



707 Wilshire Blvd., 24th Floor
 Los Angeles, California 90017
 tel (213) 626-2906
 fax (213) 626-0215
 www.meyersnave.com

Russell E. Morse
 rmorse@meyersnave.com

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VIA ELECTRONIC MAIL ONLY

Jeffrey Tsumura
 Project Planner
 City of Mountain View
 500 Castro Street, P.O. Box 7540
 Mountain View, CA 94039-7540
 E-mail: jeffrey.tsumura@mountainview.gov

**Re: 334 San Antonio Road Affordable Housing Project
 Revised Request for Incentives, Concessions and Waivers Pursuant to the
 California Density Bonus Law (Government Code, § 65915, et seq.)**

Dear Mr. Tsumura:

We represent CRP Affordable Housing and Community Development (“CRP”), developer and applicant of the 100-unit, 100% affordable housing project with associated amenities (“Project”) located at 334 San Antonio Road, Mountain View, California (the “Property”). This letter provides an analysis of the Project under the State Density Bonus Law and supports CRP’s requests for a density bonus, incentives, concessions, waivers, and parking reductions under the Density Bonus Law. We note that CRP has no legal obligation to provide support for its request for incentives, concessions, and waivers under the Density Bonus Law, however, CRP has agreed to provide this analysis for informational purposes to assist the City in its review of the Project. (*Schreiber v. City of Los Angeles* (2021) 69 Cal.App.5th 549.) CRP requests the City grant the density bonus, concessions, waivers, and parking reductions requested for the Project pursuant to Density Bonus Law as proposed.

I. PROPERTY AND PROJECT BACKGROUND

The Property is an approximately 0.62-acre (27,090 SF) parcel located at the corner of San Antonio Road and California Street in Mountain View. The Project site is zoned in the Mixed-Use Corridor subarea of the City’s P (40) Planned Community, San Antonio Precise Plan Area and has a General Plan land use designation of “Mixed Use Corridor”. The Property is located within one-half mile of a major public transportation stop, the San Antonio CalTrain station, as well as seven bus stops.

The proposed Project consists of a mix of 1-bedroom, 2-bedroom, and 3-bedroom apartment units, configured in one, 8-story building. The Project will be a 100% affordable housing project, including approximately 76 low-income units, 11 very low-income units and 11 extremely low-income units, as provided in Table A below. The Project will include one (1) Manager’s Unit. The Project also features amenity space, including 3,556 square feet of outdoor common area and 750 square feet of community space. A ground-level garage on the west side of the building will accommodate sixteen (16) parking stalls, including one (1) ADA accessible stall, six (6) Electric Vehicle Charging Stalls, and twelve (12) EV-ready parking spaces, in addition to the Project’s significant secured bike storage for residents, with charging capability for electric bikes. As the site falls within one-half mile of major transit, alternative transportation modalities will be encouraged and utilized. The Project provides 114 bicycle parking spaces, including 100 secure resident bicycle spaces and 14 outdoor guest spaces.

TABLE A

Project Unit Mix					
Unit Size	# of Units	Low Income	Very Low Income	Extremely Low Income	Manager Unit
1BR	36	28	4	4	
2BR	28	22	3	3	
3BR	36	26	4	4	1
Total	100	76	11	11	1

II. STATE DENSITY BONUS LAW

Government Code Section 65915, *et seq.*, commonly referred to as the “Density Bonus Law,” was first enacted in 1979 with the aim to address the shortage of affordable housing in California. (*Latinos Unidos Del Valle De Napa Y Solano v. County of Napa* (2013) 217 Cal.App.4th 1160, 1164.) In essence, when a developer proposes to construct a certain percentage of the units in a housing development for low- or very-low-income households, the city or county must grant the developer (1) a “density bonus,” which allows the developer to increase the density of the development by a certain percentage above the maximum allowable limit under local zoning law; (2) one or more itemized concessions, and (3) “waivers or reductions” of “development standards.” (Gov. Code, § 65915, subd. (b)(1); *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal. App. 5th 755; see also *Schreiber v. City of Los Angeles* (2021) 69 Cal.App.5th 549, 554-555 (*Schreiber*)). In addition, the developer is entitled to certain reductions in parking standards below the minimum amount of parking required by local agencies.

First, the density bonus allows for additional units above the maximum allowed by the zoning to be added to a project based on the amount of affordable housing included in the project. The higher the percentage of affordable units, the higher the percentage of the density bonus allowing a developer to exceed the zoned density. (*Ibid.*) However, an applicant under a Density Bonus Law application is not required to use the density bonus as part of a density bonus project, but may still apply the incentives, concessions, waivers of development standards, and parking reductions allowed under the Density Bonus Law.

Second, the incentives and concessions provided under the Density Bonus Law allow an applicant of a density bonus project to avoid City-required development standards¹ to assist in lowering the cost to build a project that includes affordable housing (Gov. Code, § 65915, subd. (d)(1).) An “incentive or concession” is defined as a “reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards . . . that results in identifiable and actual cost reductions.” (*Id.* at subd. (k)(1).) The law states that a “site development standard” includes setbacks, height limitations, and other requirements imposed by “any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.” (*Id.* at subds. (k)(1), (o)(1).) The applicant is not required to prove the requested incentives will lead to cost reductions; the incentive is presumed to result in cost reductions and the city bears the burden to demonstrate otherwise if it intends to deny the incentive. (*Schreiber, supra*, 69 Cal.App.5th at 555.)

Third, a city must accept an applicant-requested waiver or reduction of development standards that would have the effect of physically precluding the construction of a development at the density, or with the requested incentives, permitted by the Density Bonus Law. (Gov. Code, § 65915, subd. (e)(1).) For example, if a city ordinance imposes a building height limitation, a city must waive that limitation for a development that is eligible for a density bonus if imposing the height limit would physically preclude construction of the proposed building with the requested incentives and at the density allowed by the Density Bonus Law. (*Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755.) There are no financial criteria for granting a waiver. (*Schreiber, supra*, 69 Cal.App.5th 556.) The Density Bonus Law includes very limited exceptions to its requirements and places the burden on a city to establish an exception applies.

Finally, the Density Bonus Law allows for generous reductions in parking standards than would otherwise be required by a local agency. In general, the Density Bonus Law sets a maximum vehicular parking ratio that may be required by cities and counties for projects meet the criteria of the Density Bonus Law. However, for a 100% affordable residential project located within one-half mile of public transit, a local agency may not impose or

¹ The Terms “‘concession’ and ‘incentive’ are synonymous in the statute.” (*Schreiber, supra*, 69 Cal.App.5th 555.)

enforce any minimum automobile parking requirement on that project. (Gov. Code, § 65915, subd. (p)(3).)

III. BASE DENSITY AND BONUS UNIT CALCULATION

In the City’s September 29, 2023, letter, titled “Informal Review of Planned Community Permit and Development Review Permit 334 San Antonio Road, PL-2023-180,” the City directed that the Project should not apply maximum units or density standards, as the Project uses FAR in the Mixed-Use Corridor General Plan land use designation to determine base units. (Informal Review Letter, at pp. 3-4.)

California’s State Density Bonus Law provides that “[d]ensity shall be determined using dwelling units per acre.” (Gov. Code § 65915, subd. (o)(6).) “However, if the applicable zoning ordinance, specific plan, or land use element of the general plan does not provide a dwelling-units-per-acre standard for density, then the local agency *shall* calculate the number of units by: [e]stimating the realistic development capacity of the site based on the objective development standards applicable to the project, including, but not limited to, floor area ratio, site coverage, maximum building height and number of stories, building setbacks and stepbacks, public and private open space requirements, minimum percentage or square footage of any nonresidential component, and parking requirements, unless not required for the base project... ***the developer may provide a base density study and the local agency shall accept it, provided that it includes all applicable objective development standards.***” (Gov. Code § 65915, subd. (o)(6)(A).)

Here, the City does not provide a dwelling units per acre density standard, but instead uses FAR (floor area ratio) as the development standard to measure density and intensity in mixed-use areas. (Mountain View General Plan, p. 80.) The City applies a 1.85 FAR under Tier 1 and 1.35 FAR under the Base Tier for density in the Mixed-Use Corridor of the San Antonio Precise Plan and a 1.85 FAR under the 2030 General Plan.

The Density Bonus Law defines “base density” as “the greatest number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan...” (Gov. Code, § 65915, subd. (o)(6).) The California Department of Housing and Community Development (HCD) has issued technical guidance stating that “in case of conflict or inconsistency ***between or among*** the plans,” “[t]he language [of the Density Bonus Law] instructs that the highest density available in any of the competing documents is the one that applies.” (HCD, *RE: Cameron Park Housing Project – State Density Bonus Law and AB 2334 – Letter of Technical Assistance*, March 9, 2023, at pp. 2-4. [“HCD Guidance”] [emphasis added].)² The application of the standard allowing the greater number of units is

² From the HCD Guidance, “Beginning in 2023, and because of AB 2334, maximum allowable residential density or base density means, “...the greatest number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan, or, if a

consistent with the Density Bonus Law’s directive that it, “shall be interpreted liberally in favor of producing the maximum number of total housing units.” (Gov. Code, § 65915, subd. (r).) By instructing local agencies to apply the highest available density standard, it ensures that the greatest amount of housing production is achieved – regardless of any confusing or conflicting local circumstances resulting from competing, differing regulatory documents.” (HCD Guidance, at p. 4.)

Here, the City’s zoning ordinance, Precise Plan, and General Plan provide a range of density standards. The number of units allowed under the zoning ordinance is calculated using the 1.85 FAR under Tier 1 and 1.35 FAR under the Base Tier, as specified by the San Antonio Precise Plan, depending on whether community benefits are provided. (SAPP, at Table 4-3.) The General Plan uses an FAR of 1.85 to calculate the number of units allowed in areas designated “Mixed Use Corridor.” (General Plan, at p. 84.) The Property is located within the “Mixed Use Corridor” designation in the General Plan. Accordingly, pursuant to Government Code section 65915(o)(6), and HCD’s interpretation thereof vis a vis the HCD Guidance Letter, the FAR that allows “the greatest number of units” is used to calculate base density. Thus, the General Plan’s FAR of 1.85 governs the base density calculation.

Based on the applicable objective development standards, the Applicant provides a base density study pursuant to Density Bonus Law (Gov. Code § 65915, subd. (o)) that concludes a base density of 56 units. This base density study considered a “realistic development capacity” based on the objective development standards applicable to the project, including, but not limited to, floor area ratio, site coverage, maximum building height and number of stories, building setbacks and stepbacks, public and private open-space requirements, minimum percentage or square footage of any nonresidential component, and parking requirements, allowable height, and average unit size. (See attached Base Density Study.) As the proposed Project is a 100% affordable housing project with lower income units, the Project is entitled to an 80% density bonus. (Gov. Code § 65915, subd. (f)(3)(D)(i).) Thus, the total number of allowable units is 101 units, exceeding the 100 units proposed. All units over the base density are density bonus units.

In its July 13, 2024, letter, City staff requested base density diagrams demonstrating base density allowed under applicable development standards. Although not required pursuant to the Density Bonus Law, CRP has agreed to provide the requested base density diagram and calculations for the City’s reference as part of this resubmittal. The

range of density is permitted, means the maximum number of units allowed by the specific zoning range, specific plan, **or** land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan or specific plan, the **greater** shall prevail. (Gov. Code, § 65915, subd. (o)(6) [emphasis added].)”

dimensioned diagrams attached serve to show a realistic development plan based on the density calculations provided in the base density study.

IV. CONCESSIONS AND WAIVERS

As discussed above, the Density Bonus Law “incentivizes the construction of affordable housing by allowing a developer to add additional housing units to a project beyond the zoned capacity and secure other incentives in exchange for a commitment from the developer to include deed-restricted affordable units in the project. When a developer meets the requirements of the Density Bonus Law, a local government is obligated to permit increased building density, grant incentives, and waive any conflicting local development standards unless certain limited exceptions apply.” (*Bankers Hill 150, supra*, 74 Cal.App.5th at 763.)

A. The Project is Entitled to Up to Five Concessions and Any Necessary Waivers of Development Standards.

As provided in Government Code Section 65915(d)(2)(D), because 100% of the units in the Project are designated as affordable to low-income residents, the Project is entitled to up to five incentives or concessions. Concessions or incentives include “[o]ther regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions to provide for affordable housing costs...” (Gov. Code, § 65915, subd. (k)(3).) To the extent a concession would result in identifiable and actual reductions to the cost of providing affordable housing, a density bonus applicant may request such a concession. Here, the applicant requests five concessions, as follows:

1. Removal of the Transportation Demand Management requirements for new residential developments, in lieu of otherwise required transit pass subsidies for residents and employees, through participation in the VTA’s EcoPass, or equivalent program, for the first 3 years of the Project. (San Antonio Precise Plan, chapter 2.D, at p. 36.)
2. Reduction of minimum ground-floor height standards, in lieu of the required fourteen feet (14’) minimum floor-to-ceiling height for multi-family lobbies and active space otherwise required. (San Antonio Precise Plan, chapter 4.C, at p. 82.)
3. Reduction of common usable open space standards, in lieu of the required 175 square feet of common usable open space per residential unit otherwise required. (San Antonio Precise Plan, Section 4.B, at p. 74; chapter 4.D, at p. 83)

4. Reduction of minimum open area/ landscaping standards, in lieu of the required 40% minimum open space or landscaping otherwise required. (San Antonio Precise Plan, Section 4.B, at p. 74.)
5. Removal of undergrounding utilities request. (Project Comments and Requirements, February 9, 2024, Letter from City to CRP, at p. 17, Item 3 [“Compliance Letter”].)

Separate from the density bonus and requests for incentives or concessions, a density bonus applicant may request any number of waivers or reductions of development standards that would “have the effect of physically precluding the construction of a[n eligible] development ... at the densities or with the concessions or incentives permitted by this section.” (Gov. Code, § 65915, subd. (e)(1).) In other words, a density bonus applicant may request a waiver of any development standard (including height) if that development standard prevents the applicant from constructing the affordable housing project as proposed by the applicant. The Density Bonus Law does not set a limit on the number of waivers which can be requested and a request for a development standard waiver does not reduce the number of incentives or concessions to which the applicant is otherwise entitled. (Gov. Code, § 65915, subd. (e)(2).) Here, the applicant requests seven waivers, as follows:

1. A maximum FAR up to 4.37, in lieu of the otherwise required maximum 1.85 FAR. (City of Mountain View, 2030 General Plan, chapter 3, at p. 84.)
2. Increase in the total building height to ninety-five feet (95’) in lieu of the otherwise required fifty-five feet (55’) maximum building height applicable to the Mixed-Use Corridor Subarea. (San Antonio Precise Plan, chapter 4.D, at p. 75.)
3. Increase in the total building stories to eight (8) stories in lieu of the otherwise required four (4) story maximum applicable to the Mixed-Use Corridor Subarea. (San Antonio Precise Plan, chapter 4.D, at p. 75.)
4. Removal of building frontage setback standards. (San Antonio Precise Plan, Section 4.C, at p. 81.)
5. Removal of height at building frontage setback standards, in lieu of the otherwise required massing of 80% of a building’s linear frontage above four stories to step back a minimum of 10 feet on every street the Project faces. (San Antonio Precise Plan, Section 4.C, at p. 81.)
6. Reduction of interior unit storage standards, in lieu of the 164 cubic feet per dwelling unit of personal storage otherwise required. (San Antonio Precise Plan, chapter 4.D, at p. 83.)
7. Elimination of two-inch window recess requirement. (Compliance Letter, at p. 5.)

Finally, 100% affordable housing projects using the Density Bonus Law are entitled to significant reductions in parking standards. In fact, for a 100% affordable housing project that is located within one-half mile of a major transit stop and there is unobstructed access to the major transit stop from the development, a city, county, or city and county cannot impose vehicular parking standards. (Gov. Code, § 65915, subd. (p)(3).) In other words, no parking is required for the Project.

Although no parking is required, the Project does propose sixteen (16) on-site at-grade parking spaces, including six (6) Electric Vehicle Charging Stalls and twelve (12) EV-ready parking spaces, one (1) of which is also an ADA parking space. The Project further proposes over 100 bicycle parking spaces. Some bicycle parking spaces would be supplied with outlets for e-bicycle charging.

Each of these concessions, waivers, and parking reductions is allowed by the Density Bonus Law and meets the requirements of Density Bonus Law as explained below.

B. The Requested Concessions and Waivers Satisfy Statutory Requirements for Approval.

1. Concessions and Incentives

As provided in *Schreiber v. City of Los Angeles* and discussed above, an applicant of a density bonus project is not required to establish that cost reductions will result from the request for incentives or concessions. “By requiring the city to grant incentives *unless* it makes particular findings, the statute places the burden of proof on the city to overcome the presumption that incentives will result in cost reductions. Accordingly, [an applicant is not] required to show, and [a] city [is] not required to affirmatively find, that the incentives would actually result in cost reductions.” (*Schreiber, supra*, 69 Cal.App.5th at 593.) Regardless, the applicant has agreed to provide justification for its requested concessions for the Project, as described below.

(a) Removal of Transportation Demand Management Requirements.

The requested concession for removal of the Transportation Demand Management requirements will directly reduce the cost of developing and operating affordable units by no longer requiring the applicant to provide transit pass subsidies for residents and employees, through participation in the VTA’s EcoPass, or equivalent program, for the first three (3) years of the Project or require the development to join the Mountain View Transportation Management Association (TMA), or form and join a San Antonio specific TMA. (San Antonio Precise Plan [“SAPP”], chapter 2.D, at p. 36.) Relief from these requirements will result in actual and identifiable reductions to the cost of providing affordable housing.

However, per Compliance Letter p. 4, CRP has met with staff and intends to continue to work with staff to provide a feasible level of TDM. CRP's TDM proposal was provided within their resubmittal package and commits to providing up to \$50.00 per resident per year for the first three (3) years of the Project, once complete.

(b) Reduction of Ground-Floor Height Standards.

The requested concession for reduction of the ground-floor height standards will allow the proposed housing development to provide at least 11 feet of floor to ceiling height for lobby and residential developments, in lieu of the otherwise required 14 feet minimum floor to ceiling height for lobby spaces and active spaces in residential developments (SAPP, chapter 4.D, at pp. 81-82). This concession will allow for the construction of affordable units including larger-sized dwelling units and will result in a building design and construction efficiencies that reduce affordable housing costs; it enables the developer to reduce the ground floor height so that additional affordable units can be constructed, and the overall space dedicated to residential uses is increased. With the proposed concession, the Project will be able to achieve a more efficient design and thereby lowering the cost of providing affordable housing. The concession also ensures that all dwelling units are of a habitable size while providing a variety of affordable one-, two-, and three-bedroom units.

(c) Reduction of Common Usable Open Space Standards.

The requested concession for reduction of common usable open space standards requiring 175 square feet of common usable open space per residential unit (SAPP, Section 4.B, at p. 74; chapter 4.D, at p. 83) will allow for the dedication of additional building space for affordable residential units and the construction of larger-sized, more livable dwelling units. By allowing the proposed housing development to instead provide a total of approximately 3,556 square feet of common open space, the requested concession will result in a building design and construction efficiencies that reduce affordable housing costs; it enables the developer to dedicate additional building space for affordable units and to increase the overall space dedicated to residential uses. With the proposed concession, the Project will be able to achieve a more efficient design and thereby lowering the cost of providing affordable housing overall. The concession also ensures that all dwelling units are of a habitable size while providing a variety of affordable one-, two-, and three-bedroom units.

(d) Reduction of Minimum Open Area/ Landscaping Standards.

The requested concession for reduction of minimum open area/ landscaping standards will allow the proposed housing development to provide approximately 37.5% minimum open space or landscaping, in lieu of the otherwise required 40% minimum open space or landscaping (SAPP, Section 4.B, at p. 74) will allow for the construction of affordable units including larger-sized dwelling units and will result in a building design and construction efficiencies that reduce affordable housing costs; it enables the developer to expand the

building envelope so that additional affordable units can be constructed and the overall space dedicated to residential uses is increased. With the proposed concession, the Project will be able to achieve a more efficient design and thereby lowering the cost of providing affordable housing. The increased building envelope also ensures that all dwelling units are of a habitable size while providing a variety of affordable one-, two-, and three-bedroom units.

(e) Removal of Requirement to Underground Utilities.

The requested concession for removal of the requirement to underground overhead utilities will directly reduce the cost of developing affordable units by no longer requiring the applicant to pay hundreds of thousands of dollars to move overhead utility lines underground. Although the Applicant could not determine the source of this requirement in City documents, plans, and policies, the Compliance Letter from the City to CRP instructs Applicant, as a condition of Public Works recommending approval of the project, “Staff suggests joint trench, riser poles, etc. fronting the project shall be undergrounded and shown on the next submittal of the plans.” (Compliance Letter, at p. 17.) Regardless, removal of this request will directly reduce the cost of developing affordable units by no longer requiring the applicant to pay the additional cost (estimated at over one hundred thousand dollars [\$100,000.00]) of undergrounding utilities. Relief from these requirements will result in actual and identifiable reductions to the cost of providing affordable housing.

2. Waivers

The Applicant has requested seven waivers of development standards for the Project to ensure the Project could be developed at the proposed density within the physical constraints of the Project site. At the City’s direction in its September 29, 2023, letter, titled “Informal Review of Planned Community Permit and Development Review Permit 334 San Antonio Road, PL-2023-180,” the waivers requested below cite Tier 1 standards, unless otherwise specified. As the Applicant is requesting waivers of these standards pursuant to State Density Bonus Law requirements for streamlined approval of 100% affordable housing projects, waiver of these standards will waive associated Public Benefits Program requirements. (SAPP, chapter 5.A, at pp. 101-102.) As discussed above, the applicable FAR under the State Density Bonus Law is the General Plan’s FAR of 1.85, as it allows “the greatest number of units.” (Gov. Code § 65915, subd. (o)(6)).

(a) Increase of Maximum FAR up to 4.37

The requested waiver for an increase in the maximum FAR to 4.37 from the otherwise required 1.85 FAR (City of Mountain View, 2030 General Plan, at p. 84) for the Project will allow for the construction of the proposed affordable units as proposed to ensure a viable project. The waiver enables the developer to expand the building envelope so that the proposed number of affordable units can be constructed, and the overall space dedicated to residential uses is increased, without which the development would be physically

precluded. The requested waiver for an increase in maximum FAR will allow for the construction of the proposed affordable units.

(b) Increase of Maximum Height up to 95 feet

The requested waiver for increasing the maximum building height for the Project from the fifty-five feet (55') maximum building height applicable to the Mixed Use Corridor Subarea (SAPP, chapter 4.D, at p. 75) to the proposed ninety-five (95') maximum building height will allow for the construction of the proposed affordable units and will result in a building design and construction efficiencies that could otherwise not be accommodated. As a 100% affordable housing project that is located within one-half mile of a major transit stop, the Project is automatically entitled to receive a height increase of up to three additional stories, or 33 feet. Accordingly, by-right the Project could be 88' in height. Accordingly, the Project would only require seven (7) additional feet in height beyond what is otherwise required. However, the otherwise required eighty-eight-foot height limit would not support the number of proposed affordable units at the size and affordability as currently proposed and the waiver enables the developer to ensure all necessary project and building components could be accommodated and expand the building envelope so that additional affordable units can be constructed and the overall space dedicated to residential uses is increased, without which the development would be physically precluded. The requested waiver for an increase in building height will allow for the construction of proposed affordable units.

(c) Increase of Maximum Stories up to 8 Stories

The requested waiver for increasing the maximum building stories for the Project from the limit of four (4) maximum stories applicable to the Mixed Use Corridor Subarea (SAPP, chapter 4.D, at p. 75) to the proposed eight (8) stories will allow for the construction of the proposed affordable units and will result in a building design and construction efficiencies that could otherwise not be accommodated. As a 100% affordable housing project that is located within one-half mile of a major transit stop, the Project is automatically entitled to receive a height increase of up to three additional stories, or 33 feet. Accordingly, by-right the Project could be seven (7) stories. Accordingly, the Project would only require one (1) additional story beyond what is otherwise allowed. However, the otherwise required seven-story limit would not support the number of proposed affordable units at the size and affordability as currently proposed and the waiver enables the developer to ensure all necessary project and building components could be accommodated and expand the building envelope so that additional affordable units can be constructed and the overall space dedicated to residential uses is increased, without which the development would be physically precluded. The requested waiver for an increase in building stories will allow for the construction of proposed affordable units.

(d) Reduction of Building Frontage Setback Standards

The requested waiver for reduction of building frontage setback standards will allow the proposed development to include an approximately 15-foot, 9-inch frontage setback from the California Street curb line in the narrowest locations in lieu of the otherwise required 24 feet from neighborhood streets including California Street. (SAPP, Section 4.C, at p. 81). The waiver will allow for the construction of the proposed affordable units and would result in a building design and construction efficiencies that could otherwise not be accommodated; it enables the developer to maximize the use of the lot for residential development, expand the building envelope and to construct the proposed Project with the proposed number of affordable housing units, without which the Project's development as proposed would be physically precluded and financially infeasible.

(e) Removal of Height at Frontage Setback Standards

The requested waiver for removal of building height at frontage setback standards requiring 80% of a building's linear frontage above four stories to step back a minimum of 10 feet on every street the Project faces (SAPP, Section 4.C, at p. 81) will allow for the construction of the proposed affordable units and would result in a building design and construction efficiencies that could otherwise not be accommodated; it enables the developer to maximize the use of the lot for residential development, expand the building envelope and to construct the proposed Project with the proposed number of affordable housing units, without which the Project's development as proposed would be physically precluded.

(f) Removal of Interior Unit Storage Standards.

The requested waiver for removal of interior unit storage standards of 164 cubic feet per dwelling unit (SAPP, chapter 4.D, at p. 83) will allow for the construction of the proposed affordable units and would result in a building design and construction efficiencies that could otherwise not be accommodated; it enables the developer to maximize the use of the lot for residential development and expand the building envelope, thereby allowing the construction of proposed number of affordable housing units, without which the Project's development as proposed would be physically precluded.

(g) Removal of Minimum Two-Inch Window Recess Design Standard or Guideline.

The requested waiver for removal of minimum two-inch window recess standards (Compliance Letter, at p. 5) will allow for the construction of the proposed affordable units and would result in a building design and construction efficiencies that could otherwise not be accommodated. Removal of the window recess standard would allow the applicant to expand the building envelope and have uniform design for the units, thereby reducing costs of construction and allowing construction of the units at the unit sizes proposed for the Project. In addition, the window recess requirements create a long-term maintenance cost for the Project. Recessed windows often become places for water to "pool" and cause exterior

damage, requiring repair and replacement of windows and or siding in climates like Mountain View. Waiver of these standards would avoid cost-prohibitive maintenance expenses, thereby allowing the construction of the proposed number of affordable housing units, without which the Project's development as proposed would be physically precluded.

3. Parking Reductions

As discussed above, Government Code Section 65915(p)(3)(A) prohibits the City from imposing vehicular parking standards on proposed housing developments where 100% of all units in the development, exclusive of a manager's unit, are for lower income households, as described in Section 65915(b)(1)(G), when the development is located within one-half mile of a major transit stop, as described in Section 65915(p)(3)(A), and there is unobstructed access to the major transit stop from the development. Here, 100% of the units in the proposed housing development, exclusive of the one manager's unit, are for lower income households. The proposed housing development is located less than one-half mile from a major transit stop, the San Antonio CalTrain Station, as these terms are defined in Section 65915(o)(3) and 65915(o)(5). There is unobstructed access from the proposed housing development to the major transit station, as the term is defined in Section 65915(p)(2)(B). Thus, vehicular parking standards are inapplicable pursuant to Section 65915(p)(3)(A).

4. Public Benefits Program

As discussed above, the Applicant is requesting waivers of these standards pursuant to State Density Bonus Law requirements for streamlined approval of 100% affordable housing projects. Waiver of these standards, particularly building height, will waive associated Public Benefits Program requirements. (SAPP, at pp. 101-103.) Moreover, even if the proposed Project were subject to the Public Benefits Program, the Program is voluntary. (See SAPP, at p. 101 ["This exchange is voluntary for the applicant and the City."]) Thus, the SAPP does not require a public benefit proposal.

Assuming, *arguendo*, that the Community Benefits Program applied here, as the City alleges in Comment 11 of its Compliance Letter, the proposed Project's higher development intensity is for the express purpose of facilitating the public benefit of providing a 100% affordable housing development. (Compliance Letter, at pp. 3-4.) This purpose is significant because the Public Benefits Program provides a process for developers to "provide public benefits, with incremental value *proportional to* the proposed development intensity (e.g. building square footage) above Base FAR." (SAPP, at p. 101 [emphasis added].) Here, the development intensity above Base FAR is proposed for the explicit purpose of providing the public benefit, such that requiring additional public benefits would be contrary to the stated mechanism by which the Program operates.

The Program requires "the value of the public benefit" to be "equivalent to the value" of the additional development intensity. Here, the public benefit is affordable housing, which is

repeatedly referenced in the SAPP as the highest priority benefit in the City’s “prioritized list of public benefits.” (SAPP, at p. 102; SAPP, Table 5.1.) Moreover, the SAPP’s Guiding Principles explicitly direct the City to “[e]mphasize affordable housing development as a public benefit.” (SAPP, at p. 4, “Guiding Principles.”) Thus, by the language of the SAPP itself, the public benefits already being offered by the proposed development are equivalent to, and exceed, the value of the proposed heightened development intensity. Requiring the Program to apply to this Project would result in a skewed balance in which the Applicant is required to provide public benefits above and beyond what the SAPP directs. For these reasons, the Public Benefits Program should not apply to the proposed Project.

V. CONCLUSION

We trust the above information will provide the explanation for application of the California Density Bonus Law to the Project. We appreciate your continued assistance on this Project. Please do not hesitate to contact us with any questions regarding the contents of this letter.

Very truly yours,



Russell E. Morse

cc: Jack Burlison, CRP Affordable Housing and Community Development
Shellan Rodriguez, SMR Development
Celena Chen, Senior Assistant City Attorney, City of Mountain View

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