element is that from the 2020 general plan or the 2040 general plan?**

A: A follow up answer will be provided.

*Update: As described in the previous question, it depends on which provision of CEQA is being used to determine if a supplement EIR is required.*

**Q: How reasonable is that with the 2015 Housing Element that is so different from the Housing Element that we just adopted or what would be studied as part of the governing document to study the new projects?**

A: A follow-up answer will be provided.

*Update: When the Town approved the current Housing Element (the 2024 Housing Element), it tiered it off the 2040 General Plan EIR. The 2020 Land Use Element should be updated at some point to be consistent with the current Housing Element.*