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November 13, 2024

VIA EMAIL

Administrative Zoning and Subdivision Committee
500 Castro Street
Mountain View, CA 94041

Re: **Agenda Item 5.1 - 294-296 Tyrella Avenue Development Application**
Permit Nos. PL-2023-102 & PL-2023-103

Dear Committee Members:

Our office represents Forrest Linebarger, manager of Tower Investment LLC. Tower Investment applied for a housing development project at 294-296 Tyrella Avenue before the City adopted a substantially compliant housing element, and therefore qualifies for the protections of Gov. Code § 65589.5(d)(5), commonly referred to as the "Builder's Remedy." The Builder's Remedy significantly limits the City's review authority over projects that restrict at least 20% of the units as affordable to low-income households, as is the case here.

The staff report erroneously suggests that the City can still require compliance with certain standards through conditions of approval as an end-run around the Builder's Remedy. Staff has proposed over two hundred conditions of approval. As explained in more detail below, these conditions of approval violate the Builder's Remedy provision of the Housing Accountability Act ("HAA"). Housing advocacy organizations, including YIMBY Law and the California Housing Defense Fund, have submitted letters confirming that these conditions violate state law. (See Exhibit B.)

The City is required to approve the project as proposed by the application *without* the conditions of approval. That said, Mr. Linebarger has worked cooperatively with City staff throughout the application process and is willing to accept most of the proposed conditions, except those that would make the project infeasible. If the City eliminates or modifies the conditions as suggested in Exhibit A, Mr. Linebarger will accept the City's conditional approval. However, if the City imposes the conditions as suggested by staff, the project would not be buildable, and he would be left with no choice but to challenge the City's actions in court.

Our firm has extensive experience and success litigating housing law issues, including the first published decision interpreting the Housing Crisis Act of 2019, *Yes In My Back Yard v. City of Culver City* (2023) 96 Cal.App.5th 1103 and one of the first trial court cases interpreting the Builder's Remedy, *Jha v. Los Angeles*, LASC Sup. Ct. Case No. 23STCP03499. Please be aware

that in any action challenging the City's action, the City bears the burden to demonstrate that it has complied with the HAA and the City would be responsible for the attorney's fees of the applicant *and* any housing advocacy group that bring a challenge.

We urge the Committee to approve the project and modify the conditions of approval as suggested by the applicant in Exhibit A.[1] The project would provide a significant amount of deed-restricted affordable units, help the City attain its RHNA, and avoid costly litigation.

A. The Application Must Be Approved as Submitted

This project provides 20% of units as affordable, and therefore qualifies as "housing for very low, low-, or moderate-income households" under the HAA. (Gov. Code § 65589.5(h)(3).) As such, subdivision (d) requires a local government to approve the project unless the local government can make one of the five findings based upon a preponderance of the evidence. Those findings include: 1) the local agency has a compliant housing element and its jurisdiction has met its regional housing needs allocation; 2) the proposed project would have a specific, adverse impact upon the public health or safety that cannot be mitigated; 3) denial is required to comply with specific state or federal law; 4) the project site is on or surrounded by land zoned for agricultural or resource preservation, or does not have adequate water or wastewater facilities; or 5) the project is "inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance" with the Housing Element Law. (Gov. Code § 65589.5, subd. (d)(1) – (5).)

Thus, under Builder's Remedy provision (subdivision (d)(5)), a local government cannot deny a housing development project for low-income households, *even if* the project is inconsistent with the jurisdiction's zoning and general plan, unless the local government can make written findings, supported by a preponderance of the evidence in the record, that it has adopted a housing element in substantial compliance with the Housing Element law. Here, the City did not have a substantially compliant housing element at the time the application was submitted, and therefore the project must be approved as submitted regardless of any zoning or general plan inconsistency.

We note that the City's staff report fails to provide for the approval of all aspects of the proposed project as proposed by the applicant, most notably the applicant's request for an encroachment permit and the proposed mixed-use portion of the project, including the sale of food and

[1] We note that the City failed to provide the applicant with proper notice prior to this hearing, nor did City staff provide the conditions to the applicant prior to this hearing. The applicant has not had adequate time to review all the proposed conditions and reserves the rights to identify additional conditions that impact the feasibility of the project.

alcoholic beverages. Thus, the proposed "approval" fails to actually approve the project as proposed.

1. *Code Compliance Cannot Be Required Through Conditions of Approval*

The City's view is that it can nullify the zoning and general plan inconsistencies permitted by the Builder's Remedy by requiring code compliance through conditions of approval. We understand that the City bases this theory on subdivision (f)(3), which is simply a general interpretive provision. It is a basic canon of statutory construction that "when a general and particular provision are inconsistent, *the latter is paramount to the former*." (Code Civ. Proc. § 1859.) In other words, a general interpretive provision cannot be read to nullify the specific Builder's Remedy provision, reducing subdivision (d)(5) to a dead letter and mere surplusage.

Moreover, the City solely relies on a handful of words in subdivision (f)(1) without reading the entire provision in context. Subdivision (f)(1) says that the HAA should not be interpreted to prohibit a local agency from requiring compliance "with objective, quantifiable, written development standards, conditions, and policies appropriate to, and *consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584*." This subdivision also states that any condition of approval must "be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development."

The applicability of subdivision (f)(1) is predicated on whether a local jurisdiction has identified the standards that are "appropriate to, and consistent with," meeting a jurisdiction's RHNA. The first step in the housing element process is to identify the "appropriate zoning and development standards" to accommodate RHNA. (Gov. Code § 65583(c)(1).) Thus, a local government that does not have a certified housing element (i.e. a local agency that is subject to the Builder's Remedy) does not have standards "appropriate to, and consistent with" meeting its RHNA requirements. This is the entire reason why the Builder's Remedy, which is part of the Housing Element Law, exists.

If a local government has not gone through the housing element update process to update its zoning and general plan standards to meet RHNA requirements, subdivision (d)(5) allows affordable housing projects a path toward approval notwithstanding existing standards. Moreover, subdivision (f)(1) clearly demonstrates that the purpose of this subdivision is to "facilitate and accommodate development at the density permitted," which in this case the density is unlimited, and was not intended as backchannel to thwart subdivision (d)(5).

2. *Conditions of Approval Will Cause the City to Disapprove the Project Building Permits in Violation of the HAA*

The HAA defines disapproval as anytime an agency "[v]otes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements *necessary for the issuance of a building permit*." (Gov. Code § 65589.5(h)(6).) In other words, the HAA applies throughout the *entire* process until a building permit is issued and a project can move forward with construction.

Gov. Code § 65913.3(d)-(e), in turn, requires a local government to disapprove a building permit that is "not compliant with the permit standards" within 30 days and must allow an applicant the right to appeal a determination on noncompliance with permit standards to the City Council. If the City attempts to require code compliance through conditions of approval and subsequently disapproves the building permit for noncompliance with permit standards, my client could appeal the disapproval to the City Council. If the Council were to uphold the appeal, this is simply a more circuitous route of disapproval – based on a code inconsistency – that would violate subdivision (d)(5).

In sum, subdivision (f)(1) does not nullify the Builder's Remedy, and attempting to require code compliance through conditions of approval would still lead the City toward an unlawful disapproval of the project.

B. <u>The HAA Applies to All City Codes</u>

The City staff report suggest that only those standards contained in Chapter 36 of the City's Municipal Code are subject to the Builder's Remedy, and that the City can require compliance with any code section outside of Chapter 36.[2]

First, the enumerated findings within subdivision (d)(1)-(5) are the *only* valid reasons to disapprove an affordable housing project. Thus, if the City believes that standards outside of Chapter 36 do not fall within the scope of subdivision (d)(1)-(5), noncompliance with any such standards *cannot be utilized to disapprove the project*. Unless such standards are based on public health or safety or required under federal or state law, noncompliance with *any* code standard outside of Chapter 36 would still not be a valid reason to disapprove an affordable housing project. In other words, affordable housing projects are *only* required to comply with zoning and general plan land use standards, and any other code standard is inapplicable.

The Legislature has recently enacted AB 1893, which was intended to clarify the duties of local governments with regard to Builder's Remedy projects. The Legislative history clearly states that

[2] We note that the staff report still proposed to require compliance with the City's BMR program, which ***is*** contained in Chapter 36. Thus, even under staff's interpretation, the proposed conditions violate the HAA.

"Under existing law, as long as a developer includes 20% of the units in a development for lower income households or 100% for moderate income and the local agency does not have a substantially compliant housing element, a development must be approved." (See Exhibit C.) AB 1893 did not put new limits on local government discretion, but rather "set parameters around the density, underlying zoning, and objective standards that a development must meet in order to qualify for the Builder's Remedy."

In other words, AB 1893 placed new limits on Builder's Remedy projects, but merely confirmed and clarified the Legislature's intent regarding local government's discretion over such projects under existing law. Most significantly, AB 1893 states that if a project qualifies as a Builder's Remedy project, the project "shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, redevelopment plan and implementing instruments, or other similar provision *for all purposes*." This confirms that the Legislature has always understood that, so long as a project is protected by the Builder's Remedy, a project is not required to *actually* comply with *any* applicable standards, but rather is *legally* compliant with all standards because those standards are inapplicable.

AB 1893 confirms what the applicant has stated all along – a Builder's Remedy project is not required to comply with any local standards. The City's approach, to require compliance through conditions of approval, is simply an end run around the Builder's Remedy.

C. <u>The City Cannot Impose Conditions that have a Substantial Adverse Effect on the Viability or Affordability of the Project</u>

A local government is also prohibited from imposing a condition "including design changes, lower density, or a reduction of the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the housing development project's application is complete, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households." (Gov. Code § 65589.5(i).)

First, subdivision (i) confirms that conditions may only be based on "applicable planning and zoning *in force* at the time the housing development project's application is complete." Here, because the City did not have a compliant housing element at the time project obtained vesting rights, the City's general plan and zoning standards were not "in force" because the Builder's Remedy prohibits the disapproval based on any general plan or zoning inconsistency.

Moreover, this subdivision establishes certain conditions that are per se prohibited, including conditions that lower density or reduce the percentage of a lot that may be occupied by a building or structure. Several of the standards identified in the City's letter, such as the requirement for more parking spaces and to dedicate land for public easement, are prohibited because the standards reduce the percentage of the lot that may be occupied by a building.

Finally, subdivision (i) prohibits any condition that would have a substantial adverse impact on the viability and affordability of the project. The Legislature has recognized that providing 20% of units at rates affordable to low-income households is *already* a significant burden on the feasibility of projects and therefore enacted specific protections to affordable housing projects to prevent de facto disapprovals through conditionals of approval that would render projects infeasible. The City's own Housing Element found that its BMR program, which only requires 15% of units as affordable to moderate income households, is a significant constraint on the development of housing. This project, which contains *more* affordable units at a deeper level of affordability, would certainly be made infeasible with the City's proposed conditions.

The applicant has identified the conditions that will have a substantial adverse impact on the viability and affordability of the project and has proposed a strikethrough of staff's proposed conditions that would be acceptable, attached as Exhibit A. In addition to those conditions that increase project construction costs, the applicant has highlighted the conditions that will make it significantly less likely that the project will be built. For example, the proposed conditions limit the duration of the approval to the *minimum* allowed under state law, rather than the maximum timeframes allowed by state law in Gov. Code § 66452.6. The proposed conditions appear to be crafted to ensure that the project does *not* get constructed, which is the opposite of what the law requires.

Subdivision (i) states that the burden of proof is on the City to demonstrate that it has complied with the HAA's requirements. (*See also* Gov. Code § 65589.6.) Therefore, the *applicant* does not have to demonstrate that a condition of approval has a substantial adverse effect on the project, the burden is on the *City* to demonstrate that its conditions comply with this requirement. It will be extremely difficult to prove the City has met this burden by a preponderance of the evidence, particularly where the City's own Housing Element has already found some of the proposed conditions, including the City's park land dedication requirements, to pose a significant constraint on the development of housing. (See Mountain View 6th Cycle Housing Element, Appendix D: Constraints Analysis, p. 245.)

D. <u>The HAA Limits the Fees that Be Imposed on the Project</u>

The City's authority to impose fees and other exactions for housing development projects is derived from subdivision (f)(3) of the HAA. The staff report appears to only focus on the first half of this provision, ignoring the second half, which states that the City may impose "fees and other exactions otherwise authorized by law ***that are essential to provide necessary public services and facilities to the housing development project***."

The staff report proposes conditions with a significant amount of fees for park land dedication and transportation impacts, without explaining how these fees are essential to providing public services. This is unsurprising, as neither park land nor transportation impact mitigation qualifies as a "necessary public service." Even if the staff report made an assertion that park land dedication and transportation impact mitigation somehow qualify as necessary public services,

the City must demonstrate how these fees would be used to provide services "to the housing development project" as required by the HAA. Again, this is unsurprising, as these fees would simply be paid into the City's general mitigation fund – not to serve the future residents of the project. The proposed fees violate the HAA, and cannot be imposed.

E. The City's Park Fees Violate the Takings Clause

The United States Constitution prohibits governments from taking private property without just compensation. (U.S. Const. amend. V.) The takings clause prohibits zoning and land use regulations that impose a permanent physical occupation of private property. (Loretto v. Teleprompter Manhattan Catv Corp. (1982) 458 U.S. 419.) The Supreme Court has long held that regulatory conditions on development approvals must have an essential nexus to mitigating impacts of that development, and roughly proportional to those impacts. (*Nollan v. California Coastal Comm'n* (1987) 483 U.S. 825; *Dolan v. City of Tigard* (1994) 512 U.S. 374.) Most recently, the Supreme Court held that impact fees, even those that are legislatively enacted, must meet the "essential nexus" and "rough proportionality" tests of *Nollan* and *Dolan*. (*Sheetz v. Cnty. of El Dorado* (2024) 601 U.S. 267, 280.)

The City requires that property owners deed their private property over to the City without just compensation for public use as a park, or pay a fee. The fact that this dedication is only required as a condition of approval and that the fee is authorized by the Quimby Act does not allow it to escape constitutional scrutiny, as confirmed by Supreme Court in *Sheetz*. The City's desire to acquire and develop parkland is not impacted by our applicants project, nor is the more than 3 million dollar proposed fee in any proportional to any purported impact. The staff report states that in a "good faith" effort to reduce constraints, the City arbitrarily chose to provide a 20% reduction to the City's standard park land fee. The constitution requires more than a good faith effort, the constitution requires the City to demonstrate an "essential nexus" and "rough proportionality" between the imposed fee and project's impacts. The City has never commissioned a nexus study, and even if it had, the City must make a case by case determination that the fee imposed on any particular project passes constitutional muster. The City has not done do here, nor could it, and therefore the proposed park land dedication fee constitutes an unconstitutional taking of Mr. Linebarger's property.

F. The City Cannot Impose Conditions Based on Subjective Standards

The HAA greatly limits a local government's ability to deny a housing development project that complies with applicable, objective general plan, zoning, and subdivision standards, and prohibits local governments from applying subjective standards. (Gov. Code § 65589.5(j)(1)(A)-(B); *see also Cal. Renters Legal Advocacy & Educ. Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 844.) The HAA defines "objective" as "involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official." (§ 65589.5(h)(8).)

The test to determine whether a standard is objective is whether there is a single standard "knowable in advance, *to be applied to all*." (*Cal. Renters Legal Advocacy & Educ. Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 843.) Many of the standards cited in the City's letter fail this test of objectivity because the standards allow public officials to make a subjective determination whether the standard will apply in particular instance, and therefore the standard is *not* one that is "applied to all" and an applicant cannot know if the standard will be applied in this instance.

For example, the parkland in-lieu fees in MVCC Sec. 41.3 are only required when "dedication is impossible, impractical or undesirable as determined by the public works director, zoning administrator or city council as appropriate." Not only is the "impossible, impractical or undesirable" standard subjective, but the decision to require fees is up to the discretion of public officials and is not knowable in advance. This section requires a housing developer to "dedicate land, pay a fee or both *at the option of the city*." This clearly fails the HAA test of objectivity, and therefore the City cannot impose such a standard.

G. The Project is Deemed Compliant with all Code Requirements that Were Not Adequately Identified in the City's Code Compliance Determination

The HAA requires a local government to provide an applicant with a written code compliance determination within a certain timeframe, and that written determination must "identify[ ] the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity" with that provision. (Gov. Code § 65589.5(j)(2).) If the written determination fails to provide the required documentation in a manner that satisfies the HAA's requirements, "the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision." (*Id.*)

Several of the City's consistency comments failed to meet the HAA standard for a written code compliance determination, including because the comment did not identify the provision the City believes the project fails to comply with. For example, the comments on trash management and multimodal transportation did not "identify the provision" that the City believes the project does not comply with, and therefore these comments do not satisfy the HAA written code compliance requirement. Thus, even if such provisions exist, the project is deemed compliant with such provisions because any inconsistency was not adequately identified within the HAA's deadline. To the degree that the City's conditions of approval are requiring compliance with a provision that the Project has already been deemed compliant with, that condition would violate the HAA.

H. Imposing Conditions of Approval Violate the Project's Vesting Rights

In 2019, the Legislature enacted the HCA to prohibit what the Senate Floor Analyses described as "the most egregious practices" by local governments that prevent the development of new housing. Specifically, the HCA added a new "preliminary application" that allows a housing developer to submit a preliminary application, which under the HAA "vests" the "ordinances,

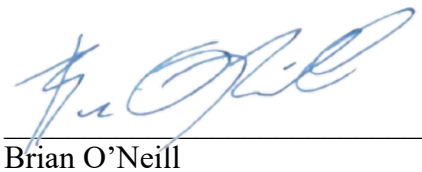
policies, and standards" in effect at the time a complete preliminary application is submitted. (§ 65589.5(o)(1).) The HAA defines "ordinances, policies, and standards" broadly to include "general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, *and any other rules, regulations, requirements, and policies of a local agency* . . . ." (Gov. Code § 65589.5(o)(4).)

Many of the City's proposed conditions are not tethered to existing code standards that were in place at the time the preliminary application for this project was submitted and appear to be ad hoc requirements and rules that planning staff has determined should be applied to the project. The HAA clearly states that a project "shall be subject *only* to the ordinances, policies, and standards adopted and in effect" when a preliminary application was submitted, and the proposed conditions of approval subject the project here to a myriad of standards that were not in existence until the staff report was published less than a week ago. Thus, these conditions violate the project's vesting rights.

Conclusion

Tower Investment's proposed project qualifies as a builder's remedy project and therefore must be approved as proposed. The multitude of conditions that staff have proposed violate state law, and therefore cannot be imposed. Regardless, the applicant is still willing to accept the vast majority of the conditions with the exception of those that will make the project infeasible. We urge the Committee to approve this much needed affordable housing project, with modifications to the project conditions as requested by the applicant in Exhibit A.

Very truly yours,



Brian O'Neill

Exhibit A

CITY OF MOUNTAIN VIEW
FINDINGS REPORT/ZONING PERMIT

APPLICATION NO.: PL-2023-102
DATE OF FINDINGS: November 13, 2024
EXPIRATION OF ZONING PERMIT:

THIS DOCUMENT REPRESENTS THE ZONING PERMIT RECEIVED FOR THE SUBJECT SITE. THIS DOCUMENT DOES NOT WAIVE THE REQUIREMENT FOR SUBSEQUENT CITY APPROVALS AS APPLICABLE, INCLUDING, BUT NOT LIMITED TO, BUILDING PERMITS, EXCAVATION PERMITS, ETC.

Applicant's Name:

Forrest Linebarger of Tower Investment, LLC

Property Address:	Assessor's Parcel No(s).:	Zone:
294-296 Tyrella Avenue	**160-32-001, 163-032-002**	**R3-1**

Request:

Request for a Development Review Permit and Heritage Tree Removal Permit to demolish an existing single-family house to construct a seven-story, 85-unit residential condominium development (20% affordable)with a two-level parking garage on a 0.48-acre project site.

APPROVED ☐ CONDITIONALLY APPROVED ☒ DISAPPROVED ☐ OTHER ☐

******ZONING ADMINISTRATOR RECOMMENDATION TO CITY COUNCIL******

FINDINGS OF APPROVAL:

The Development Review Permit to allow a seven-story, 85-unit residential condominium development, replacing an existing single-family house, is conditionally approved based upon the conditions of approval contained herein and upon the following findings per Section 36.44.70:

A. **The project complies with the general design considerations as described by the purpose and intent of Chapter 36 (Zoning) of the Mountain View City Code (MVCC or City Code), the General Plan, and any City-adopted design guidelines.** The Builder's Remedy provisions of the Housing Accountability Act (HAA) prohibit local agencies from disapproving or conditioning approval of a housing development project for very low-, low-, or moderate-income households through the use of design review standards. The proposed Builder's Remedy project is consistent with some of these design review standards, such as LUD 6.3 (Street Presence) as the building facade is designed in a manner that emphasizes the more active lobby area and appropriately encloses the podium parking with a horizontal siding to improve the ground-floor appearance at the street. Additionally, the project complies with LUD 9.6 (Light and Glare) as the proposed building light fixtures will not result in off-site glare and with LUD 10.7 (Beneficial Landscaping Options) as the proposed plant palette primarily utilizes low-water use plantings. Where the project is inconsistent, such inconsistencies are not a basis for disapproval of the project.

B. **The architectural design of structures, including colors, materials, and design elements (i.e., awnings, exterior lighting, screening of equipment, signs, etc.), is compatible with surrounding development.** The Builder's Remedy provisions of the HAA prohibit local agencies from disapproving or conditioning approval of a housing development project for very low-, low-, or moderate-income households through the use of design review standards. The architectural design of structures, including colors, materials, and design elements (i.e., awnings, exterior lighting, screening of equipment, signs, etc.), is somewhat compatible with surrounding development because the project uses stucco and lap siding, which are prevalent building

materials used in the surrounding buildings. Where the project is inconsistent, such inconsistencies are not a basis for disapproval of the project.

C. **The location and configuration of structures, parking, landscaping, and access are appropriately integrated and compatible with surrounding development, including public streets and sidewalks and other public property.** The Builder's Remedy provisions of the HAA prohibit local agencies from disapproving or conditioning approval of a housing development project for very low-, low-, or moderate-income households through the use of design review standards. A multi-modal transportation analysis (MTA) was completed for the project and identified on-site and off-site modifications to improve vehicular and pedestrian circulation. The proposed Builder's Remedy project is consistent with some of these design recommendations provided in the MTA, such as a single-driveway entrance to the project site from Tyrella Avenue and incorporation of on-site loading spaces. Where the project is inconsistent, such inconsistencies are not a basis for disapproval of the project.

D. **The general landscape design ensures visual relief, complements structures, provides an attractive environment, and is consistent with any adopted landscape program for the general area.** The Builder's Remedy provisions of the HAA prohibit local agencies from disapproving or conditioning approval of a housing development project for very low-, low-, or moderate-income households through the use of design review standards. The proposed Builder's Remedy project is consistent with some of these design review standards. For example, the project is consistent with the total open area requirement and the proposed landscape design complies with the Council policies that encourage a minimum of 75% native landscaping and increases to the tree canopy coverage. Additionally, proposed landscape design includes screening trees along the perimeter to provide visual relief to the adjacent neighbors. Where the project is inconsistent, such inconsistencies are not a basis for disapproval of the project.

E. **The design and layout of the proposed project will result in well-designed vehicular and pedestrian access, circulation, and parking.** The Builder's Remedy provisions of the HAA prohibit local agencies from disapproving or conditioning approval of a housing development project for very low-, low-, or moderate-income households through the use of design review standards. The design and layout of the proposed project will result in well-designed vehicular and pedestrian access, circulation, and parking by locating the vehicular access to the at-grade podium parking on Tyrella Avenue as recommended by the MTA. The site design also includes direct pedestrian access from Tyrella Avenue and a secondary pedestrian access to the project site located off of Middlefield Road. Where the project is inconsistent, such inconsistencies are not a basis for disapproval of the project.

F. **The approval of the Development Review Permit complies with the California Environmental Quality Act (CEQA).** The approval of the 85-unit residential condominium development project complies with CEQA because it qualifies as a categorically exempt project per CEQA Guidelines Section 15332 ("In-Fill Development") as the project is consistent with the following findings, and none of the exceptions in CEQA Guidelines Section 15300.2 apply:

1. ***The project is consistent with the applicable General Plan designation and all applicable General Plan policies as well as with applicable zoning designation and regulations.*** The applicant submitted a preliminary application before the City adopted a substantially compliant Housing Element for a housing development project that proposes 20% of its total units to be affordable to lower-income households; therefore, the project qualifies as a Builder's Remedy project. The Builder's Remedy provision of the HAA prohibits the City from relying on inconsistencies with zoning and General Plan standards as a basis for denial of a housing development project for very low-, low-, or moderate-income households. Therefore, any existing zoning requirements and development standards that the project is not in compliance with are not "applicable" to the project within the meaning of CEQA Guidelines Section 15332, subdivision (a). For these reasons, the project is consistent with the "applicable" designations and policies;

2. ***The proposed development occurs within City limits, on a project site of no more than five acres, substantially surrounded by urban uses.*** The gross project site is approximately 0.48 acre in size and is located at the southwest corner of Middlefield Road and Tyrella Avenue, within the eastern-central portion of the City of Mountain View. The site is located within an urbanized, developed, residential area of the City and is surrounded by existing residential uses. Therefore, the proposed project would meet this criterion.

3. ***The project site has no value as habitat for endangered, rare, or threatened species*.** The project site is developed with existing residential uses and is located within a developed, urban area of the City. Vegetation on the site consists of

landscape trees, and the site does not contain habitat for endangered, rare, or threatened species. The project will be required to comply with the City's standard tree replacement requirements outlined in the City Code and the City's standard conditions of approval.

No species identified as a candidate, sensitive, or special status species are known to occur at the site location, and no sensitive or jurisdictional habitats are present at or adjacent to the site. The site is not part of any habitat conservation plan. Therefore, the project site has no value as habitat for endangered, rare, or threatened species, and the project would meet this criterion under CEQA Guidelines Section 15332(c).

4. ***Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.***

Traffic/Transportation: As the project is residential, it would not exceed the City's transportation impact thresholds. According to the City of Mountain View's VMT policy, residential projects located in areas of low VMT, defined as exhibiting VMT that is 15% or greater, below the existing nine-county Bay Area regional average VMT shall be presumed to have a less-than-significant transportation impact. The project site is located in a low-VMT area; and, therefore, the project would not result in significant transportation impacts.

Noise: The project would not exceed the City's applicable significance thresholds related to noise or vibration. The project is not located within the vicinity of a private airstrip or a public airport and would not expose people residing or working in the area to excessive aircraft noise levels.

The project would result in construction noise and vibration at levels similar to other mid-rise construction projects within the City. There is nothing unique or peculiar about the project or its construction that would suggest that the project would have greater construction noise or vibration impacts than other typical mid-rise construction projects.

The project would include stationary sources of operational noise, such as mechanical heating, ventilating, and air conditioning (HVAC) equipment that is standardized for noise reduction as well as an emergency generator for the elevator. Stationary equipment would be located and shielded to operate within the City's Noise Ordinance requirements. As directed by the California Supreme Court in *Make UC A Good Neighbor v. Regents of University of California (2024),* 16 Cal.5th 43, noise from resident activity at the site is not considered an environmental impact.

Based on the above discussion, the project would not result in significant or unique noise impacts. With implementation of all required standard conditions of approval pertaining to noise (see Section 5.0 CEQA Checklist for full text of applicable conditions), the project would not result in significant effects related to noise or vibration. For these reasons, the project would meet the criteria pursuant to CEQA Guidelines Section 15332(d).

Air Quality: The project would not exceed the City's applicable significance thresholds related to air quality. The project is consistent with the policies and standards of the City's General Plan and proposes infill residential development within an area that is well served by transit. As such, the project is also considered to be consistent with the Clean Air Plan.

The project would not exceed the screening criteria published by the Bay Area Air Quality Management District (BAAQMD) air quality emissions resulting from construction or operations. Construction-related emissions from the project will be reduced to a less-than-significant level with implementation of required City of Mountain View standard conditions of approval. Given the nature of the proposed residential use, project operations would not be a substantial source of toxic air contaminants and would not pose a health risk to others. Pursuant to the City of Mountain View's standard conditions of approval, the project will be required to install MERV 13 or better HVAC air filters which will remove emissions from indoor air and ensure that the project will not result in significant health risks.

With implementation of the City's standard condition of approval, the project would not result in significant effects related to air quality and would meet the criteria pursuant to CEQA Guidelines Section 15332(d).

Water Quality: The project would not exceed the City's applicable significance thresholds related to water quality. The project site is currently developed and is located within an urbanized environment. There are no lakes, creeks, or other

surface waters in the immediate site vicinity. The project site is served by the City's existing stormwater system and downstream conveyance channels that will receive runoff from the Project.

Given the location and flat nature of the site, the project would not substantially increase runoff as a source of polluted runoff from the site. The project will be subject to regulatory requirements and the City's standard conditions of approval, which require site design measures to reduce the amount of stormwater runoff and limit pollution in stormwater runoff. With implementation of all required standard conditions pertaining to water, the project would not result in significant impacts related to water quality and would meet the criteria pursuant to CEQA Guidelines Section 15332(d) for an infill exemption.

5. ***The site can be adequately served by all required utilities and public services.*** As documented in the utility impact study, the project would not exceed the City's applicable significance thresholds related to utilities and public services. The project site is located within an urbanized residential area of the City, which is served by all needed utilities (e.g., water, electricity, sanitary sewer facilities, and storm drain facilities), and all required public services (e.g., police and fire services, and public schools). The proposed redevelopment will require specific on-site extensions and improvements to existing utility infrastructure to serve the new residential condominium building. Based on the findings and recommendations of the Utility Study, which also incorporates information from previous studies, the project would not contribute to additional deficiencies in the water system or sewer system.

   The project would not result in significant effects related to utilities or public services and would meet the criteria pursuant to CEQA Guidelines Section 15332(d) for an infill exemption.

The Heritage Tree Removal Permit to remove six Heritage trees (Tree Nos. 4, 5, 6, 7, 8, and 9) is conditionally approved based on the conditions contained herein, a site visit conducted on December 28, 2023, and the following findings per Section 32.35:

A. **It is necessary to remove the trees due to the condition of the trees with respect to age of the trees relative to the life span of that particular species, disease, infestation, general health, damage, public nuisance, danger of falling, proximity to existing or proposed structures, and interference with utility services.** It is necessary to remove the trees due to the condition of the trees with respect to age of the trees relative to the life span of that particular species, disease, infestation, general health, damage, public nuisance, danger of falling, proximity to existing or proposed structures, and interference with utility services because the Heritage trees to be removed are located within the building footprint, necessitating their removal for project construction. This was identified in the arborist report prepared by Kielty Arborist Report Services, LLC, dated April 18, 2024, and reviewed by the City arborist.

B. **It is necessary to remove the trees in order to construct the improvements and/or allow reasonable and conforming use of the property when compared to other similarly situated properties.** It is necessary to remove the trees in order to construct the improvements and/or allow reasonable and conforming use of the property when compared to other similarly situated properties because the trees are within the building footprint, and it would be infeasible to design the building and parking to avoid conflict with the trees' protection zones, given the proposed footprint of the project.

C. **It is appropriate to remove the trees based on the nature and qualities of the trees as Heritage trees, including maturity, aesthetic qualities, such as its canopy, shape, and structure, majestic stature, and visual impact on the neighborhood**. It is appropriate to remove the trees based on the nature and qualities of the trees as Heritage trees, including maturity, aesthetic qualities such as its canopy, shape and structure, majestic stature, and visual impact on the neighborhood because the trees are located within the building footprint, and replacement trees at a minimum 24" box size will be provided to offset the loss of Heritage trees at a 2:1 ratio.

D. **It is appropriate to remove the trees to implement good forestry practices, such as, but not limited to, the number of healthy trees a given parcel of land will support, the planned removal of any tree nearing the end of its life cycle, and replacement with young trees to enhance the overall health of the urban forest.** It is appropriate to remove the trees to implement good forestry practices, such as, but not limited to, the number of healthy trees a given parcel of land will support, the planned removal of any tree nearing the end of its life cycle, and replacement with young trees to enhance the overall health of the urban forest because the project proposes replacement trees at a minimum 24" box size to offset the loss of Heritage trees at a 2:1 ratio.

E. **The approval of the Heritage Tree Removal Permit complies with the California Environmental Quality Act (CEQA).** The approval of the Heritage Tree Removals proposed as part of the 85-unit residential development project complies with CEQA because it qualifies as a categorically exempt project per CEQA Guidelines Section 15332 ("In-Fill Development") because the project is consistent with the following findings, and none of the exceptions in CEQA Guidelines Section 15300.2 apply:

1. ***The project is consistent with the applicable General Plan designation and all applicable General Plan policies as well as with applicable zoning designation and regulations.*** The applicant submitted a preliminary application before the City adopted a substantially compliant Housing Element for a housing development project that proposes 20% of its total units to be affordable to lower income households; therefore, the project qualifies as a Builder's Remedy project. The Builder's Remedy provisions of the HAA prohibits the City from relying on inconsistencies with zoning and General Plan standards as a basis for denial of a housing development project for very low-, low-, or moderate-income households. Therefore, any existing zoning requirements and development standards that the project is not in compliance with are not "applicable" to the project within the meaning of CEQA Guidelines Section 15332, subdivision (a). For these reasons, the project is consistent with the "applicable" designations and policies.

2. ***The proposed development occurs within City limits, on a project site of no more than five acres, substantially surrounded by urban uses.*** The gross project site is approximately 0.48 acre in size and is located at the southwest corner of Middlefield Road and Tyrella Avenue, within the eastern-central portion of the City of Mountain View. The site is located within an urbanized, developed residential area of the City and is surrounded by existing residential uses. Therefore, the proposed project would meet this criterion.

3. ***The project site has no value as habitat for endangered, rare, or threatened species*.** The project site is developed with existing residential uses and is located within a developed, urban area of the City. Vegetation on the site consists of landscape trees, and the site does not contain habitat for endangered, rare, or threatened species. The project will be required to comply with the City's standard tree replacement requirements outlined in the City Code and the City's standard conditions of approval.

   No species identified as a candidate, sensitive, or special-status species are known to occur at the site location, and no sensitive or jurisdictional habitats are present at or adjacent to the site. The site is not part of any habitat conservation plan. Therefore, the project site has no value as habitat for endangered, rare, or threatened species, and the project would meet this criterion under CEQA Guidelines Section 15332(c).

4. ***Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.***

   Traffic/Transportation: As the project is residential, it would not exceed the City's transportation impact thresholds. According to the City of Mountain View's VMT policy, residential projects located in areas of low VMT, defined as exhibiting VMT that is 15% or greater below the existing nine-county Bay Area regional average, VMT shall be presumed to have a less-than-significant transportation impact. The project site is located in a low-VMT area; and, therefore, the project would not result in significant transportation impacts.

   Noise: The project would not exceed the City's applicable significance thresholds related to noise or vibration. The project is not located within the vicinity of a private airstrip or a public airport and would not expose people residing or working in the area to excessive aircraft noise levels.

   The project would result in construction noise and vibration at levels similar to other mid-rise construction projects within the City. There is nothing unique or peculiar about the project or its construction that would suggest that the project would have greater construction noise or vibration impacts than other typical mid-rise construction projects.

   The project would include stationary sources of operational noise, such as mechanical heating, ventilating, and air conditioning (HVAC) equipment that is standardized for noise reduction as well as an emergency generator for the elevator. Stationary equipment would be located and shielded to operate within the City's Noise Ordinance requirements. As directed by the California Supreme Court in *Make UC A Good Neighbor v. Regents of University of California (2024),* 16 Cal. 5th 43, noise from resident activity at the site is not considered an environmental impact.

Based on the above discussion, the project would not result in significant or unique noise impacts. With implementation of all required standard conditions of approval pertaining to noise (see Section 5.0 CEQA Checklist for full text of applicable conditions), the project would not result in significant effects related to noise or vibration. For these reasons, the project would meet the criteria pursuant to CEQA Guidelines Section 15332(d).

Air Quality: The project would not exceed the City's applicable significance thresholds related to air quality. The project is consistent with the policies and standards of the City's General Plan and proposes infill residential development within an area that is well served by transit. As such, the project is also considered to be consistent with the Clean Air Plan.

The project would not exceed the screening criteria published by the BAAQMD air quality emissions resulting from construction or operations. Construction-related emissions from the project will be reduced to a less-than-significant level with the implementation of required City of Mountain View standard conditions of approval. Given the nature of the proposed residential use, project operations would not be a substantial source of toxic air contaminants and would not pose a health risk to others. Pursuant to the City of Mountain View's standard conditions of approval, the project will be required to install MERV 13 or better HVAC air filters, which will remove emissions from indoor air and ensure that the project will not result in significant health risks.

With implementation of the City's standard conditions of approval, the project would not result in significant effects related to air quality and would meet the criteria pursuant to CEQA Guidelines Section 15332(d).

Water Quality: The project would not exceed the City's applicable significance thresholds related to water quality. The project site is currently developed and is located within an urbanized environment. There are no lakes, creeks, or other surface waters in the immediate site vicinity. The project site is served by the City's existing stormwater system and downstream conveyance channels that will receive runoff from the project.

Given the location and flat nature of the site, the project would not substantially increase runoff as a source of polluted runoff from the site. The project will be subject to regulatory requirements and the City's standard conditions of approval, which require site design measures to reduce the amount of stormwater runoff and limit pollution in stormwater runoff. With implementation of all required standard conditions pertaining to water, the project would not result in significant impacts related to water quality and would meet the criteria pursuant to CEQA Guidelines Section 15332(d) for an infill exemption.

5. ***The site can be adequately served by all required utilities and public services.*** As documented in the utility impact study, the project would not exceed the City's applicable significance thresholds related to utilities and public services. The project site is located within an urbanized residential area of the City, which is served by all needed utilities (e.g., water, electricity, sanitary sewer facilities, and storm drain facilities) and all required public services (e.g., police and fire services, and public schools). The proposed redevelopment will require specific on-site extensions and improvements to existing utility infrastructure to serve the new residential condominium building. Based on the findings and recommendations of the Utility Study, which also incorporates information from previous studies, the project would not contribute to additional deficiencies in the water system or sewer system.

   The project would not result in significant effects related to utilities or public services and would meet the criteria pursuant to CEQA Guidelines Section 15332(d)(5) for an infill exemption.

This approval is granted to construct an 85-unit residential condominium development located on Assessor's Parcel Nos. 160-32-001 and 163-32-002. Development shall be substantially as shown on the project materials listed below, except as may be modified by conditions contained herein, which are kept on file in the Planning Division of the Community Development Department:

a. Project plans prepared by Tower Investment, LLC, dated October 7, 2024.

b. Arborist Report prepared by Kielty Arborist Report Services, LLC, dated April 18, 2024.

THIS REQUEST IS GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

Planning Division—650-903-6306 or planning.division@mountainview.gov

1. ~~**EXPIRATION:** This permit is valid for a period of two years from the date of approval. This permit shall become null and void if building permits have not been issued and construction activity has not commenced within the two-year period or if there has been no significant construction activity for a period of one year following the last building inspection for an issued building permit, unless a permit extension application has been submitted to and approved by the Zoning Administrator at a duly noticed public hearing prior to the expiration date or continuation of construction.~~

2. **PERMIT EXTENSION:** Zoning permits may be extended for up to two years after an Administrative Zoning public hearing, in compliance with procedures described in Chapter 36 of the City Code. An application for extension must be filed with the Planning Division, including appropriate fees, prior to the original expiration date of the permit(s). ~~Regardless of any zoning permit extension, if the project has not commenced construction within two and one-half years following the date of the project's "final approval" as defined in Government Code Section 65589.5(o)(2)(D)(ii), or otherwise obtained vested rights to develop and operate the project, then the project shall be subject to all ordinances, plans, regulations, and specifications adopted after the preliminary application was submitted and then in effect.~~

3. **PLANNING INSPECTION:** Inspection(s) by the Planning Division are required for foundation, framing, application of exterior materials, and final completion of each structure to ensure that the construction matches the approved plans.

4. **AIR QUALITY:** The applicant is required to secure a permit from the Bay Area Air Quality Management District or provide written assurance that no permit is required prior to issuance of a building permit.

5. **CERTIFICATION OF BUILDING PERMIT PLANS:** In a letter, the project architect shall certify the architectural design shown in the building permit plans match the approved plans. Any changes or modifications must be clearly noted in writing and shown on redlined plan sheets. The project architect shall also certify the structural plans are consistent with the architectural plans. In the event of a discrepancy between the structural plans and the architectural plans, the architectural plans shall take precedence, and revised structural drawings shall be submitted to the Building Inspection Division.

6. **ACCESSORY STRUCTURE(S):** Any future accessory structure on-site will require approval by the Planning Division and may require separate City permits.

7. **ZONING INFORMATION:** The following information must be listed on the title sheet of the building permit drawings: (a) zoning permit application number; (b) zoning district designation; (c) total floor area ratio and residential density in units per acre, if applicable; (d) lot area (in square feet and acreage); and (e) total number of parking spaces.

8. **LOT AREA:** Modifications shall be made to the project lot area provided in the building permit drawings to depict the correct lot area, which shall include the square footage associated with the proposed park land dedication as the City will not accept the park land dedication. Include new calculations for open area, paving coverage, and setbacks as a result of the changes in the lot area on the title sheet of the building permit drawings. **(PROJECT-SPECIFIC CONDITION)**

PERMIT SUBMITTAL REQUIREMENTS

9. **REVISIONS TO THE APPROVED PROJECT:** Minor revisions to the approved plans shall require approval by the Zoning Administrator. Major modifications as determined by the Zoning Administrator shall require a duly noticed public hearing, which can be referred to the City Council.

10. **FLOOR AREA RATIO (FAR) DIAGRAM:** Building permit drawings must include a floor area ratio (FAR) diagram for each structure on-site, clearly identifying each level of the structure(s) and the gross area(s) which count toward floor area per required zoning calculations. The diagram must also clearly identify all areas which are exempt from FAR.

11. **PAINT COLOR-CODING:** At submittal of building plan check, provide color-coded elevations of each side of the building(s) detailing the location of all paint and stain colors, manufacturer, and color names.

12. **GEOTECHNICAL REPORT:** The applicant shall have a design-level geotechnical investigation prepared which includes recommendations to address and mitigate geologic hazards in accordance with the specifications of California Geological Survey (CGS) Special Publication 117, *Guidelines for Evaluating and Mitigating Seismic Hazards*, and the requirements of the Seismic Hazards Mapping Act. The report will be submitted to the City during building plan check, and the recommendations made in the geotechnical report will be implemented as part of the project and included in building permit drawings and civil drawings as needed. Recommendations may include considerations for design of permanent below-grade walls to resist static lateral earth pressures, lateral pressures caused by seismic activity, and traffic loads; method for backdraining walls to prevent the build-up of hydrostatic pressure; considerations for design of excavation shoring system; excavation monitoring; and seismic design.

13. **TOXIC ASSESSMENT:** A toxic assessment report shall be prepared and submitted as part of the building permit submittal. The applicant must demonstrate that hazardous materials do not exist on the site or that construction activities and the proposed use of this site are approved by the City's Fire Department (Fire and Environmental Protection Division); the State Department of Health Services; the Regional Water Quality Control Board; and any federal agency with jurisdiction. No building permits will be issued until each agency and/or department with jurisdiction has released the site as clean or a site toxics mitigation plan has been approved.

14. ~~**SIGNAGE:** No signs are approved as part of this application. Any new signage will require separate planning and/or building permits. Application form and submittal requirements are available online at www.mountainview.gov/planningforms.~~

15. ~~**MASTER SIGN PROGRAM:** The applicant shall develop a master sign program for this property as part of a separate planning permit. The program shall identify suitable sign locations, types, sizes, colors, and materials in written and visual forms for all buildings/tenant spaces on-site with a common theme for signage that is compatible with the structures and uses. Application form and submittal requirements are available online~~ at www.mountainview.gov/planningforms.

OPERATIONS

16. **ROOF DECK OPERATION:** The approved hours of operation for the rooftop common area shall be limited to ~~8~~7:00 a.m. to 10:00 p.m., and shall not allow amplified music. ~~In the event any problems arise with the hours of operation or noise, the Zoning Administrator may hold a public hearing to review common area operations and impose new or modified conditions of approval in response to public comment received. The public hearing shall be conducted and noticed in accordance with Chapter 36, Article XVI, Division 6, of the City Code.~~

17. **PARKING MANAGEMENT PLAN:** Prior to building permit issuance, the applicant shall develop a parking management plan describing parking allocation for residents, guests, and/or commercial uses on the project site, ~~subject to administrative approval by the Zoning Administrator prior to building permit issuance.~~

18. **LOADING/DELIVERY PLAN:** Prior to building permit issuance, the applicant shall develop a plan specifying measures to manage on-site deliveries and loading, which may include measures to tailor delivery hours and/or days to limit conflicts with peak traffic times or adjacent land uses.

19. **UNBUNDLED PARKING**: All parking spaces for the project shall be unbundled and must be offered for sale or lease separately from the residential units pursuant to Assembly Bill 1317. ~~The applicant shall submit a parking management plan detailing how the spaces will be allocated and managed, which shall be reviewed and approved by the Community Development Department prior to the final Certificate of Occupancy.~~ **(PROJECT-SPECIFIC CONDITION)**

SITE DEVELOPMENT AND BUILDING DESIGN

20. **EXTERIOR MATERIALS:** High-quality materials and finishes shall be used throughout the project and shall remain in compliance with the materials identified in the approved plans, except as modified by the conditions of approval herein. ~~Details regarding all color and architectural details shall be provided in the building permit plan submittal and shall be subject to review and approval by the Zoning Administrator prior to the issuance of building permits.~~

21. **TRIM MATERIALS:** ~~Trim materials throughout the project shall be wood or high-density foam trim.~~ Details of the specific placement, utilization, and finish of the trim materials shall be provided with the building permit drawings. ~~Final trim design details shall be subject to review and approval by the Zoning Administrator prior to the issuance of building permits.~~

22. **SPECIAL PAVING MATERIALS:** The color, material, design, and product specifications for the special paving materials used on-site shall be submitted with the building permit drawings. ~~Final paving design details shall be subject to review and approval by the Zoning Administrator prior to the issuance of building permits.~~

23. **WINDOWS:** ~~Manufacturer t~~Type, design, material, and installation details for all windows within the project shall be specified for each unit in the building permit drawings. ~~for review and approval by the Zoning Administrator prior to the issuance of building permits.~~

24. **MOCK-UP:** The applicant shall set up a large material and color mock-up on-site, prior to building permit issuance and purchase of the finish materials~~, for final selection and approval by the Zoning Administrator.~~. At a minimum, the mock-up shall include stucco, cementitious siding, fabric awning and paint samples. Proposed primary and secondary (accent) paint colors should be painted next to each other on the mock-up for purposes of inspection. ~~The color(s) shall not be considered approved until after inspection and approval by the Zoning Administrator.~~

25. **ROOFTOP EQUIPMENT SCREEN:** All rooftop equipment must be concealed behind opaque ~~(solid)~~ screening designed to complement the building design such that rooftop equipment is not visible from any elevation. Details of the rooftop equipment and roof screens shall be included in the building permit drawings ~~and approved by the Zoning Administrator.~~

26. **MECHANICAL EQUIPMENT (GROUND SCREENING):** All mechanical equipment, such as air condenser (AC) units or generators, shall be concealed behind opaque screening. No mechanical equipment is permitted on front porches or balconies but may be located in the fenced yard area or building rooftops.

27. **OUTDOOR STORAGE:** There is to be no outdoor storage without specific Development Review approval by the Planning Division.

28. **FENCE(S)/WALL(S):** All fencing and walls are to be shown on building plan drawings, including details on height, location, and material finish. No fence or wall shall exceed 6' in height, measured from adjacent grade to the top of the fence or wall. The design and location must ~~be approved by the Zoning Administrator and~~ comply with all setback ~~and traffic visibility area~~ requirements.

29. **PARKING SPACE DESIGN:** All parking spaces (except puzzle lifts) must be double-striped with 4" wide stripes. Double stripes shall be 18" apart, from outside edge to outside edge of the stripes, or 10" from inside edge to inside edge of the stripes. The 8-1/2' parking space width is measured from the center of one double stripe to the other, such that the space between stripes is 7'. For parallel parking spaces, only single-striped or tic-mark is required between spaces. Single stripes shall be measured from interior edge to interior edge of the stripe, such that the space between stripes is 24'.

30. **LIGHTING PLAN:** The applicant shall submit a lighting plan in building permit drawings. This plan should include photometric contours, manufacturer's specifications on the fixtures, and mounting heights. The design and location of outdoor lighting fixtures shall ensure there will be no glare and light spillover to surrounding properties, which is demonstrated with photometric contours extending beyond the project property lines. ~~The lighting plan submitted with building permit drawings must be approved by the Zoning Administrator prior to building permit issuance.~~

31. **ROOFTOP DECK LIGHTING:** Proposed lighting fixtures on the rooftop decks and courtyards shall not be visible from ground level on adjacent public streets. Any string lighting shall be designed to include shades to avoid light spillover and be screened so they are not visible from off-site. Limited pedestrian-scale/building-mounted lighting along pathways may be permitted subject to review and approval of photometric lighting plan submitted as part of the building permit drawings.

32. **BIKE PARKING FACILITIES:** The applicant shall provide the following bike parking on the project site, which must be shown on building permit drawings:

    a. Short-term bike parking for visitors, including a minimum of 10 bike spaces total. These spaces shall be provided as bike racks which must secure the frame and both wheels. Racks should be located near the building entrance (i.e., within constant visual range) unless it is demonstrated that they create a public hazard or are infeasible. If space is unavailable near building entrances, the racks must be designed so that the lock is protected from physical assault and must include clear and visible signage leading to public bicycle parking if not visible from a street or public path.

    b. Long-term bike parking for employees/residents at 1 bike space per unit, for a total of 85 bike spaces. These spaces shall be in a secure location to protect against theft and may include, but are not limited to, bike lockers, enclosed cages, or other restricted interior areas. Any area used for long-term bike parking shall not be included in zoning calculations for floor area or building coverage.

    c. One bicycle repair station shall be located on-site at grade-level. Specifications, location, and details shall be included on drawings submitted for building permit review.

GREEN BUILDING

33. **GREEN BUILDING—RESIDENTIAL NEW CONSTRUCTION:** The project is required to meet the mandatory measures of the California Green Building Standards Code and meet the intent of 110 GreenPoint Rated points. All mandatory prerequisite points and minimum point totals per category to attain GreenPoint Rated status must be achieved, unless specific point substitutions or exceptions are approved by the Community Development Department. Formal project registration and certification through Build It Green is not required for compliance with the Mountain View Green Building Code (MVGBC). The project is also required to comply with Title 24, Part 6.

34. **ENERGY MONITORING:** To support energy management and identify opportunities for energy savings, the project shall provide submeters or equivalent combinations of sensors to record energy use data (electricity, natural gas, etc.) for each major energy system in the building.

TREES AND LANDSCAPING

35. **LANDSCAPING:** Detailed landscape plans encompassing on- and off-site plantable areas out to the street curb must be included in building permit drawings. Minimum plant sizes are flats or one-gallon containers for ground cover, five-gallon for shrubs, and 24" box for trees. The drawings must be approved by the Zoning Administrator prior to building permit issuance and implemented prior to occupancy. All plans should be prepared by a licensed Landscape Architect ~~and should comply with the City's Landscape Guidelines~~, including the Water Conservation in Landscaping Regulations (forms are available online at www.mountainview.gov/planningforms). ~~Additional landscaping materials or modifications may be required by the Planning Division at final inspection to ensure adequate planting coverage and/or screening.~~

36. **LANDSCAPE CERTIFICATION:** Prior to occupancy, the Landscape Architect shall certify in writing the landscaping has been installed in accordance with all aspects of the approved landscape plans and final inspection(s), subject to final approval by the Zoning Administrator.

37. **STREET TREES:** Install standard City street trees along the street frontage, including where there are gaps in the space of existing street trees. The location of existing trees to remain, existing trees to be removed, and new street trees shall be shown on the grading, utility, and landscaping plans submitted for building permit review. New street trees shall be planted in accordance with Detail F-1 of the Public Works Standard Provisions, a minimum of 10' from sanitary sewer lines, traffic signals, stop and yield signs, and streetlights and 5' from water lines, fire lines, and driveways. Street trees are to be irrigated by the property owner in accordance with Chapter 32 of the City Code.

38. **STREET TREE FORM:** The applicant shall complete the "Proposed Street Tree" form available in the Planning Division or online at www.mountainview.gov/planningforms. Once completed, the applicant shall email the original to the Parks Division at parks@mountainview.gov and provide a duplicate copy to the Building Inspection Division with building permit submittal.

39. **ARBORIST REPORT:** A qualified arborist shall provide written instructions for the care of the existing tree(s) to remain on-site before, during, and after construction. The report shall also include a detailed plan showing installation of chain link fencing around the dripline to protect these trees and installation of an irrigation drip system and water tie-in for supplemental water during construction. Arborist's reports shall be received by the Planning Division and must be approved prior to issuance of building permits. Prior to occupancy, the arborist shall certify in writing that all tree preservation measures have been implemented. Approved measures from the report shall be included in the building permit drawings.

40. **ARBORIST INSPECTIONS:** During demolition activity and upon demolition completion, a qualified arborist shall inspect and verify the measures described in the arborist report are appropriately implemented for construction activity near and around the preserved trees, including the critical root zones. Should it be determined that the root systems are more extensive than previously identified and/or concerns are raised of nearby excavation or construction activities for the project foundation or underground parking garage, the design of the building and/or parking garage may need to be altered to maintain the health of the trees prior to building permit issuance.

41. **MONTHLY ARBORIST INSPECTIONS:** Throughout demolition and construction, a qualified arborist must conduct monthly inspections to ensure tree protection measures and maintenance care are provided. A copy of the inspection letter, including recommendations for modifications to tree care or construction activity to maintain tree health, shall be provided to the Planning Division at planning.division@mountainview.gov.

~~42. **SCREEN TREES:** The applicant shall revise the landscape plan to incorporate trees with broad, dense canopies along the interior property line. The trees are necessary to screen views of and provide privacy for adjoining properties.~~

43. **LANDSCAPE SCREENING:** All utility meters, lines, transformers, backflow preventers, etc., on-site or off-site, must be shown on all site plan drawings and landscape plan drawings. All such facilities shall be located so as to not interfere with landscape material growth and shall be screened in a manner which respects the building design and setback requirements. ~~Additional landscaping materials or modifications may be required by the Planning Division at final inspection to ensure adequate plant screening.~~

44. **TREE REMOVALS:** Permits to remove, relocate, or otherwise alter Heritage trees cannot be implemented until a project building permit for new construction is secured and the project is pursued.

45. **REPLACEMENT TREES:** The applicant shall offset the loss of each Heritage/street tree with two replacement trees, for a total of 12 replacement trees. Each replacement tree shall be no smaller than a 24" box and shall be noted on the landscape plan as Heritage or street replacement trees.

46. **TREE PROTECTION MEASURES:** The tree protection measures for Tree Nos. 1, 10, and 17 shall be included as notes on the title sheet of all grading, landscape plans, and utility plans. These measures shall follow the City's Tree Technical Manual for tree protection installation, which include, but may not be limited to, 6' chain link fencing at the drip line, a continuous maintenance and care program, and protective grading techniques. Also, no materials may be stored within the drip line of any tree on the project site. **(PROJECT SPECIFIC CONDITION)**

47. **IRREVOCABLE DAMAGE TO HERITAGE TREES:** In the event one or more of the preserved Heritage tree(s) are not maintained and irrevocable damage or death of the tree(s) has occurred due to construction activity, the tree shall be replaced with a similar tree in size and species. ~~a stop work order will be issued on the subject property and no construction activity shall occur for two (2) working days per damaged tree. The applicant will also be subject to a penalty fee at twice the tree valuation prior to damage; this fee applies to each Heritage tree damaged. No construction activity can resume until the penalty fee(s) have~~

NOISE

48. **MECHANICAL EQUIPMENT (NOISE):** The noise emitted by any mechanical equipment shall not exceed a level of 55 dB(A) during the day or 50 dB(A) during the night, 10:00 p.m. to 7:00 a.m., when measured at any location on the adjoining residentially used property.

49. **CONSTRUCTION NOISE REDUCTION:** The following noise reduction measures shall be incorporated into construction plans and contractor specifications to reduce the impact of temporary construction-related noise on nearby properties: (a) comply with manufacturer's muffler requirements on all construction equipment engines; (b) turn off construction equipment when not in use, where applicable; (c) locate stationary equipment as far as practical from receiving properties; (d) use temporary sound barriers or sound curtains around loud stationary equipment if the other noise reduction methods are not effective or possible; and (e) shroud or shield impact tools and use electric-powered rather than diesel-powered construction equipment.

50. **SITE-SPECIFIC BUILDING ACOUSTICAL ANALYSIS:** A qualified acoustical consultant will review final site plans, building elevations, and floor plans prior to construction to calculate expected interior noise levels as required by State noise regulations. Project-specific acoustical analyses are required by the California Building Code (CBC) to confirm that the design results in interior noise levels reduced to 45 dB(A)L_{dn} or lower. The specific determination of what noise insulation treatments are necessary will be completed on a unit-by-unit basis. Results of the analysis, including the description of the necessary noise control treatments, will be submitted to the City along with the building plans and approved prior to issuance of a building permit. Building sound insulation requirements will include the provision of forced-air mechanical ventilation for all residential units as recommended by the qualified acoustical consultant, so that windows can be kept closed at the occupant's discretion to control noise. Special building techniques (e.g., sound-rated windows and building facade treatments) will be implemented as recommended by the qualified acoustical consultant to maintain interior noise levels at or below acceptable levels. These treatments will include, but are not limited to, sound-rated windows and doors, sound-rated wall construction, acoustical caulking, protected ventilation openings, etc.

CC&RS AND DISCLOSURES

51. **CC&Rs:** One electronic PDF of the proposed Covenants, Conditions, and Restrictions (CC&Rs) for the homeowners association shall be submitted to the Planning Division that meets all state and federal requirements ~~and approved by the City Attorney~~ prior to building permit issuance. The applicant shall provide a completed CC&R checklist at submittal along with associated review fee made payable to the City of Mountain View. The checklist can be obtained by contacting the project planner or by email inquiry to planning.division@ mountainview.gov.

52. **MASTER PLAN:** The applicant shall prepare a master plan which establishes rules for modifications or additions of any building structures at this site, including fences, trellises, sunshades, and accessory buildings as well as modifications to principal buildings. These rules shall be consistent with the provisions of the Zoning District and shall be approved by the Zoning Administrator. The Covenants, Conditions, and Restrictions (CC&Rs) shall specifically state that the master plan establishes the rules for additions/modifications to the complex and that changes to the master plan require approval by the Zoning Administrator. Copies of the master plan shall accompany the CC&Rs to be submitted to the Planning Division for review and approval.

53. **PROJECT INFORMATION:** All marketing and sales literature, leasing information, and the Covenants, Conditions, and Restrictions (CC&Rs) for the complex shall clearly state that this project is complete as built and that no further expansions to the building structures are permitted without Planning Division approval. Any revisions to the project would require a separate application to the City by the homeowners association and would need to establish rules for all units in the complex.

54. ~~**NOTICE OF DEVELOPMENT RESTRICTIONS:** A Notice of Development Restrictions indicating the related development permit conditions that are to be completed with the development of the property is required for all planned developments and common-interest developments. The notice shall be prepared by the Planning Division and City Attorney's Office and shall be signed and notarized by the subdivider. The approved and executed Notice of Development Restrictions must be recorded on the land of the subdivision before the approval of the parcel or final map.~~

CONSTRUCTION ACTIVITIES

55. **SINGLE-PHASE DEVELOPMENT:** Construction of the project shall be done in a single phase unless a phased construction project schedule is approved by the Zoning Administrator (or City Council).

56. **CONSTRUCTION PARKING:** The applicant shall prepare a construction parking management plan to address parking demands and impacts during the construction phase of the project by contractors or other continued operations on-site. ~~The plan shall~~

~~also include a monitoring and enforcement measure which specifies on-street parking is prohibited and will be monitored by the owner/operator of the property (or primary contractor), and penalties will be enforced by the owner/operator of the property (or primary contractor) for violations of on-street parking restrictions. Violations of this provision may result in a stop-work notice being issued by the City for development project. The construction parking management plan shall be subject to review and approval by the Zoning Administrator prior to the issuance of building permits.~~

57. **NOTICE OF CONSTRUCTION:** The applicant shall notify neighbors within 750' of the project site of the construction schedule in writing, prior to construction. For multi-phased construction, separate notices may be required for each phase of construction. A copy of the notice and the mailing list shall be submitted for review prior to issuance of building permits.

58. **DISTURBANCE COORDINATOR:** The applicant shall designate a "disturbance coordinator" who will be responsible for responding to any local complaints regarding construction noise. The coordinator (who may be an employee of the general contractor) will determine the cause of the complaint and will require that reasonable measures warranted to correct the problem be implemented. A telephone number of the noise disturbance coordinator shall be conspicuously posted at the construction site fence and on the notification sent to neighbors adjacent to the site. The sign must also list an emergency after-hours contact number for emergency personnel.

59. **HEALTH AND SAFETY MEASURES:** The permittee/contractor is responsible for preparing and implementing an appropriate health and safety plan to address the contamination and manage the operations in a safe manner and in compliance with the Cal/OSHA Construction Safety Orders and other state and federal requirements.

60. **HAZARDOUS MATERIALS CONTAMINATION:** To reduce the potential for construction workers and adjacent uses to encounter hazardous materials contamination from asbestos-containing materials (ACM) and lead-based paint, the following measures are to be included in the project:

    a. In conformance with local, state, and federal laws, an asbestos building survey and a lead-based paint survey shall be completed by a qualified professional to determine the presence of ACMs and/or lead-based paint on the structures proposed for demolition. The surveys shall be completed prior to demolition work beginning on the structures.

    b. A registered asbestos abatement contractor shall be retained to remove and dispose of all potentially friable ACMs, in accordance with the National Emissions Standards for Hazardous Air Pollutants (NESHAP) guidelines, prior to building demolition that may disturb the materials. All construction activities shall be undertaken in accordance with Cal/OSHA standards, contained in Title 8 of the California Code of Regulations (CCR), Section 1529, to protect workers from exposure to asbestos. Materials containing more than 1% asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations.

    During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the waste being disposed.

61. **BASIC AIR QUALITY CONSTRUCTION MEASURES**: The applicant shall require all construction contractors to implement the basic construction mitigation measures recommended by the Bay Area Air Quality Management District (BAAQMD) to reduce fugitive dust emissions. Emission reduction measures will include, at a minimum, the following measures: (a) all exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) will be watered two times per day; (b) all haul trucks transporting soil, sand, or other loose material off-site will be covered; (c) all visible mud or dirt track-out onto adjacent public roads will be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited; (d) all vehicle speeds on unpaved roads will be limited to 15 mph; (e) all roadways, driveways, and sidewalks to be paved will be completed as soon as possible. Building pads will be laid as soon as possible after grading unless seeding or soil binders are used; (f) idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measures Title 13, Section 2485, of the CCR). Clear signage shall be provided for construction workers at all access points; (g) all construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation; and (h) post a publicly

visible sign with the telephone number and person to contact at the City of Mountain View regarding dust complaints. This person will respond and take corrective action within 48 hours. BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.

62. **DISCOVERY OF CONTAMINATED SOILS:** If contaminated soils are discovered, the applicant will ensure the contractor employs engineering controls and Best Management Practices (BMPs) to minimize human exposure to potential contaminants. Engineering controls and construction BMPs will include, but not be limited to, the following: (a) contractor employees working on-site will be certified in OSHA's 40-hour Hazardous Waste Operations and Emergency Response (HAZWOPER) training; (b) the contractor will stockpile soil during redevelopment activities to allow for proper characterization and evaluation of disposal options; (c) the contractor will monitor area around construction site for fugitive vapor emissions with appropriate field screening instrumentation; (d) the contractor will water/mist soil as it is being excavated and loaded onto transportation trucks; (e) the contractor will place any stockpiled soil in areas shielded from prevailing winds; and (f) the contractor will cover the bottom of excavated areas with sheeting when work is not being performed.

63. **DISCOVERY OF ARCHAEOLOGICAL RESOURCES:** If prehistoric or historic-period cultural materials are unearthed during ground-disturbing activities, it is recommended that all work within 100' of the find be halted until a qualified archaeologist and Native American representative can assess the significance of the find. Prehistoric materials might include obsidian and chert-flaked stone tools (e.g., projectile points, knives, scrapers) or tool-making debris; culturally darkened soil ("midden") containing heat-affected rocks and artifacts; stone milling equipment (e.g., mortars, pestles, handstones, or milling slabs); and battered-stone tools, such as hammerstones and pitted stones. Historic-period materials might include stone, concrete, or adobe footings and walls; filled wells or privies; and deposits of metal, glass, and/or ceramic refuse. If the find is determined to be potentially significant, the archaeologist, in consultation with the Native American representative, will develop a treatment plan that could include site avoidance, capping, or data recovery.

64. **DISCOVERY OF HUMAN REMAINS:** In the event of the discovery of human remains during construction or demolition, there shall be no further excavation or disturbance of the site within a 50' radius of the location of such discovery, or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to their authority, the Coroner shall notify the Native American Heritage Commission, which shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the landowner shall reinter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance. A final report shall be submitted to the City's Community Development Director prior to release of a Certificate of Occupancy. This report shall contain a description of the mitigation programs and its results, including a description of the monitoring and testing resources analysis methodology and conclusions, and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the City's Community Development Director.

65. **DISCOVERY OF PALEONTOLOGICAL RESOURCES:** In the event that a fossil is discovered during construction of the project, excavations within 50' of the find shall be temporarily halted or delayed until the discovery is examined by a qualified paleontologist, in accordance with Society of Vertebrate Paleontology standards. The City shall include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. If the find is determined to be significant and if avoidance is not feasible, the paleontologist shall design and carry out a data recovery plan consistent with the Society of Vertebrate Paleontology standards.

66. **INDOOR FORMALDEHYDE REDUCTIONS:** If the project utilizes composite wood materials (e.g., hardwood plywood, medium density fiberboard, particleboard) for interior finishes, then only composite wood materials that are made with CARB approved, no-added formaldehyde (NAF) resins, or ultra-low emitting formaldehyde (ULEF) resins shall be utilized (CARB, Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products, 17 CCR Section 93120, *et seq.*, 2009-2013).

67. **PRECONSTRUCTION NESTING BIRD SURVEY:** To the extent practicable, vegetation removal and construction activities shall be performed from September 1 through January 31 to avoid the general nesting period for birds. If construction or vegetation

removal cannot be performed during this period, preconstruction surveys will be performed no more than two days prior to construction activities to locate any active nests as follows:

The applicant shall be responsible for the retention of a qualified biologist to conduct a survey of the project site and surrounding 500' for active nests—with particular emphasis on nests of migratory birds—if construction (including site preparation) will begin during the bird nesting season, from February 1 through August 31. If active nests are observed on either the project site or the surrounding area, the applicant, in coordination with the appropriate City staff, shall establish no-disturbance buffer zones around the nests, with the size to be determined in consultation with the California Department of Fish and Wildlife (usually 100' for perching birds and 300' for raptors). The no-disturbance buffer will remain in place until the biologist determines the nest is no longer active or the nesting season ends. If construction ceases for two days or more and then resumes during the nesting season, an additional survey will be necessary to avoid impacts on active bird nests that may be present.

Housing Department—650-903-6379 or neighborhoods@mountainview.gov

68. **BMR RENTAL, PROVIDING UNITS:** Prior to issuance of the first building permit for the project, the applicant shall ~~enter into a recorded agreement with the City that~~record a deed restriction that will require the applicant to provide at least 20% of the total number of dwelling units
within the development as Below-Market-Rate (BMR) units consistent with the Housing Accountability Act (Government Code Section 65589.5; the HAA) and the ~~Below-Market-Rate Housing Program Administrative Guidelines and Directives~~. This results in a total of seventeen (17) units being available, the units will be designated as follows: fifteen (15) studio units at 80% AMI and two (2) junior one-bedroom units at 80% AMI. This is in accordance with the units outlined in the Affordable Housing Compliance Plan dated September 26, 2023, including BMR unit locations indicated on the plan set dated October 7, 2024. The Housing Department reserves the right to review, approve, or deny any modifications to the Affordable Housing Compliance Plan or unit delivery.

69. **BMR RENTAL UNIT MIX:** The plan set dated October 7, 2024, labels Floor Plan "E" and Floor Plan "DZ" as one-bedroom units; however, these fit the classification of studio units. For this reason, units labeled Floor Plan "E" will be considered studio units and Floor Plan "DZ" as junior one-bedroom units in any affordable housing agreements with the City and will be priced as studio and one-bedroom units for rental or ownership purposes. **(PROJECT-SPECIFIC CONDITION)**

~~70. **BMR, PROCESS:** Prior to the first building permit submittal, the applicant shall contact the Housing Department at 650-903-6190 to begin preparation of a BMR agreement for the project. The applicant shall submit the following information: (a) a copy of the Findings Report or Conditions of Approval; (b) a legal description of the property; (c) a plan indicating the location, size, and phasing of BMR units; and (d) additional information as requested by the Housing Department. The BMR agreement must recorded prior to building permit issuance.~~

71. **NOTICE TO TENANTS AND TENANT RELOCATION ASSISTANCE:** The applicant shall comply with the provisions of the State Housing Crisis Act. ~~This includes, but is not limited to, consulting with the City's Housing Department and retained, relocation consultant to provide: (1) all required notices to tenants; (2) information to the relocation consultant for tenant eligibility determination; (3) funding for the relocation consultant services; (4) relocation assistance payments to eligible tenants; and (5) notice and offer of right of first refusal in the new housing to former eligible tenants.~~

72. **REPLACEMENT UNITS:** The project shall be i~~I~~n compliance with the State Housing Crisis Act. ~~, the applicant shall replace one (1) demolished unit with units at a comparable size. Each unit must be deed-restricted at an affordable cost for and occupancy by a household in the same or lower income category (i.e., low-income, very low-income, extremely low-income) as the tenant household in occupancy at the time the notice of intent to develop the site was issued, if the tenants were low - or lower income. If the tenant household in occupancy at the time the notice of intent to develop the site was issued was above low-income, the unit must be deed-restricted at 80% AMI or below. The deed restriction shall be effectuated by an affordability restriction, covenant, or agreement, as approved by the City Attorney, which shall be recorded prior to issuance of the first building permit.~~

73. **CONDOMINIUM CONVERSION (CHANGE TO THE CONDO PARCEL BUILDING): A change from rental housing to for sale housing shall not be considered a change in use for the** ~~The BMR agreement negotiates between the parties based upon the CONDO PARCEL BUILDING described in the agreement. Any substantive change in the CONDO PARCEL BUILDING, or~~

~~CONDO PARCEL BUILDING to determine whether~~ City's Below-Market-Rate Housing Program. ~~would be applicable and to what extent the Agreement may require amendment.~~

Developer has indicated the Developer may elect to rent the condominium units initially instead of selling the units. Should that occur, Developer shall follow all applicable state and federal statutes, ordinances, and requirements in place at that time, ~~including, but not limited to, BMR Housing Program Requirements, and if such units that are initially rented are subsequently sold, Developer shall follow all requirements for such conversions, such as tenant relocation requirements, and first right of refusal requirements for affected tenants as set forth in the City Code and the City of Mountain View Below-Market-Rate Housing Program Administrative Guidelines.~~ If Developer intends to rent all or a portion of the housing units in the condominium building, the twenty percent (20%) Builder's Remedy requirement for rentals apply. ~~, and prior to building permit issuance for the condominium building, Developer will cooperate to amend the BMR Agreement to list which additional units would be designated BMR rental units.~~

Building Division—650-903-6313 or building@mountainview.gov

Entitlement review by the Building Division is preliminary. Building and Fire plan check reviews are separate permit processes applied for once the zoning approval has been obtained and appeal period has concluded; a formal permit submittal to the Building Division is required. Plan check review shall determine the specific requirements and construction compliance in accordance with adopted local, state, and federal codes for all building and/or fire permits. For more information on submittal requirements and timelines, contact the Building Division online at www.mountainview.gov/building. It is a violation of the MVCC for any building occupancy or construction to commence without the proper building and/or fire permits and issued Certificate of Occupancy.

74. **BUILDING CODES:** Construction plans will need to meet the current codes adopted by the Building Division ~~upon~~ at the time of the ~~building permit submittal~~Permit Streamlining Act application. Current codes are the 2022 California Codes: Building, Residential, Fire, Electrical, Mechanical, Plumbing, CALGreen, CALEnergy, in conjunction with the City of Mountain View Amendments, and the Mountain View Green Building Code (MVGBC).

75. **USE AND OCCUPANCY CLASSIFICATION:** Provide proposed use(s) and occupancy(ies) for the proposed project per the CBC, Chapter 3.

76. **SPECIAL REQUIREMENTS BASED ON OCCUPANCY AND USE:** Project shall comply with the requirements per the CBC, Chapter 4.

77. **DWELLING UNIT SEPARATION:** Private garage separation required per the CBC, Section 406.3.2.

78. **OPENING PROTECTION:** Openings from a private garage directly into a room used for sleeping purposes shall not be permitted per the CRC, Section R302.5.1.

79. **BUILDING HEIGHT AND NUMBER OF STORIES:** The project shall comply with the requirements per the CBC, Chapter 5, Section 504.

80. **BUILDING AREA:** The project shall comply with the requirements per the CBC, Chapter 5, Section 506.

81. **MIXED USE AND OCCUPANCY:** The project shall comply with the requirements per the CBC, Chapter 5, Section 508.

82. **OCCUPANCY SEPARATION:** Proper separation is required to be provided between occupancies per the CBC, Table 508.4.

83. **TYPE OF CONSTRUCTION:** Provide the type of proposed construction per Chapter 6 of the CBC.

84. **FIRE AND SMOKE PROTECTION FEATURES:** The project shall comply with the requirements per the CBC, Chapter 7.

85. **MINIMUM DISTANCE OF PROJECTIONS:** The project shall comply with the requirements per the CBC, Chapter 7 (Table 705.2).

86. **FIRE-RESISTANCE RATING FOR EXTERIOR WALLS BASED ON FIRE SEPARATION DISTANCE:** The project shall comply with the requirements per the CBC, Chapter 7 (Table 705.5).

87. **MAXIMUM AREA OF EXTERIOR WALL OPENINGS BASED ON FIRE SEPARATION DISTANCE AND DEGREE OF OPENING PROTECTION:** The project shall comply with the requirements per the CBC, Chapter 7 (Table 705.8).

88. **FIRE WALLS:** Provide the required Fire Wall Resistance Ratings per CBC, Chapter 7, Table 706.4(c), as amended in MVCC Section 8.10.24.

89. **MEANS OF EGRESS:** The project is required to comply with the requirements per the CBC, Chapter 10, Means of Egress.

90. **OCCUPANT LOAD:** The project shall comply with Table 1004.5, Maximum Floor Area Allowance per Occupant, per the CBC, Chapter 10, Section 1004.

91. **ACCESSIBLE MEANS OF EGRESS:** The site must meet accessible means of egress per the CBC, Chapter 10, Section 1009.

92. **ACCESSIBILITY REQUIREMENTS:**

- **Chapter 11A:** The project will be required to comply with the accessibility requirements in the CBC, Chapter 11A.
- **Parking (Chapter 11A):** The project will be required to comply with the accessible parking requirements in the CBC, Chapter 11A.
- **Assigned Accessible Parking Spaces (Chapter 11A):** When assigned parking spaces are provided, at least 2% of the assigned parking spaces are required to be accessible per the CBC, Chapter 11A, Section 1109A.4.
- **Unassigned and Visitor Parking Spaces (Chapter 11A):** When parking is provided, at least 5% of the parking spaces are required to be accessible per the CBC, Chapter 11A, Section 1109A.5.

93. **MVGBC CALGREEN:** The project shall comply with the Mountain View CALGreen checklist requirements available online at www.mountainview.gov/greenbuilding.

94. **REACH CODES FOR MULTI-FAMILY RESIDENTIAL (NEW CONSTRUCTION):**

a. **EV Parking Requirements:** If there are 20 dwellings or less, parking shall comply with 40% Level 2 EVCS installed and 60% EV1-ready, as amended in MVCC Section 8.20.32 and per Table 101.10. If there are more than 20 dwellings, parking shall comply with MVCC per Table 101.10.

95. **PLUMBING FIXTURES:** The project shall comply with Table 422.1 of the California Plumbing Code (CPC), Section 4.

96. **DUAL PLUMBING:** New buildings and facilities shall be dual-plumbed for potable and recycled water systems for toilet flushing when recycled water is available, per California Green Building Standards Code, Appendix A5, A5.303.5~~, and as amended in MVCC Section 8.30.4.~~.

97. **PLUMBING:** The project will be subject to the submetering requirements per Senate Bill 7 (Housing: Water Meters for Multi-Unit Structures).

98. **UTILITIES:** No utilities shall cross property lines.

99. **STRUCTURAL CALCULATIONS:** Structural calculations may be required once the application for a building permit is submitted.

100. **ADDRESSES:** All street names, street numbers, residential apartment numbers, ADU numbers, and suite numbers will be processed by the Building Division prior to permit issuance.

101. **CAR STACKERS:** All car stackers will need to be UL-listed and meet any other requirements adopted at the time of building submittal, up to and including NFPA approval.

102. **SURVEY REQUIRED:** Structures within 6' of a property line, or required setback, shall provide a site survey certificate and obtain approval from the City prior to concrete pour.

103. **SCHOOL IMPACT FEE:** The project is subject to school impact fees. To obtain information, fee estimates, and procedures, please contact the following local school districts: Mountain View Los Altos Union High School District at www.mvla.net or 650-940-4650; *and* Mountain View Whisman School District at www.mvwsd.org or 650-526-3500; or Los Altos School District at www.lasdschools.org or 650-947-1150.

104. ***DEMOLITION PERMIT(S):** Demolition permit(s) are issued under a separate permit application. Visit the City of Mountain View Building Division online at www.mountainview.gov/building or contact by phone at 650-903-6313 to obtain information and submittal requirements.

105. **ELECTRICAL VEHICLE CHARGERS (EVs) AND PHOTOVOLTAIC SYSTEM (PVs) PERMITS:** Proposed EV and PV are to be a deferred submittal under a separate building permit application.

~~106. **SIGNS:** Proposed signs are to be a deferred submittal under a separate building permit application.~~

107. **PEDESTRIAN PROTECTION:** Pedestrians shall be protected during construction, remodeling, and demolition; additionally, if required, signs shall be provided to direct pedestrian traffic. Provide sufficient information at the time of building plan submittal of how pedestrians will be protected from construction activity per the CBC, Section 3306.

108. **WORK HOURS/CONSTRUCTION SITE SIGNAGE:** No work shall commence on the job site prior to 7:00 a.m. nor continue later than 6:00 p.m., Monday through Friday, nor shall any work be permitted on Saturday or Sunday or any holiday unless prior approval is granted by the Chief Building Official. The general contractor, applicant, developer, or property owner shall erect a sign at all construction site entrances/exits to advise subcontractors and material suppliers of the working hours (see job card for specifics) and contact information, including an after-hours contact. Violation of this condition of approval may be subject to the penalties outlined in Section 8.70 of the MVCC and/or suspension of building permits.

109. **RESPONSIBLE CONSTRUCTION**: This project is subject to the City's Responsible Construction Ordinance. For projects covered by this Ordinance, owners, contractors, and/or qualifying subcontractors are required to acknowledge responsibilities and make specified certifications upon completion of a project. The required certifications include that: (a) employees are provided written wage statements and notice of employers' pay practices as required under State law (or, alternatively, are covered by a valid collective bargaining agreement); and (b) they have no unpaid wage theft judgements. Acknowledgement forms are required to be submitted at building permit application, which is available online at www.mountainview.gov/building. More information is available at www.mountainview.gov/wagetheft.

Fire Department—650-903-6343 or fire@mountainview.gov

FIRE PROTECTION SYSTEMS AND EQUIPMENT

110. **FIRE SPRINKLER SYSTEM:** Provide an automatic fire sprinkler system to be monitored by a central station monitoring alarm company. This monitoring shall include water flow indicators and tamper switches on all control valves. Shop-quality drawings shall be submitted electronically for review and approval. The underground fire service system shall be approved prior to approval of the automatic fire sprinkler system. All work shall conform to NFPA 13, NFPA 24, NFPA 72, and Mountain View Fire Department specifications. (MVCC Sections 14.10.30 and 14.10.31 and California Fire Code Section 903.)

111. **STANDPIPE SYSTEM:** Provide a Class I standpipe system. (MVCC Sections 14.10.32, 14.10.33, 14.10.34, and 14.10.35 and California Fire Code Section 905.)

112. **FIRE PROTECTION DURING CONSTRUCTION:** Every building four stories or more in height shall be provided with no fewer than one standpipe for use during construction. Such standpipe(s) shall be installed when the progress of construction is not more than 40' in height above the lowest level of Fire Department access. Such standpipe(s) shall be provided with Fire Department hose connections at accessible locations adjacent to usable stairs, and the standpipe outlets shall be located adjacent to such usable stairs. Such standpipe systems shall be extended as construction progresses to within one floor of the highest point of

construction having secured decking or flooring. On each floor, there shall be provided a 2.5" valve outlet for Fire Department use. (California Fire Code, Chapter 33.)

113. **FIRE HYDRANTS:** Hydrants in accordance with the Department of Public Works Standard Provisions shall be located every 300' (apart) and within 150' of all exterior walls. Installation shall be complete, and the system shall be tested prior to combustible construction.

114. **ON-SITE WHARF HYDRANTS:** Provide ground-level wet standpipes (wharf hydrants). On-site wharf hydrants shall be so located as to reach any portion of combustible construction with 150' of hose. Installation shall be complete, and the system shall be tested prior to the start of combustible construction. The wharf hydrant shall be capable of providing a combination flow of 500 GPM with two 2.5" outlets flowing. Shop-quality drawings shall be submitted electronically for review and approval. (NFPA 24 and Mountain View Fire Department requirements.)

115. **FIRE EXTINGUISHERS:** Install one 2-A:10-B:C fire extinguisher for every 50'/75' of travel or every 3,000 square feet. Fire extinguisher locations shall be indicated on the architectural floor plans. (CCR, Title 19, Chapter 3, and California Fire Code, Section 906.)

116. **AUTOMATIC/MANUAL FIRE ALARM SYSTEM:** Provide an approved automatic/manual fire alarm system in accordance with California Fire Code and Mountain View Fire Department specifications. Shop-quality drawings shall be submitted electronically for review and approval. Prior to occupancy, the system shall be field-tested, approved, and in service. Provisions shall be made for monthly testing, maintenance, and service. (California Fire Code, Section 907, and MVCC Sections 14.10.36 and 14.10.37.)

117. **SMOKE ALARMS:** All residential occupancies shall be provided with California State Fire Marshal-listed smoke alarms. Smoke alarms shall be installed in accordance with the California Building Code and the approved manufacturer's instructions. (California Fire Code, Section 907.2.11.)

118. **CARBON MONOXIDE ALARMS:** All residential occupancies shall be provided with carbon monoxide alarms. Carbon monoxide alarms shall be installed in accordance with the California Building Code and the approved manufacturer's instructions. (California Fire Code, Section 915.)

FIRE DEPARTMENT ACCESS

119. **LOCKBOX:** Install an approved key lockbox per the Fire Protection Engineer's directions. (California Fire Code, Section 506.)

120. **KEYSWITCH:** Install an approved keyswitch per the Fire Protection Engineer's directions. Contact the Building Division at 650-903-6313 or building@mountainview.gov for instructions. A keyswitch shall be required when there are interior electronically controlled doors (card readers, etc) that prevent rapid Firefighter deployment throughout the building (this does not include electronically controlled doors to individual dwelling units). The keyswitch shall be located in the main entrance lobby and shall automatically unlock all electronically controlled doors upon activation. Contact the FPE for more information.

121. **STRETCHER REQUIREMENTS:** In all structures with one or more passenger service elevators, at least one elevator shall be provided with a minimum clear distance between walls or between walls and door, excluding return panels, of not less than 80"x54", and a minimum distance from wall to return panel of not less than 51" with a 42" side slide door, unless otherwise designed to accommodate an ambulance-type stretcher (84"x24") in the horizontal position. (CBC, Section 3002.4.)

EGRESS AND FIRE SAFETY

122. **EXIT ILLUMINATION:** Exit paths shall be illuminated any time the building is occupied with a light having an intensity of not less than one footcandle at floor level. Power shall normally be by the premises wiring with battery backup. Exit illumination shall be indicated on the electrical plan sheets in the drawing sets. (CBC, Section 1008.)

123. **EXIT SIGNS:** Exit signs shall be internally or externally illuminated and provided with battery backup per Uniform Building Code Chapter 10. Exit signs shall be posted above each required exit doorway and wherever otherwise required to clearly indicate the direction of egress. (CBC, Section 1013.)

124. **EXIT DOORS IN GROUPS A, E, H, AND I OCCUPANCIES:** Exit doors shall be provided with approved panic hardware. (CBC, Section 1010.2.9.)

125. **GROUP A OCCUPANCIES:** Buildings or portions of buildings used for assembly purposes shall conform to all requirements of Title 19 and the Uniform Building Code. This shall include, but not be limited to: (1) two exits; (2) fire-retardant drapes, hangings, Christmas trees, or other similar decorative material; and (3) posting of a maximum occupant load sign. (CCR, Title 19, Sections 3.08, 3.21, and 3.30.)

126. **GROUP A, E, I, AND R1 OCCUPANCIES: DECORATIVE MATERIALS:** All drapes, hangings, curtains, drops, and all other decorative material, including Christmas trees, shall be made from a noncombustible or fire-resistive material or maintained in a flame-retardant condition by means of an approved flame-retardant solution or process approved by the California State Fire Marshal. (CCR, Title 19, Sections 3.08 and 3.21.)

127. **INTERIOR WALL AND CEILING FINISHES:** Interior finishes shall have a flame-spread rating in accordance with the California Building Code, Chapter 8, and CCR, Title 19, Section 3.21.

128. **POSTING OF ROOM CAPACITY:** Any room used for assembly purposes shall have the capacity of the room posted in a conspicuous place near the main exit from the room. (CBC, Section 1004.9.)

129. **ON-SITE DRAWINGS:** Submit electronic (.pdf) drawing files according to Fire Department specifications prior to final Certificate of Occupancy.

130. **STAIRWAY IDENTIFICATION SIGNS:** For stairs connecting three or more stories in height, approved stairway identification signs shall be located at each floor level in all enclosed stairways. The sign shall identify the stairway and indicate whether there is roof access, the floor level, and the upper and lower terminus of the stairway. The sign shall be located 5’ above the floor landing in a position which is readily visible when the door is in the open or closed position. (CBC, Section 1023.9.)

131. **TWO-WAY COMMUNICATION:** A two-way communication system shall be provided at the landing serving each elevator or bank of elevators on each accessible floor that is one or more stories above or below the level of exit discharge. (CBC, Section 1009.8.)

HAZARDOUS CONDITIONS

132. **ELECTRICAL ENERGY STORAGE SYSTEMS:** Electrical Energy Storage Systems shall comply with the California Fire Code, Section 1207.

EXTERIOR IMPROVEMENTS

133. **PREMISES IDENTIFICATION:** Approved numbers or addresses shall be provided for all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Address signs shall be a minimum of 6” in height and a minimum of 0.5” in width. (MVCC Section 14.10.18.)

OTHER

134. **EMERGENCY RESPONDER RADIO COVERAGE:** All buildings shall have approved radio coverage for emergency responders within the building. (California Fire Code, Section 510.)

Public Works Department—650-903-6311 or public.works@mountainview.gov

OWNERSHIP AND PROPERTY

135. **PRELIMINARY TITLE REPORT:** At first submittal of the building permit and improvement plans, the applicant shall submit to the Public Works Department a current preliminary title report or land deed (dated within six months of the first submittal) indicating the exact name of the current legal owners of the property(ies), their type of ownership (individual, partnership, corporation, etc.), and legal description of the property(ies) involved. The title report shall include all easements and agreements referenced in the title report. Depending upon the type of ownership, additional information may be required. The applicant shall provide an updated title report to the Public Works Department upon request. All required materials shall be submitted electronically (i.e., flattened, reduced-size PDFs).

136. **SUBDIVISION:** The project site is a subdivision of existing parcels. Any combination or division of land for sale, lease, or financing purposes requires the filing and approval of a tentative map , completion of all conditions of subdivision approval, and the recordation of the parcel, all prior to the issuance of the building permit. In order to place the approval of a final map on the City Council agenda, all related materials must be completed and approved a minimum of 40 calendar days prior to the Council meeting date.

RIGHTS-OF-WAY

137. **STREET DEDICATION:** The existing half-street widths are 50' for Middlefield Road and 30' for Tyrella Avenue. No street dedication in easement or fee shall be dedicated on the map.

138. **PRIVATE UTILITY AND ACCESS EASEMENTS:** Dedicate private utility and/or access easements on the face of the map, as necessary, for the utility improvements.

139. **PLAT AND LEGAL DESCRIPTION:** For any new easement, submit to the Public Works Department for review and approval a legal description (metes and bounds), plat (drawing), and other required documents per the Legal Description and Plat Requirements handout. The handout is available online at: www.mountainview.gov/landdevelopment. The legal description and plat must be prepared and stamped by a California-registered civil engineer or land surveyor. All required materials shall be submitted electronically (i.e., flattened, reduced-size PDFs).

FEES AND PARK LAND

140. **MAP PLAN CHECK FEE:** Prior to the issuance of any building permits OR prior to approval of the first final map, as applicable, the applicant shall pay the map plan check fee in accordance with Sections 28.7.b and 28.6.b of the City Code per the rates in effect at time of payment. The map plan check fee shall be paid at the time of the first map plan check submittal per the adopted fee in effect at time of payment.

141. **PLAN CHECK AND INSPECTION FEE:** Prior to the issuance of any building permits OR prior to approval of the first final map, the applicant shall pay the plan check and inspection fee in accordance with Sections 27.60 and 28.36 of the City Code per the adopted rates in effect at time of payment.

An initial plan check fee based on the Public Works fee schedule shall be paid at the time of the first improvement plan submittal based on the initial cost estimate (Infrastructure Quantities) for constructing street improvements and other public facilities; public and private utilities and structures located within the public right-of-way; and utility, grading, and driveway improvements for common green and townhouse-type condominiums. Once the plans have been approved, the approved cost estimate will be used to determine the final bond amounts, plan check fees, and inspection fees. Any paid initial plan check fee will be deducted from the approved final plan check fee.

~~142. **TRANSPORTATION IMPACT FEE:** Prior to the issuance of any building permits OR prior to the approval of the first final map, the applicant shall pay the transportation impact fee for the development per the current master fee schedule. Residential category fees are based on the number of units. Retail, Service, Office, R&D, and Industrial category fees are based on the square footage of the development. Credit is given for the existing site use(s), as applicable.~~

143. **WATER AND SEWER CAPACITY CHARGES:** ~~Prior to the issuance of any building permits~~T~~,~~ the applicant shall pay the water and sewer capacity fees for the development per the ~~current~~ master fee schedule at the time of application plus allowable increased per the Permit Streamlining Act. The water and sewer capacity charges for residential connections are based on the number and type of dwelling units. Separate capacity charges apply for different types of residential categories to reflect the estimated demand of each type of connection. The water and sewer capacity charges for nonresidential connections are based on the water meter size, building area, and building use, respectively. Credit is given for the existing site use(s) and meter size(s), as applicable. Fees shall be paid pro-rate before occupancy of the units.

~~144. **PARK LAND DEDICATION FEE:** Prior to the issuance of any building permits OR prior to the approval of the first final map, the applicant shall pay the Park Land Dedication In-Lieu Fee as described below.~~

~~The total amount of Park Land Dedication In-Lieu Fee for this project is $4,610,400, or $67,800 for each net new market-rate residential unit ($11.3 million/acre land valuation, 68 units x $67,800/unit = $ 4,610,400). No credit against the Park Land Dedication Fee is allowed for private open space and recreational facilities.~~

~~In a good-faith effort to reduce constraints on housing development projects for lower-income households, the City is applying the lowest fair-market value per acre identified in the Fiscal Year 2024-25 Master Fee Schedule ($11.3 million per acre) and implementing early application of Housing Program 1.8 (Park Land Ordinance Update) of the adopted Housing Element to apply a 20% reduction to the Park Land Dedication In-Lieu Fees for this project. The total discounted Park Land Dedication In-Lieu Fee to be paid as a condition of approval for this project is $3,688,320, or $54,240 for each net new market-rate residential unit. **(PROJECT-SPECIFIC CONDITION)**~~

145. **PARK LAND DEDICATION:** (N) Lot B as shown on the Tentative Map does not meet the requirements for a city park parcel. The final map shall not show (N) Lot B. This condition supercedes the Tentative Map. **(PROJECT-SPECIFIC CONDITION)**

STREET IMPROVEMENTS

146. **UTILITY PAYMENT AGREEMENT:** Prior to the issuance of any building permits and prior to the approval of the final map, the applicant shall sign a utility payment agreement and post a security deposit made payable to the City as security if each unit or building does not have separate sewer connections and water meters in accordance with Section 35.38 of the City Code. The utility payment agreement shall include provisions to have the security transferred from the applicant to the homeowners association (HOA), but still made payable to the City, when the HOA is formed for the subdivision.

147. **PUBLIC IMPROVEMENTS:** Install or reconstruct standard public improvements ~~required for the project and as required by Chapters 27 and 28 of the City Code. These public improvements~~ as shown on Sheets A1.1 and C-3 include: construction of new storm, sewer, and water connections; replace damaged curb, gutter, and sidewalk; install new landscape with street trees on Tyrella Avenue and Middlefield Road; reconstruct of a new driveway on Tyrella Avenue; construct a new curb ramp at the project corner of Middlefield Road and Tyrella Avenue; and pavement restoration on utility trench excavation on Middlefield Road and Tyrella Avenue.

a. **Improvement Agreement:** Prior to the issuance of the building permit OR approval of the first final map, the property owner must sign a Public Works Department improvement agreement for the installation of the public improvements.

b. **Bonds/Securities:** Prior to the issuance of any building permits OR approval of the first final map, the property owner must sign a Public Works Department faithful performance bond (100% of Infrastructure Quantities) and materials/labor bond (100% of Infrastructure Quantities), or provide a cash deposit (100% of Infrastructure Quantities), or provide a letter of credit (150% of Infrastructure Quantities) securing the installation and warranty of the off-site improvements. The surety (bond company) must be listed as an acceptable surety on the most current Department of the Treasury's Listing of Approved Sureties on Federal Bonds, Department Circular 570. This list of approved sureties is available at: www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570_a-z.htm. The bond amount must be below the underwriting limitation amount listed on the Department of the Treasury's Listing of Approved Sureties. The surety must be licensed to do business in California. Guidelines for security deposits are available at the Public Works Department.

c. **Insurance:** Prior to the issuance of any building permits OR approval of the first final map, the property owner must provide a Certificate of Insurance and endorsements for Commercial General Liability and Automobile Liability naming the City as an additional insured from the entity that will sign the improvement agreement. The insurance coverage amounts are a minimum of Two Million Dollars ($2,000,000) Commercial General Liability, One Million Dollars ($1,000,000) Automobile Liability, One Million Dollars ($1,000,000) Contractors' Pollution Liability, and One Million Dollars ($1,000,000) Workers' Compensation. The insurance requirements are available from the Public Works Department.

148. **INFRASTRUCTURE QUANTITIES:** For projects with any work within the public right-of-way, upon first submittal of the building permit and improvement plans, submit a construction cost estimate indicating the quantities of street and utility improvements. Construction cost estimate shall include private common street and utility improvements for Common Green and Townhouse-Type Condominium developments. The construction cost estimate is used to estimate the cost of street and utility improvements and to determine the Public Works plan check and inspection fees. The construction cost estimate is to be prepared by the civil engineer preparing the improvement plans.

149. **EXCAVATION PERMIT:** For projects with any work within the public right-of-way, upon first submittal of the building permit and improvement plans, submit a complete Excavation Permit Application for all applicable work within the public right-of-way to the Public Works Department. Permit applications are available online from the Public Works Department website at: www.mountainview.gov/landdevelopment. All work within the City right-of-way must be consolidated on the site, off-site, and/or utility plans. Plans of the work, traffic control plans for work within the public roadway and/or easement, insurance certificate and endorsements, and permit fees are required with the Excavation Permit Application.

150. **OFF-SITE IMPROVEMENT PLANS:** Prepare off-site public improvement plans in accordance with Chapter 28 of the City Code, the City's Standard Design Criteria, Submittal Checklist, Plan Review Checklist, and the conditions of approval of the project. The plans are to be drawn on 24"x36" sheets at a minimum scale of 1"=20'. The plans shall be stamped by a California-registered civil engineer and shall show all public improvements and other applicable work within the public right-of-way. An encroachment permit for work for the work shown on the approved plans shall be approved by the Public Works Department after submittal of plans meeting the above requirments.

Traffic control plans for each phase of construction shall be prepared in accordance with the latest edition of the California Manual of Uniform Traffic Control Devices (CA MUTCD) for work that impacts traffic on existing streets. Construction management plans of on-site parking for construction equipment and construction workers and on-site material storage areas must be submitted for review and approval and shall be incorporated into the off-site improvement plans identified "For Reference Only."

Off-site improvement plans, an initial plan check fee and map plan check fee based on the Public Works fee schedule, Improvement Plan Checklist, and items noted within the checklist must be submitted together as a separate package concurrent with the first submittal of the building plans and final map. All required materials shall be submitted electronically (i.e., flattened, reduced-size PDFs).

The off-site plans must be approved and signed by the Public Works Department. After the plans have been signed by the Public Works Department, two full-size and two half-size blackline set, one PDF of the signed/stamped plan set, and a USB flash

151. **TRAFFIC CONTROL PLANS:** Upon first submittal of the building permit and improvement plans, the applicant shall submit traffic control plans for any off-site and on-site improvements or any work that requires temporary lane closure, shoulder closure, bike lane closure, and/or sidewalk closure for review and approval. Sidewalk closures are not allowed unless reconstruction of sidewalk necessitates temporary sidewalk closure. In these instances, sidewalk detour should be shown on the Traffic Control plans. Traffic control plans shall show and identify, at a minimum, work areas, delineators, signs, and other traffic-control measures required for work that impacts traffic on existing streets and shall be prepared in accordance with the latest edition of the California Manual of Uniform Traffic Control Devices (CA MUTCD). A completed Traffic Control Checklist shall be included with each traffic control plan submittal. Traffic-control plans shall be prepared, stamped, and signed by a California-registered Traffic Engineer (T.E.).

152. **CONSTRUCTION MANAGEMENT PLAN:** Upon first submittal of the building permit and improvement plans, the applicant shall provide a construction traffic and parking management plan with the building plans and within the improvement plans

identified "For Reference Only—See Building Permit Plans." The plan must be approved prior to the issuance of a building permit, including demolition permits. The plan must show the following:

1. **Truck Route:** Truck route (to and from project site) for construction and delivery trucks pursuant to MVCC Sections 19.58 and 19.59, and which does not include neighborhood residential streets;

2 **Construction Phasing, Equipment, Storage, and Parking:** Show and identify construction vehicle and equipment parking area, material storage and lay-down area, sanitation facilities, and construction trailer location for each phase of construction. All construction vehicles, equipment, and trailers shall be located so as not to obstruct traffic or the safe use of roads. ~~on-site or at a site nearby (not on a public street or public parking) arranged by the permittee/contractor. Construction equipment, materials, or vehicles shall not be stored or parked on public streets or public parking lots, unless approved by the Public Works Director due to special conditions. Construction contractors/workers are required to park on-site or at a private property arranged by the permittee/contractor and shall not be allowed to use neighboring streets for parking/storage. Any use of the public street for construction staging shall require an Encroachment Agreement at the discretion of the Public Works Director;~~

3. **Sidewalks:** Sidewalk closure or narrowing is ~~not~~ allowed during ~~any~~ on-site construction activities as shown in the plans as necessary for the construction of the project but shall be removed as soon as practicable.; and

4. **Traffic Control and Detour Plans:** Traffic control plans, including detour plans, shall be submitted to the Public Works Department for review and approval for any on-site improvements and work related to the phases of the construction management plan, which requires temporary roadway closure, lane closure, shoulder closure, and/or bike lane closure. Pedestrian detour plans shall be provided when necessary.

   Traffic control plans shall be prepared in accordance with the latest edition of the California Manual of Uniform Traffic Control Devices (CA MUTCD). A completed Traffic Control Checklist shall be included with each traffic control plan submittal. A separate Excavation Permit from the Public Works Department will be required prior to the issuance of the building permit.

153. **NOTIFICATION OF ADJACENT/AFFECTED PROPERTIES:** During improvement plan design, the applicant shall provide advance written notification(s) to owners and tenants of adjacent and affected properties describing the nature of the proposed public improvements and estimated project duration, as determined necessary by the Public Works Department. The notice(s) shall be approved by the City prior to distribution.

154. **ENCROACHMENT RESTRICTIONS:** Private facilities, including, but not limited to, structures, steps, doors (including door swing), handrails, backflow preventers, signs, fences, retaining curbs, and retaining walls shall not encroach into the public right-of-way and/or street easement.

155. **SPECIAL PAVERS AND CONCRETE:** Pavers, colored concrete, and textured concrete shall not be installed within the public street or sidewalk.

156. **CORNER STREET SIGHT TRIANGLE:** At street corners of controlled and/or uncontrolled intersections, the site shall be compliant with Corner Triangles of Safety per the Public Works Standard Details ~~and to the satisfaction of the Public Works Director~~. The project will be required to remove or modify all objects~~, including, but not limited to landscape, hardscape, monument signs, mailbox banks/cluster, planters, retaining walls, seat walls, bicycle racks, partitions, parking stalls, etc.,~~ that are not compliant with safety triangle height and clearance requirements. ~~Artwork, benches, tables, chairs, bicycle racks, and planters shall not be installed in this safety area.~~

157. **DRIVEWAY SIGHT TRIANGLE:** Within the pedestrian and/or vehicle traffic safety sight triangle(s), for the project site and adjacent properties, the site shall be compliant with height and clearance requirements per the Public Works Standard Details ~~and to the satisfaction of the Public Works Director. The project is required to remove or modify all objects, including, but not limited to, landscape, hardscape, poles, bollards, signs, mailboxes, planters, retaining walls, seat walls, bicycle racks, partitions, buildings, and other structures, parking stalls, etc., that are not compliant with safety triangle height and clearance requirements~~. The structural column as shown on the plans is ~~an~~ allowed within the Sight Triangle. Any changes to the location or dimensions of the column are subject to review by the Public Works Director.

158. **STREET OVERLAY AND/OR PAVEMENT RECONSTRUCTION:** Pavement restoration is required on utility trench excavation on Middlefield Road and Tyrella Avenue project street frontage. The specific areas of work shall be clearly identified and shown on the plans.

159. **ROADWAY SIGNING, STRIPING, AND PAVEMENT MARKINGS:** Signing and striping plans shall be prepared in accordance with the latest edition of the California Manual of Uniform Traffic Control Devices (CA MUTCD). All new striping and pavement markings shall be thermoplastic. All striping and markings damaged and/or removed as part of construction and pavement work shall be replaced with thermoplastic striping. The specific areas of work shall be clearly identified and shown on the plans to the satisfaction of the City Traffic Engineer.

160. **RED CURB AT CROSSWALKS:** Street curbs adjacent to a public crosswalk shall be painted red a minimum of 20' in each direction, as determined and approved by the City Traffic Engineer. The specific areas of work shall be clearly identified and shown on the plans.

161. **RED CURB AT DRIVEWAY ENTRANCES:** Street curbs adjacent to driveway entrances, including entrances to underground parking garages, shall be painted red a minimum of 10' in each direction, as determined and approved by the City Traffic Engineer. The specific areas of work shall be clearly identified and shown on the plans.

162. **ON-STREET PARKING RESTRICTIONS:** Parking shall be prohibited along Tyrella Avenue and Middlefield Road along the project frontage. A painted red curb shall be installed to discourage on-street parking in the interim of bike lane improvements and to provide improved sight visibility from the project driveway. The painted red curb shall be installed along the project frontage. The specific areas of work shall be clearly identified and shown on the plans.

163. **NOTICE OF POTENTIAL ON-STREET PARKING REMOVAL:** A notice for the potential to remove on-street parking to install bicycle lanes on Moffett Boulevard will be sent by Public Works staff to the property owner(s).

164. **STOP-CONTROLLED SITE EGRESS:** All egress points to public streets or public easements shall be stop-controlled to address conflict points with pedestrians, bicyclists, and vehicles as they enter a public roadway. Stop-controlled egress shall include STOP signs, a limit line, and "STOP" pavement marking(s). The specific areas of work shall be clearly identified and shown on the plans.

CURBS, SIDEWALKS, AND DRIVEWAYS

165. **ADA RAMP REQUIREMENTS:** All new access ramps shall comply with the Americans with Disabilities Act (ADA) requirements. Existing nonconforming access ramps shall be reconstructed to comply with the ADA requirements. The specific ramp case type, ramp design, and limits of work shall be clearly identified and shown on the plans.

166. **DRIVEWAY REMOVAL:** Replace abandoned driveways with standard curb, gutter, and sidewalk. The specific areas and limits of replacement work shall be clearly identified and shown on the plans.

~~167. **CURB, GUTTER, SIDEWALK IMPROVEMENTS:** Replace damaged curb, gutter, and sidewalk along the project frontages of Middlefield Road and Tyrella Avenue. The sidewalk shall have a consistent 2% cross-slope from the top of the curb to back of the sidewalk and minimal grade breaks in the longitudinal slope of the curb line. The specific limits of work shall be clearly identified and shown on the plans.~~

STREET TREES

168. **STREET TREES:** Install standard City street trees along the street frontage on Middlefield Road and Tyrella Avenue, as shown on Sheets L-1, L-4, and L-5.

169. **STREET TREE LOCATION:** The location of existing trees to remain, existing trees to be removed, and new street trees shall be shown on the grading, utility, and landscaping plans. New street trees shall be planted in accordance with Detail F-1 of the Standard Provisions a minimum of 10' from sanitary sewer lines, traffic signals, stop and yield signs, and streetlights and 5' from

water lines, fire lines, and driveways. New street tree species must be selected from the City's adopted Master Tree list or be an approved alternate by the City arborist. The applicant shall complete the "Proposed Street Tree" form available from the Planning Division online at www.mountainview.gov/planningforms. Once completed, the applicant shall email the original to the Parks Division at parks@mountainview.gov and provide a duplicate copy to the Building Division with building permit submittal.

170. **STREET TREE IRRIGATION:** Street trees are to be irrigated by the property owner(s) in accordance with Chapter 32 of the City Code.

UTILITIES

171. **POTHOLING:** Potholing shall be completed prior to the first submittal of the building plans and improvement plans. Utilities shall be potholed to determine the depths and locations of existing subsurface utilities where improvements are proposed for construction, including, but not limited to, new utility crossings and installation of signal and streetlight pole foundations. Proposed pothole locations for signal pole foundations shall be approved by the City Traffic Engineer prior to potholing. Existing pavement sections shall also be recorded for all potholes. Obtain an Excavation Permit from the Public Works Department prior to performing potholing. Incorporate pothole data on the first submittal of improvement plans, including, but not limited to, pothole location, depth of utility, and pavement sections.

172. **UTILITY RELOCATION**: Existing utilities to be relocated as a result of the streetscape improvements, including, but not limited to, traffic signal poles, streetlights, utility boxes and structures, storm drains, and any other conflicts shall be resolved during the design of off-site improvements in accordance with City Standards and design guidelines.

173. **WATER AND SEWER SERVICE:** Each dwelling, townhouse, apartment house, restaurant, or place of business shall have its own water meter and sanitary sewer lateral in accordance with MVCC Section 35.38.

174. PW-94 [UTILITIES]
SEPARATE FIRE SERVICE: Domestic water and fire services shall have separate lines connected to the City's water main, except when supplying NFPA 13D fire sprinkler systems, as approved by the City Fire Protection Engineer. On-site fire lines, post indicator valves, Fire Department connections, and detector checks also require approval from the City's Fire Protection Engineer.

175. **SEPARATE IRRIGATION SERVICE AND METER:** A separate water service and water meter for irrigation will be required. The existing water service may be adequate to serve multiple meters, depending on size, and would require advance approval from the Public Works Director.

176. **UTILITY SERVICES:** The size and location of all existing and new water meters, backflow preventers, potable water services, recycled water services, fire services, sewer laterals, sewer cleanouts, storm drain laterals, storm cleanouts/inlets, gate valves, manholes, and utility mains shall be shown on the plans. Sewer laterals, potable water services, and fire services shall have a minimum 5' horizontal separation from each other. Recycled water and potable water shall have a minimum 10' horizontal separation from each other. New potable water and recycled water services shall have a minimum 5' clearance from trees, and new sewer laterals shall have a minimum 10' clearance from trees. Angled connections within service lines shall not be allowed. Utility profiles shall be required for all new services.

Existing water services shall be shown to be disconnected and abandoned at the main in accordance with City standards, unless they are satisfactory for reuse, as determined by the Public Services Division. Water services 4" or larger that are not reused shall be abandoned at the main by removing the gate valve and installing a blind flange and thrust block at the tee. Existing sanitary sewer laterals and storm connections that are not reused shall be abandoned, and existing face-of-curb drains that are not reused shall be removed.

177. **BACKFLOW PREVENTER:** Aboveground reduced-pressure backflow preventers are required for all new and existing City potable water and recycled water services. Backflow preventers shall be located directly behind the water meter or as reasonably close as possible at a location preapproved by the Public Services Division. Backflow prevention assemblies shall be conveniently located as close to the meter as feasible outside of buildings and are not allowed within buildings' utility closets

or basements. A minimum 3' clearance shall be provided around each assembly for accessibility and maintenance. Protective covers and/or enclosures must be preapproved by the Cross-Connection Control Specialist prior to installation.

178. **CATHODIC PROTECTION:** Cathodic protection shall be required in areas of soil corrosivity.

179. **SANITARY SEWER CLEANOUT OR MANHOLE:** A one-way sanitary sewer cleanout OR manhole shall be installed in accordance with City standards.

180. **WATER AND SEWER APPLICATIONS:** Upon first submittal of the building permit and improvement plans, the applicant shall submit complete applications for water and sewer service to the Public Works Department if new water services, water meters, fire services, or sewer laterals are required. Any unpaid water and sanitary sewer fees must also be paid prior to the issuance of any permits.

181. **OFF-SITE TRASH CAPTURE DEVICES:** Trash capture devices in the public right-of-way required to be installed by the Fire and Environmental Protection Division shall be shown and identified on the improvement plans.

182. **ON-SITE UTILITY MAINTENANCE:** On-site water, sanitary sewer, and storm drainage facilities shall be privately maintained by the property owner(s) and shall be noted on the plans.

183. **UNDERGROUNDING OF OVERHEAD SERVICES:** All new and existing electric and telecommunication laterals ~~facilities~~ serving the site are to be placed underground~~, including transformers.~~. The undergrounding of the new and existing overhead electric and telecommunication lateral lines is to be completed prior to the issuance of a Certificate of Occupancy for any new buildings within the site~~. If allowed by the City, a~~Above ground transformers, power meters, and pedestals shall be located so they are screened in the least visible location from the street or to the general public~~, as approved by the Community Development and Public Works Departments.~~

184. **JOINT UTILITY PLANS:** Upon first submittal of the building permit and improvement plans, the improvement plans shall include joint utility plans showing the location of the proposed electric, gas, and telecommunication conduits and associated facilities, including, but not limited to, vaults, manholes, cabinets, pedestals, etc. Appropriate horizontal and vertical clearances in accordance with PG&E requirements shall be provided between gas transmission lines, gas service lines, overhead utility lines, street trees, streetlights, and building structures. These plans shall be combined with and made part of the improvement plans. Joint trench intent drawings will be accepted at first improvement plan submittal. All subsequent improvement plan submittals shall include joint trench design plans. During joint trench design, the applicant shall provide advance written notification(s) to owners and tenants of adjacent and affected properties describing the nature of the proposed improvements and estimated project duration, as determined necessary by the Public Works Department. The notice(s) must be approved by the City prior to distribution.]

GRADING AND DRAINAGE IMPROVEMENTS (ON-SITE)

185. **DRAINAGE PLANS:** On-site drainage plans shall be included in the building plans.

186. **DRAINAGE REQUIREMENTS:** On-site parking lots and driveways (other than single-family residential) shall not surface-drain across public sidewalks or driveway aprons. Storm drain laterals from the site shall be installed with a property line inlet or manhole and connect to existing storm drain manholes or curb inlets if at all possible.

187. **SURFACE WATER RELEASE:** Provide a surface stormwater release for the lots, driveways, alleys, and private streets that prevents the buildings from being flooded in the event the storm drainage system becomes blocked or obstructed. Show and identify path of surface water release on the grading and drainage plans.

SOLID WASTE AND RECYCLING

188. **RECOLOGY MOUNTAIN VIEW:** The applicant/contractor must be in compliance and shall include the following as a note on the building permit and improvement plans: "Recology Mountain View is the City's exclusive hauler for recycling and disposal

of construction and demolition debris. For all debris boxes, contact Recology. Using another hauler may violate MVCC Sections 16.13 and 16.17 and result in code enforcement action."

189. **MOUNTAIN VIEW GREEN BUILDING CODE/CONSTRUCTION AND DEMOLITION ORDINANCE:** If this project is subject to the requirements of the Mountain View Green Building Code, a Construction and Demolition Waste Management Plan shall be submitted with the building permit application and approved by the Public Works Solid Waste and Recycling Division prior to the issuance of a building permit. A Final Construction and Demolition Waste Management Plan shall be submitted and approved prior to final inspection.

190. **TRASH ROOMS AND/OR ENCLOSURES:** Trash rooms and/or enclosures shall be used only for trash, recycling, and compost containers and shall not be used for storage at any time. Access door to the trash facility shall be clearly labeled "Trash Room."

191. **TRASH ENCLOSURE DESIGN AND DETAILS:** Include trash plan sheet and enclosure details on a separate sheet in the initial building plans.

The property must have trash, recycling, and organics/composting service. Display on plans trash room layout, location, and dimensions to scale with minimum service levels indicated below.

This 85-unit residential property will require the following minimum service levels:

	Qty	Size Yds./Gal.	Type	Frequency	Total Yds.
Trash	3	3	bin	2x/week	18
Paper Recycling	2	3	bin	2x/week	6
Containers Recycling	1	3	bin	1x/week	3
Compost	3	64	cart	1x/week	0.96
					27.96

- The resident vestibules require a three-chute system consisting of one trash chute and two recycling chutes (containers and paper collected in different chutes) and sufficient space for compost receptacles (e.g., slim jims) or carts. Property maintenance must empty the compost receptacles into the compost collection carts located at the ground floor trash room each week.
- All trash rooms and chute vestibules must have signage with sorting instructions according to the City's programs and all signage approved by the Solid Waste Program Manager prior to installation.
- Any trash room light switch shall be above the height of a three-yard bin (5'2"), so it is accessible.
- The trash room requires an 8' wide door with keypad access.
- Maintain 1' between bins, interior curbs, and walls in trash rooms. If no interior berm or curb, it shall have bumpers on the walls to avoid damage from bins hitting it.
- Trash room chutes require locking mechanism to secure closed at ground level when bins removed from underneath for servicing (note on building plans). On collection days, remove all bins scheduled for pick-up from under chutes and place in the trash staging rooms in such a way as to allow easy access by the hauler. The hauler will not move bins out of the way to access the ones they are collecting.
- The trash room shall have a staging area for the six (6) bins with footprints showing where maintenance staff will line up to stage the bins in front of the roll-up door for hauler access each service day.
- The path of travel to roll out the trash bins to the street for servicing must be flat and smooth. Bins will not be rolled over pavers or stamped surfaces. Provide a minimum 6' wide pathway for the hauler to pull bins from the trash room to/from the street for service.

- The three compost carts will not be rolled out by the hauler. These carts shall be transported each week by the property maintenance staff to the red curb at Tyrella Avenue and removed promptly after service.
- Trash rooms are for collection containers only and not for other storage; label "Trash Room."
- Any movement of bins over 30' is subject to hauler rollout fees. Current rollout fee is $0.75 per foot per container per month.
- Maintain overhead clearances of 15' in the travelway and 22' at the point of collection.
- Applicant shall install a commercial flared driveway instead of a standard driveway at Tyrella Avenue to provide a wider entry for trash collection vehicles to minimize running over curbs when entering or exiting the property.
- There shall be 40' of red curb paint and "No Parking" signage extending along Tyrella Avenue from the driveway towards Middlefield Road shown on all relevant building permit plans (architectural, civil, landscape). Include dimensions and vehicle approach to service containers on collection day. **(PROJECT-SPECIFIC CONDITION)**

OTHER PUBLIC WORKS NOTES

192. **SANTA CLARA VALLEY WATER DISTRICT WELLS:** Santa Clara Valley Water District (Valley Water) requires the following note to be labeled on the building and improvement plans: "While the Santa Clara Valley Water District (Valley Water) has records for most wells located in the County, it is always possible that a well exists that is not in Valley Water's records. If previously unknown wells are found on the subject property during development, they must be properly destroyed under permit from Valley Water or registered with Valley Water and protected from damage."

193. **STREET CLEANING:** The owner/developer shall comply with and include the following note on the off-site, or grading/drainage, or utility plans: "The prime contractor or developer is to hire a street cleaning contractor to clean up dirt and debris from City streets that are attributable to the development's construction activities. The street cleaning contractor is to have the capability of sweeping the streets with both a broom-type sweeper and a regenerative air vacuum sweeper, as directed by the Public Works Director or designated representative."

194. **OCCUPANCY RELEASE (RESIDENTIAL):** The owner/developer shall comply with and include the following note on the off-site or grading/drainage or utility plans: "For residential developments, no residential units will be released for occupancy unless the improvements to be constructed to City standards and/or to be accepted for maintenance by the City, including water meters and sanitary sewer cleanouts as well as trash rooms and/or enclosures, are substantially complete per the City of Mountain View Standard Provisions for Public Works construction. The Public Works Director shall make the determination of what public improvements are substantially complete."

Fire and Environmental Protection Division—650-903-6378 or FEPD@mountainview.gov

ENVIRONMENTAL SAFETY

For more information, guidelines, design criteria, or materials about urban runoff conditions, contact the Fire and Environmental Protection Division (FEPD) of the Fire Department at 650-903-6378 or online at www.mountainview.gov/fep. "Stormwater Quality Guidelines for Development Projects" can be accessed on the Fire Department website at www.mountainview.gov/fepforms.

195. **STORM DRAIN/SANITARY SEWER PLAN CHECK SHEET:** Complete a "Storm Drain/Sanitary Sewer Discharges" check sheet. All applicable items in the check sheet should be completed and shown on the building plan submittal.

196. **CONSTRUCTION BEST MANAGEMENT PRACTICES:** All construction projects shall be conducted in a manner which prevents the release of hazardous materials, hazardous waste, polluted water, and sediments to the storm drain system.

197. **CONSTRUCTION SEDIMENT AND EROSION CONTROL PLAN:** The applicant shall submit a written plan acceptable to the City which shows controls that will be used at the site to minimize sediment runoff and erosion during storm events. The plan

should include installation of the following items where appropriate: (a) silt fences around the site perimeter; (b) gravel bags surrounding catch basins; (c) filter fabric over catch basins; (d) covering of exposed stockpiles; (e) concrete washout areas; (f) stabilized rock/gravel driveways at points of egress from the site; and (g) vegetation, hydroseeding, or other soil stabilization methods for high-erosion areas. The plan should also include routine street sweeping and storm drain catch basin cleaning.

198. **SWIMMING POOLS, SPAS, AND FOUNTAINS:** Swimming pools, spas, and fountains shall be installed with a sanitary sewer cleanout in a readily accessible nearby area to allow for draining.

199. **LOW-USE ACCESS AREA DRAINAGE:** Low-use public access areas, such as overflow parking, emergency access roads, and alleys, shall be designed to increase stormwater infiltration and decrease runoff by one or more of the following methods: (a) porous pavement; (b) pavers; (c) uncompacted bark/gravel; or (d) drain to landscaped areas or vegetative strips.

200. **LANDSCAPE DESIGN:** Landscape design shall minimize runoff and promote surface filtration. Examples include: (a) no steep slopes exceeding 10%; (b) using mulches in planter areas without ground cover to avoid sedimentation runoff; (c) installing plants with low water requirements; and (d) installing appropriate plants for the location in accordance with appropriate climate zones. Identify which practices will be used in the building plan submittal.

201. **EFFICIENT IRRIGATION:** Common areas shall employ efficient irrigation to avoid excess irrigation runoff. Examples include: (a) setting irrigation timers to avoid runoff by splitting irrigations into several short cycles; (b) employing multi-programmable irrigation controllers; (c) employing rain shutoff devices to prevent irrigation after significant precipitation; (d) use of drip irrigation for all planter areas which have a shrub density that will cause excessive spray interference of an overhead system; and (e) use of flow reducers to mitigate broken heads next to sidewalks, streets, and driveways. Identify which practices will be used in the building plan submittal.

202. **FIRE SPRINKLERED BUILDINGS:** New buildings that will have fire sprinkler systems shall be provided with a sanitary sewer drain in a protected area, which can adequately accommodate sprinkler water discharged during sprinkler system draining or activation of the inspector test valve. Show the location and provide a detail of the fire sprinkler drain on the plans.

203. **PRIVATE STREET MAINTENANCE:** For residential projects with private streets, the following ongoing maintenance shall be provided: (a) private streets shall be swept at least four times per year; (b) private storm drain inlets shall be cleaned at least once per year prior to October 15; and (c) common area trash management and litter control. Attach a copy of the contract or maintenance agreement identifying the name, address, and phone number of the party carrying out these maintenance activities.

204. **OUTDOOR STORAGE AREAS (INCLUDING GARBAGE ENCLOSURES):** Outdoor storage areas (for storage of equipment or materials which could decompose, disintegrate, leak, or otherwise contaminate stormwater runoff), including garbage enclosures, shall be designed to prevent the run-on of stormwater and runoff of spills by all of the following: (a) paving the area with concrete or other nonpermeable surface; (b) covering the area; and (c) sloping the area inward (negative slope) or installing a berm or curb around its perimeter. There shall be no storm drains in the outdoor storage area.

205. **PARKING GARAGES:** For multiple-level parking garages, interior levels shall be connected to an approved wastewater treatment system discharging to the sanitary sewer.

206. **STORMWATER TREATMENT (C.3):** This project will create or replace more than five thousand (5,000) square feet of impervious surface; therefore, stormwater runoff shall be directed to approved permanent treatment controls as described in the City's guidance document entitled, "Stormwater Quality Guidelines for Development Projects." Runoff from portions of the public right-of-way (e.g., sidewalks, curb extensions, pavement replacement, and curb and gutter replacement in the street frontage) that are constructed or reconstructed as part of Regulated Projects will also need to be treated using LID measures. The City's guidelines also describe the requirement to select Low-Impact Development (LID) types of stormwater treatment controls; the types of projects that are exempt from this requirement; and the Infeasibility and Special Projects exemptions from the LID requirement.

The "Stormwater Quality Guidelines for Development Projects" document requires applicants to submit a Stormwater Management Plan, including information such as the type, location, and sizing calculations of the treatment controls that will

be installed. Include three stamped and signed copies of the Final Stormwater Management Plan with the building plan submittal. The Stormwater Management Plan must include a stamped and signed certification by a qualified Engineer, stating that the Stormwater Management Plan complies with the City's guidelines and the State NPDES Permit. Stormwater treatment controls required under this condition may be required to enter into a formal recorded Maintenance Agreement with the City.

207. **STORMWATER MANAGEMENT PLAN—THIRD-PARTY ENGINEER'S CERTIFICATION:** The Final Stormwater Management Plan must be certified by a qualified third-party engineer that the proposed stormwater treatment controls comply with the City's Guidelines and Provision C.3 of the Municipal Regional Stormwater NPDES Permit (MRP). A list of qualified engineers is available at the following link: https://scvurppp.org/wp-content/uploads/2022/12/SCVURPPP-Qualified-Consultants-List-Memo_December-2022.pdf

208. **FULL TRASH CAPTURE:** Projects located in "moderate," "high," or "very high" trash generating areas as outlined in the City's Long-Term Trash Load Reduction Plan that are undergoing site improvements shall install full trash capture protection within the existing storm drain system. Examples of full trash capture systems include large trash capture devices, such as hydrodynamic separators or media filtration systems, or small trash capture devices, such as storm drain catch basin connector pipe screens. The full-trash capture device must be selected from the list of State Water Board-approved devices: https://www.waterboards.ca.gov/water_issues/programs/stormwater/trash_implementation.html. Once installed, the property owner or property manager shall be responsible for maintaining the trash capture device. Maintenance shall be completed in accordance with the manufacturer's recommended frequency, but at a minimum of one time per year. Indicate the type of full trash capture device that will be installed to remove trash from runoff for the entire project site and include details for the installation of the trash capture system(s) in the building plans for the project.

209. **FULL TRASH CAPTURE (OFF-SITE IMPROVEMENT):** Projects located in "moderate," "high," or "very high" trash generating areas as outlined in the City's Long-Term Trash Load Reduction Plan that will construct off-site improvements to the public storm drain system shall install full trash capture protection within the newly constructed public storm drain system. Examples of full trash capture systems include large trash capture devices, such as hydrodynamic separators or media filtration systems, or small trash capture devices, such as storm drain catch basin connector pipe screens. The full-trash capture device must be selected from the list of State Water Board approved devices: https://www.waterboards.ca.gov/water_issues/programs/stormwater/trash_implementation.html. Once installed, the property owner or property manager shall be responsible for maintaining the trash capture device. Maintenance shall be completed in accordance with the manufacturer's recommended frequency, but at a minimum of one time per year. Indicate the type of full trash capture device that will be installed to remove trash from runoff for the entire project site and include details for the installation of the trash capture system(s) in the building plans for the project.

210. **BUILDING DEMOLITION PCB CONTROL:** Nonwood frame buildings constructed before 1981 that will be completely demolished are required to conduct representative sampling of priority building materials that may contain polychlorinated biphenyls (PCBs). If sample results of one or more priority building materials show PCBs concentrations ≥50 ppm, the applicant is required to follow applicable federal and state notification and abatement requirements prior to demolition of the building. Submit a completed "Polychlorinated Biphenyls (PCBs) Screening Assessment Applicant Package" with the building demolition plans for the project. A demolition permit will not be issued until the completed "PCBs Screening Assessment Applicant Package" is submitted and approved by the City Fire Department and FEPD. Applicants are required to comply with applicable federal and state regulations regarding notification and abatement of PCBs-containing materials. Contact the City's FEPD at 650-903-6378 to obtain a copy of the "PCBs Screening Assessment Applicant Package" and related guidance and information.

NOTE: Decisions of the Zoning Administrator may be appealed to the City Council in compliance with Chapter 36 of the City Code. An appeal shall be filed in the City Clerk's Office within 10 calendar days following the date of mailing of the findings. Appeals shall be accompanied by a filing fee. No building permits may be issued, or occupancy authorized during this appeal period.

NOTE: As required by California Government Code Section 66020, the applicant is hereby notified that the 90-day period has begun as of the date of approval of this application, in which the applicant may protest any fees, dedications, reservations, or other exactions

imposed by the City as part of this approval or as a condition of approval. The fees, dedications, reservations, or other exactions are described in the approved plans, conditions of approval, and/or the adopted City fee schedule.

AMBER BLIZINSKI, ASSISTANT COMMUNITY DEVELOPMENT DIRECTOR

AB/KP/4/FDG
PL-2023-102

CITY OF MOUNTAIN VIEW
SUBDIVISION CONDITIONS

APPLICATION NO.: PL-2023-103
DATE OF FINDINGS: November 13, 2024
EXPIRATION OF ZONING PERMIT:

THIS DOCUMENT REPRESENTS THE ZONING PERMIT RECEIVED FOR THE SUBJECT SITE. THIS DOCUMENT DOES NOT WAIVE THE REQUIREMENT FOR SUBSEQUENT CITY APPROVALS AS APPLICABLE, INCLUDING, BUT NOT LIMITED TO, BUILDING PERMITS, EXCAVATION PERMITS, ETC.

Applicant's Name:

Forrest Linebarger of Tower Investment, LLC

Property Address:	Assessor's Parcel No(s).:	Zone:
294-296 Tyrella Avenue	**160-32-001 and 163-32-002**	**R3-1**

Request:

Request for a Tentative Map for condominium purposes associated with an 85-unit residential condominium development project (PL-2023-102) on a 0.48-acre project site.

APPROVED ☐ CONDITIONALLY APPROVED ☒ DISAPPROVED ☐ OTHER ☐

******SUBDIVISION COMMITTEE RECOMMENDATION TO CITY COUNCIL******

FINDINGS OF APPROVAL:

The Tentative Map for condominium purposes associated with an 85-unit condominium project (PL-2023-102) is conditionally approved based upon the conditions of approval contained herein and upon the following findings per Section 36.44.70:

A. **The proposed subdivision, together with the provisions for its design and improvement, is consistent with applicable general and specific plans. (Gov. Code §§ 66473.5, 66474)** The Builder's Remedy provisions of the Housing Accountability Act prohibit local agencies from relying on inconsistency with zoning and General Plan standards as a basis for denial of a housing development project for very low-, low-, or moderate-income households. The project is consistent with some provisions of the Zoning Ordinance and General Plan, and where the project is inconsistent with the Zoning Ordinance and General Plan, said inconsistencies are not a basis for disapproval of the project. The subdivision is compatible with some General Plan policies. Specifically, the project supports the General Plan Policies LUD 3.5 (Diversity) and LUD 3.9 (Parcel Assembly). The subdivision provides for the improvement of the 0.48 acre with frontage improvements, including new utility connections, new landscaping, and repair of damaged curb, gutter, and sidewalks;

B. **The site is physically suitable for the type and density of development. (Gov. Code § 66474)** The Builder's Remedy provisions of the Housing Accountability Act prohibit local agencies from relying on inconsistency with zoning and General Plan standards as a basis for denial of a housing development project for very low-, low-, or moderate-income households. The project is consistent with some provisions of the Zoning Ordinance and General Plan, and where the project is inconsistent with the Zoning Ordinance and General Plan, said inconsistencies are not a basis for disapproval of the project. The proposed map facilitates development of the project site consistent with some provisions of the Zoning Ordinance and is intended to provide 85 mixed-income residential units (68 market-rate and 17 units affordable to low-income households) to alleviate housing and affordability problems. The site is flat and is surrounded by existing residential developments in the area. The site supports General Plan Policy LUD 3.5 (Diversity) as the project is a residential development serving a range of diverse households and

incomes (68 market-rate units and 17 affordable units). The proposed development of 0.48-acre site will not exceed a maximum development of 85 units;

C. **The proposed design of the subdivision and the improvements, as conditioned, will not cause environmental damage or substantially and avoidably injure fish or wildlife or their habitat. (Gov. Code § 66474)** The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitats as the project site complies with the California Environmental Quality Act (CEQA) as a categorically exempt project under CEQA Guidelines Section 15332 ("In-Fill Development") because the project is consistent with the following findings, and none of the exceptions in CEQA Guidelines Section 15300.2 apply:

1. **The project is consistent with the applicable General Plan designation and all applicable General Plan policies as well as with applicable zoning designation and regulations.** The applicant submitted a preliminary application before the City adopted a substantially compliant Housing Element for a housing development project that proposes 20% of its total units to be affordable to lower-income households; therefore, the project qualifies as Builder's Remedy project. The Builder's Remedy provision of the HAA prohibits the City from relying on inconsistencies with zoning and the General Plan standards as a basis for denial of a housing development project for very low-, low-, or moderate-income households. Therefore, any existing zoning requirements and development standards that the project is not in compliance with are not "applicable" to the project within the meaning of CEQA Guidelines Section 15332, subdivision (a). For these reasons, the project is consistent with the "applicable" designations and policies.

2. **The proposed development occurs within City limits on a project site of no more than five acres and substantially surrounded by urban uses.** The gross project site is approximately 0.48 acres in size and is located at the southwest corner of Middlefield Road and Tyrella Avenue within the eastern-central portion of the City of Mountain View. The site is located within an urbanized, developed residential area of the City and is surrounded by existing residential uses. Therefore, the proposed project would meet this criterion.

3. **The project site has no value as habitat for endangered, rare, or threatened species.** The project site is developed with existing residential uses and is located within a developed, urban area of the City. Vegetation on the site consists of landscape trees, and the site does not contain habitat for endangered, rare, or threatened species. The project will be required to comply with the City's standard tree replacement requirements outlined in the City Code and the City's Standard Conditions of Approval.

   No species identified as a candidate, sensitive, or special-status species are known to occur at the site location, and no sensitive or jurisdictional habitats are present at or adjacent to the site. The site is not part of any habitat conservation plan. Therefore, the project site has no value as habitat for endangered, rare, or threatened species, and the project would meet this criterion under CEQA Guidelines Section 15332(c).

4. **Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.**

   Traffic/Transportation: As the project is residential, it would not exceed the City's transportation impact thresholds. According to the City of Mountain View's Vehicle Miles Traveled (VMT) policy, residential projects located in areas of low VMT, defined as exhibiting VMT that is 15% or greater below the existing nine-county Bay Area regional average VMT, shall be presumed to have a less-than-significant transportation impact. The project site is located in a low VMT area and, therefore, the project would not result in significant transportation impacts.

   Noise: The project would not exceed the City's applicable significance thresholds related to noise or vibration. The project is not located within the vicinity of a private airstrip or a public airport and would not expose people residing or working in the area to excessive aircraft noise levels.

   The project would result in construction noise and vibration at levels similar to other midrise construction projects within the City. There is nothing unique or peculiar about the project or its construction that would suggest that the project would have greater construction noise or vibration impacts than other typical midrise construction projects.

   The project would include stationary sources of operational noise, such as mechanical heating, ventilating, and air conditioning (HVAC) equipment, that is standardized for noise reduction, as well as an emergency generator for the

elevator. Stationary equipment would be located and shielded to operate within the City's Noise Ordinance requirements. As directed by the California Supreme Court in *Make UC A Good Neighbor v. Regents of University of California (2024) 16 Cal.5th 43*, noise from resident activity at the site is not considered an environmental impact.

Based on the above discussion, the project would not result in significant or unique noise impacts. With implementation of all required standard conditions of approval pertaining to noise (see Section 5.0 CEQA Checklist for full text of applicable conditions), the project would not result in significant effects related to noise or vibration. For these reasons, the project would meet the criteria pursuant to CEQA Guidelines Section 15332(d).

Air Quality: The project would not exceed the City's applicable significance thresholds related to air quality. The project is consistent with the policies and standards of the City's General Plan and proposes infill residential development within an area that is well served by transit. As such, the project is also considered to be consistent with the Clean Air Plan.

The project would not exceed the screening criteria published by the Bay Area Air Quality Management District (BAAQMD) air quality emissions resulting from construction or operations. Construction-related emissions from the project will be reduced to a less-than-significant level with implementation of required City of Mountain View standard conditions of approval. Given the nature of the proposed residential use, project operations would not be a substantial source of toxic air contaminants and would not pose a health risk to others. Pursuant to the City of Mountain View's standard conditions of approval, the project will be required to install MERV 13 or better HVAC air filters which will remove emissions from indoor air and ensure that the project will not result in significant health risks.

With implementation of the City's standard condition of approval, the project would not result in significant effects related to air quality and would meet the criteria pursuant to CEQA Guidelines Section 15332(d).

Water Quality: The project would not exceed the City's applicable significance thresholds related to water quality. The project site is currently developed and is located within an urbanized environment. There are no lakes, creeks, or other surface waters in the immediate site vicinity. The project site is served by the City's existing stormwater system and downstream conveyance channels that will receive runoff from the project.

Given the location and flat nature of the site, the project would not substantially increase runoff as a source of polluted runoff from the site. The project will be subject to regulatory requirements and the City's standard conditions of approval, which require site design measures to reduce the amount of stormwater runoff and limit pollution in stormwater runoff. With implementation of all required standard conditions pertaining to water, the project would not result in significant impacts related to water quality and would meet the criteria pursuant to CEQA Guidelines Section 15332(d) for an infill exemption.

5. **The site can be adequately served by all required utilities and public services.** As documented in the utility impact study, the project would not exceed the City's applicable significance thresholds related to utilities and public services. The project site is located within an urbanized residential area of the City which is served by all needed utilities (e.g., water, electricity, sanitary sewer facilities, and storm drain facilities) and all required public services (e.g., police and fire services, public schools). The proposed redevelopment will require specific on-site extensions and improvements to existing utility infrastructure to serve the new residential condominium building. Based on the findings and recommendations of the Utility Study which also incorporates information from previous studies, the project would not contribute to additional deficiencies in the water system or sewer system.

   The project would not result in significant effects related to utilities or public services and would meet the criteria pursuant to CEQA Guidelines Section 15332(d) for an infill exemption;

D. **The design of the subdivision and its improvements will not cause serious public health problems. (Gov. Code § 66474)** The design of the subdivision and the proposed improvements are not likely to cause serious public health problems because the project will be consistent with applicable policies included in the General Plan and the City Code and will be subject to standard conditions of approval to protect public health, safety, convenience, and welfare. Proposed public (off-site) improvements are designed to meet applicable City design standards and the City Code. Additionally, the project will be further reviewed for compliance with Building and Fire Codes to ensure on-site improvements comply with applicable codes for safe habitation;

E. **The design of the subdivision and its improvements will not conflict with easements, acquired by the public at large, for access through or use of property within the subdivision (Gov. Code § 66474).** The subdivision and improvements as conditioned will not conflict with existing easements**;**

F. **For a proposed subdivision with more than five hundred (500) dwelling units, water will be available and sufficient to serve the proposed subdivision in accordance with Section 66473.7 of the Subdivision Map Act. (Gov. Code § 66473.7)** This finding does not apply because the project proposes 85 dwelling units;

G. **The discharge of waste from the proposed subdivision into the sewer system will not violate regional water quality control regulations. (Gov. Code § 66474.6)** The subdivision will not result in the discharge of waste into the sewer system that would violate regional water quality control regulations;

H. **The design of the subdivision provides, to the extent feasible, for future passive or natural heating or cooling opportunities. (Gov. Code § 66473.1)** The subdivision provides, to the extent feasible, for future passive or natural heating or cooling opportunities. The project includes a cool roof to reflect sunlight and absorb less energy to reduce energy consumption; and

I. **The City has considered the effects on housing needs of the region in which the local jurisdiction is situated and balanced these needs against the public service needs of its residents and available fiscal and environmental resources. (Gov. Code § 66412.3)** In approving the tentative tract map, the City Council has considered its effect upon the housing needs of the region balanced with the public service needs of Mountain View residents and available fiscal and environmental resources.

This approval is granted to merge two existing parcels to create a single lot for 85 residential condominium units located on Assessor's Parcel Nos. 160-32-001 and 163-32-002. Development shall be substantially as shown on the project materials listed below, except as may be modified by conditions contained herein, which are kept on file in the Planning Division of the Community Development Department:

a. Tentative Map prepared by Tower Investment, LLC, dated October 7, 2024.

THIS REQUEST IS GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

FINAL MAP

1. **MAP SUBMITTAL:** File a final map for approval and recordation in accordance with the City Code and the California Subdivision Map Act prior to the issuance of any building permit for the property(ies) within the subdivision. All existing and proposed easements are to be shown on the map. Submit the map for review concurrent with all items on the Map Checklist and the Off-Site Improvement Plans to the Public Works Department. All required materials shall be submitted electronically (i.e., flattened, reduced-size PDFs).

2. **PRELIMINARY TITLE REPORT:** At first submittal of a final map to the Public Works Department, the applicant shall provide a current preliminary title report indicating the exact name of the current legal owners of the property(ies), their type of ownership (individual, partnership, corporation, etc.), and legal description of the property(ies) involved (dated within six months of the submission). The title report shall include all easements and agreements referenced in the title report. Depending upon the type of ownership, additional information may be required. The applicant shall provide an updated title report to the Public Works Department upon request. All required materials shall be submitted electronically (i.e., flattened, reduced-size PDFs).

3. **SOILS REPORT:** Soils and geotechnical reports prepared for the subdivision shall be indicated on a final map. Submit a copy of the report with the first submittal of a final map. All required materials shall be submitted electronically (i.e., flattened, reduced-size PDFs).

   As required by the State Seismic Hazards Mapping Act, a project site-specific geotechnical investigation shall be conducted by a registered soils/geologist identifying any seismic hazards and recommending mitigation measures to be taken by the project. The applicant, through the applicant's registered soils engineer/geologist, shall certify the project complies with the requirements of the State Seismic Hazards Mapping Act. Indicate the location (page number) within the geotechnical report of where this certification is located or provide a separate letter stating such.

4. **MAP DOCUMENTS:** Prior to the approval and recordation of the map, submit a subdivision guarantee, Santa Clara County Tax Collector's letter regarding unpaid taxes or assessments, and subdivision security if there are unpaid taxes or special assessments. All required materials shall be submitted electronically (i.e., flattened, reduced-size PDFs).

5. **FINAL MAP APPROVAL:** A final map shall be signed and notarized by the owner and engineer/surveyor and submitted with a PDF to the Public Works Department. In order to place the approval of a final map on the public hearing agenda for the City Council, all related materials and agreements must be completed, signed, and received by the Public Works Department 40 calendar days prior to the Council meeting date. After City Council approval, the City Engineer will sign the map. The applicant's title company shall have the Santa Clara County Recorder's Office record the original and shall provide a Xerox Mylar copy of the map to be endorsed by the Santa Clara County Recorder's Office. The endorsed Xerox Mylar copy and a PDF shall be returned within one week after recording the map to the Public Works Department.

RIGHTS-OF-WAY

6. **STREET DEDICATION:** The existing half-street widths are 50' for Middlefield Road and 30' for Tyrella Avenue. No street dedication in easement or fee shall be dedicated on the map.

7. **PRIVATE UTILITY AND ACCESS EASEMENTS:** Dedicate private utility and/or access easements on the face of the map, as necessary, for the utility improvements.

ASSESSMENTS, FEES, AND PARK LAND

8. **SUBDIVISION FEES:** Pay all subdivision fees due in accordance with the rates in effect at the time of payment prior to the approval of a final map.

9. **MAP PLAN CHECK FEE:** Prior to issuance of any building permits OR prior to approval of a final map, as applicable, the applicant shall pay the map plan check fee in accordance with Sections 28.27.b and 28.19.b of the City Code per the rates in effect at time of payment. The map plan check fee shall be paid at the time of first map plan check submittal per the adopted fee in effect at time of payment.

10. **PLAN CHECK AND INSPECTION FEE:** Prior to issuance of any building permits OR prior to approval of a final map, the applicant shall pay the plan check and inspection fee in accordance with Sections 27.60 and 28.36 of the City Code per the adopted rates in effect at time of payment.

    An initial plan check fee based on the Public Works adopted fee schedule shall be paid at the time of initial improvement plan check submittal based on the initial cost estimate for constructing street improvements and other public facilities; public and private utilities and structures located within the public right-of-way; and utility, grading, and driveway improvements for common green and townhouse-type condominiums. Once the plans have been approved, the approved cost estimate will be used to determine the final bond amounts, plan check fees, and inspection fees. Any paid initial plan check fee will be deducted from the approved final plan check fee.

~~11. **TRANSPORTATION IMPACT FEE:** Prior to issuance of any building permits OR prior to approval of the first final map, as applicable, the applicant shall pay the transportation impact fee for the development. Residential category fees are based on the number of units. Retail, Service, Office, R&D, and Industrial category fees are based on the square footage of the development. Credit is given for the existing site use(s), as applicable.~~

~~12. **PARK LAND DEDICATION FEE:** Prior to the issuance of any building permits or prior to the approval of the first final map, the applicant shall pay the Park Land Dedication In-Lieu Fee as described below.~~

~~The total amount of Park Land Dedication In-Lieu Fee for this project is $4,610,400, or $67,800 for each net new market-rate residential unit ($11.3 million/acre land valuation, 68 units x $67,800/unit = $ 4,610,400). No credit against the Park Land Dedication Fee is allowed for private open space and recreational facilities.~~

~~In a good-faith effort to reduce constraints on housing development projects for lower-income households, the City is applying the lowest fair-market value per acre identified in the Fiscal Year 2024-25 Master Fee Schedule ($11.3 million per acre) and is~~

~~implementing early application of Housing Program 1.8 (Park Land Ordinance Update) of the adopted Housing Element to apply a 20% reduction to the Park Land Dedication In-Lieu fees for this project. The total discounted Park Land Dedication In-Lieu Fee to be paid as a condition of approval for this project is $3,688,320, or $54,240 for each net new market-rate residential unit.~~ **~~(PROJECT-SPECIFIC CONDITION)~~**

13. **PARK LAND DEDICATION:** New Lot B as shown on the Tentative Map does not meet the requirements for a City park parcel. The final map shall not show New Lot B. This condition supercedes the Tentative Map. **(PROJECT-SPECIFIC CONDITION)**

STREET IMPROVEMENTS

14. **UTILITY PAYMENT AGREEMENT:** ~~Prior to the approval of the first final map, the applicant shall sign a utility payment agreement and post a security deposit made payable to the City as security if each unit or building does not have separate sewer connections and water meters in accordance with Section 35.38 of the City Code.~~ The utility payment agreement shall include provisions to have the security transferred from the applicant to the homeowners association (HOA), but still made payable to the City, when the HOA is formed for the subdivision.

15. **PUBLIC IMPROVEMENTS:** ~~Install or reconstruct standard public improvements that are required for the subdivision and as required by Chapters 27 and 28 of the City Code.~~ These public improvements as shown on Sheet A1.1 and C-3 include: construction of new storm, sewer, and water connections; replace damaged curb, gutter, and sidewalk; install new landscape with street trees on Tyrella Avenue and Middlefield Road; reconstruction of a new driveway on Tyrella Avenue; construct a new curb ramp at the project corner of Middlefield Road and Tyrella Avenue; and pavement restoration on utility trench excavation on Middlefield Road and Tyrella Avenue.

    a. **Improvement Agreement:** Prior to the approval of the first final map, the property owner must sign a Public Works Department improvement agreement for the installation of the public improvements.

    b. **Bonds/Securities:** Prior to the approval of the first final map, the property owner must sign a Public Works Department faithful performance bond (100%) and materials/labor bond (100%) or provide a letter of credit (150%) or cash security (100%) securing the installation and warranty of the off-site improvements in a form approved by the City Attorney's Office. The surety (bond company) must be listed as an acceptable surety on the most current Department of the Treasury's Listing of Approved Sureties on Federal Bonds, Department Circular 570. This list of approved sureties is available through the internet at: www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570_a-z.htm. The bond amount must be below the underwriting limitation amount listed on the Department of the Treasury's Listing of Approved Sureties. The surety must be licensed to do business in California. Guidelines for security are available at the Public Works Department.

    c. **Insurance:** Prior to the approval of the first final map, the property owner must provide a Certificate of Insurance and endorsements for the Commercial General Liability and Automobile Liability naming the City as an additional insured from the entity that will sign the improvement agreement. The insurance coverage amounts are a minimum of Two Million Dollars ($2,000,000) Commercial General Liability, One Million Dollars ($1,000,000) Automobile Liability, One Million Dollars ($1,000,000) Contractor's Pollution Liability, and One Million Dollars ($1,000,000) Workers' Compensation. The insurance requirements are available from the Public Works Department.

16. **INFRASTRUCTURE QUANTITIES:** Upon submittal of the initial building permit and improvement plans, submit a completed construction cost estimate form indicating the quantities of the street and utility improvements with the submittal of the improvement plans. The construction cost estimate is used to estimate the cost of improvements and to determine the Public Works plan check and inspection fees. The construction cost estimate is to be prepared by the civil engineer preparing the improvement plans.

17. **OFF-SITE IMPROVEMENT PLANS:** Prepare off-site public improvement plans in accordance with Chapter 28 of the City Code, the City's Standard Design Criteria, Submittal Checklist, Plan Review Checklist, and the conditions of approval of the project. The plans are to be drawn on 24" x 36" sheets at a minimum scale of 1" = 20'. The plans shall be stamped by a California-registered civil engineer and shall show all public improvements and other applicable work within the public right-of-way.

Traffic control plans for each phase of construction shall be prepared in accordance with the latest edition of the California Manual of Uniform Traffic Control Devices (CA MUTCD) and shall show, at a minimum, work areas, delineators, signs, and other traffic-control measures required for work that impacts traffic on existing streets. Construction management plans: Locations of on-site parking for construction equipment and construction workers and on-site material storage areas must be submitted for review and approval and shall be incorporated into the off-site improvement plans and identified as "For Reference Only."

Off-site improvement plans, an initial plan check fee, and map plan check fee based on the Public Works fee schedule, Improvement Plan Checklist, and items noted within the Checklist must be submitted together as a separate package concurrent with the first submittal of the building plans and a final map. All required materials shall be submitted electronically (i.e., flattened, reduced-size PDFs).

The off-site plans must be approved and signed by the Public Works Department. After the plans have been signed by the Public Works Department, two full-size and two half-size black-line sets, one PDF of the signed/stamped plan set, and a USB flash drive with CAD file and PDF must be submitted to the Public Works Department prior to the approval of a final map. CAD files shall meet the City's Digital Data Submission Standards.

UTILITIES

18. **ON-SITE UTILITY MAINTENANCE:** On-site water, sanitary sewer, and storm drainage facilities shall be privately maintained by the property owner(s).

19. **JOINT UTILITY PLANS:** Upon submittal of the initial building permit and improvement plans, the applicant shall submit joint utility plans showing the location of the proposed electric, gas, and telecommunication conduits and associated facilities, including, but not limited to, vaults, manholes, cabinets, pedestals, etc. Appropriate horizontal and vertical clearances in accordance with PG&E requirements shall be provided between gas transmission lines, gas service lines, overhead utility lines, street trees, streetlights, and building structures. These plans shall be combined with and made part of the improvement plans. Joint trench intent drawings will be accepted at first improvement plan submittal. All subsequent improvement plan submittals shall include joint trench design plans.

GRADING AND DRAINAGE IMPROVEMENTS (ON-SITE)

20. **SURFACE WATER RELEASE:** Provide a surface stormwater release for the lots, driveways, alleys, and private streets that prevents the residential buildings from being flooded in the event the storm drainage system becomes blocked or obstructed. Show and identify path of surface water release on the improvement plans.

OTHER APPROVALS AND EXPIRATION

21. **CONSISTENCY WITH OTHER APPROVALS:** This map shall be consistent with all requirements of Application No. PL-2023-102. All conditions of approval imposed under that application shall remain in full force and effect and shall be met prior to approval of a final map.

22. **APPROVAL EXPIRATION:** If the map is not completed within ~~24~~ 48 months from the date of this approval, this map shall expire.

The map ~~is eligible for an~~shall be extended ~~extension of~~ an additional ~~12 or~~ 24 months, provided the application for extension is filed with the
Planning Division by the applicant prior to the expiration of the original map. Upon filing a timely application for extension, the map shall automatically be extended, up to 10 years ~~for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first~~. Notwithstanding any automatic extension period authorized in the Subdivision Map Act, the City may, upon the subdivider's application filed before the Tentative Map expiration date, extend its life in accordance with state law and Section 28.19.75 of the Municipal Code.

NOTE: As required by California Government Code Section 66020, the applicant is hereby notified that the 90-day period has begun as of the date of approval of this application, in which the applicant may protest any fees, dedications, reservations, or other exactions

imposed by the City as part of this approval or as a condition of approval. The fees, dedications, reservations, or other exactions are described in the approved plans, conditions of approval, and/or the adopted City fee schedule.

AMBER BLIZINSKI, ASSISTANT COMMUNITY DEVELOPMENT DIRECTOR

AB/KP/6/FDG
PL-2023-103

Exhibit B

YIMBY LAW
Sue the Suburbs.
yimbylaw.org

April 9, 2024

VIA E-MAIL

Krisha Penollar, Project Planner
Community Development Department
500 Castro Street
Mountain View, CA 94039

Re: 294-296 Tyrella Avenue Builder's Remedy Project
Yes In My Back Yard Comment Letter

Dear Ms. Penollar:

YIMBY Law is a 501(c)3 non-profit corporation, whose mission is to increase the accessibility and affordability of housing in California. YIMBY Law pursues this mission through the enforcement of state housing laws, including the Housing Accountability Act ("HAA" or Gov. Code § 65589.5). As you know, subdivision (d)(5) of the HAA states that if a city or county does not have a "substantially compliant" Housing Element, that jurisdiction cannot utilize its zoning or general plan standards to disapprove a housing project that reserves 20% of its units affordable to lower income households. In other words, cities that fail to pass a compliant housing element by their deadline lose local control over housing development. This is known as the Builder's Remedy.

The City of Mountain View failed to adopt a substantially compliant Housing Element by the statutory deadline, and a preliminary application for an 85-unit housing development project with 20% low-income units at 294-296 Tyrella Avenue was submitted while the City was out of compliance. The submittal of a preliminary application ensures that the Builder's Remedy applies to the project throughout the entire entitlement process.[1] YIMBY Law understands that the City is attempting to execute an end run around the Builder's Remedy by enforcing its zoning through conditions of approval. We are writing to inform you that the City's actions are inconsistent with the Builder's Remedy and violate the HAA.

The City is taking the position that subdivision (f)(1) allows the City to enforce its zoning and general plan through conditions of approval. First, we note that subdivision (f)(1) is simply a general interpretive proviso and does not provide the City with substantive authority that overrides the

[1] See HCD Letter of Technical Assistance issued to Santa Monica, dated October 5, 2023, available at https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/santa-monica-TA-100522.pdf.

Builder's Remedy. Subdivision (d)(5) clearly eliminates a local government's authority to impose its zoning and general plan standards when the jurisdiction is out of compliance with the Housing Element Law.

Moreover, the City is entirely focused on the first half of the first sentence of subdivision (f)(1), completely ignoring the rest. Subdivision (f)(1) says that the HAA should not be interpreted to prohibit a local agency from requiring compliance "with objective, quantifiable, written development standards, conditions, and policies *appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584.*"

Subdivision (f)(1) merely references compliance with standards that are appropriate to and consistent with meeting a jurisdiction's RHNA – i.e. the "appropriate zoning and development standards" to accommodate RHNA that are identified in a local government's certified Housing Element. (Gov. Code § 65583(c)(1).) Said another way, a local government that does not have a certified Housing Element to accommodate its RHNA does not have *any* standards appropriate to and consistent with meeting its RHNA requirements. In short, a local government that does not have a certified Housing Element cannot rely on subdivision (f)(1) at all because the Housing Element process is how a local government identifies standards appropriate to and consistent with meeting RHNA.

Regardless, subdivision (f)(1) also states that any condition of approval must "be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development." This clearly demonstrates that the purpose of subdivision (f)(1) is to *assist* the project is getting built, not as a roadblock to the development of affordable housing as the City is attempting here.

The City has also argued that any zoning standard that is not codified within the chapter of the City Code titled "Zoning Ordinance" is outside the scope of the Builder's Remedy. The City cannot evade the HAA simply by moving zoning standards into a different chapter of the City Code. Under state law, zoning ordinances are defined broadly to include any standard that regulates the location, height, bulk, number of stories, and size of buildings and structures; the size and use of lots, yards, courts, and other open spaces; the percentage of a lot which may be occupied by a building or structure; the intensity of land use; offstreet parking and loading requirements; building setback lines; and inclusionary housing requirements. (Gov. Code § 65850.) The Builder's Remedy applies to *any* City ordinance that fits within the broad state law definition of a zoning ordinance.

The HAA provides additional provisions to prevent a jurisdiction attempting to prevent the development of housing through conditions of approval. A local government is also prohibited from imposing *any* condition that would have "a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households." (Gov. Code §

65589.5(i).) YIMBY Law reminds the City that the HAA squarely places the burden of proof on the City to demonstrate that it has complied with the HAA's requirements. (Gov. Code § 65589.6.) In other words, the applicant does not have to demonstrate that a condition of approval has a substantial adverse effect on the project, the burden is on the *City* to demonstrate that its conditions comply with this requirement.

The City's own analysis found that its BMR program, park land dedication requirements, TDM measures, and parking requirements all pose significant constraints on the development of housing.[2] Despite this admission, the City is now attempting to circumvent the HAA by imposing these constraints on an affordable housing project as conditions of approval. Even if the Builder's Remedy did not apply and the City were authorized to impose its zoning, which it is not, these conditions of approval *still* violate the HAA because the City admits they have a substantial adverse effect on the viability and affordability of housing.

The proposed project at 294-296 Tyrella Avenue provides desperately needed affordable housing in a community where skyrocketing housing costs have made housing unattainable except for the wealthiest individuals. We respectfully request that the City process the project consistent with the state law, and approve the project as submitted without the proposed unlawful conditions of approval. If the City fails to do so, YIMBY Law reserves the right to pursue litigation against the City to enforce state housing laws.

Best,

Sonja Trauss
Executive Director
YIMBY Law

Cc:
City attorney Jennifer Logue, Jennifer.Logue@mountainview.gov
Community Development Director, Dawn Cameron dawn.cameron@mountainview.gov
YIMBY Law attorney, Brian O'Neill, brian@pattersononeill.com

[2] Mountain View 6th Cycle Housing Element, Appendix D: Constraints Analysis, p. 245.

Oct 4, 2024

Mountain View City Council
500 Castro St.
Mountain View, CA 94041

Re: Builder's Remedy Projects in Mountain View

By email: citycouncil@mountainview.gov; Pat.Showalter@mountainview.gov; Lisa.Matichak@mountainview.gov; Margaret.Abe-Koga@mountainview.gov; Alison.Hicks@mountainview.gov; Ellen.Kamei@mountainview.gov; Lucas.Ramirez@mountainview.gov; Emily.Ramos@mountainview.gov

CC: cityattorney@mountainview.gov; city.mgr@mountainview.gov; community.development@mountainview.gov; city.clerk@mountainview.gov

Dear Mountain View City Council and City Staff,

The California Housing Defense Fund ("CalHDF") submits this letter to request that the Council and city staff comply with its obligations to process proposed builder's remedy projects under all relevant state and federal laws.

According to the Community Development Department's August 2024 report, the City is processing a number of builder's remedy applications:

- 294-296 Tyrella Avenue - 7-story, 85-unit apartment building
- 1500 N. Shoreline Boulevard - 1,914 unit project in eight buildings, each 9-15 stories
- 1920 Gamel Way - six-story, 216-unit condominium project
- 2645 – 2655 Fayette Drive - 7-story, 70-unit apartment building
- 901, 913, and 987 North Rengstorff Avenue - 15-story, 455-unit apartment development

The City is requiring these projects to comply with numerous aspects of its municipal code that together render the projects infeasible. The City's actions are a violation of the Housing Accountability Act ("HAA"). Separately, the City's continued imposition of fees in lieu of a dedication of parkland is in violation of the constitutional prohibition on exactions in excess of the impacts of proposed development.

I. The City Cannot Require Builder's Remedy Projects To Comply with Zoning and General Plan Standards

Density and height standards are not the only development standards that preclude housing development. The HAA requires that (emphasis added) **"**A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or **condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households**, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following …" (Gov. Code, 65589.5, subd. (d).)

Based on our enforcement work, the City has some of the highest park fees in the state. In fact, the City itself has come to the conclusion that they are a barrier to housing. From the City's Housing Element, Appendix D, "The economic analysis that the City conducted as part of this Housing Element Update (see Appendix H) found that Mountain View's park dedication requirements have a moderate to major impact on development costs for rowhouses and a major impact on development costs for multifamily development."

Given the staggering land costs in the City, and the fact that the projects must provide 20% low-income housing, also requiring more than $70,000 in parks fees per unit is a clear violation of state law. (See Gov. Code, 65589.5, subd. (d).)

The City's view is that it can apply any/all provisions of its code to these projects, provided that they do not pertain specifically to density, based on its reading of Government Code, Section 65589.5, subdivisions (f)(1) and (f)(3). This is incorrect. Subdivision (f)(1) allows cities to apply development standards to housing developments if those standards are "appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need" and that these standards must be "applied to facilitate and accommodate development at the density permitted on the site and proposed by the development." Builder's remedy projects only arise when a City has failed to adequately plan for its share of housing production required under its Regional Housing Needs Allocation ("RHNA"). In this situation, none of a jurisdiction's development standards are consistent with meeting housing production goals, because that jurisdiction has failed to produce a plan to justify its policies at all. And again, the City here has *admitted* that the standard in question is a major factor in making housing development infeasible. There is simply no way that requiring a dedication of parkland from new housing development is consistent with meeting the City's RHNA goals.

The parkland dedication requirement is also not covered by subdivision (f)(3). That provision allows cities to apply "fees and other exactions authorized by state law." The parkland

dedication requirement is not an exaction, because if it were it would be prohibited under state law. The Mitigation Fee Act allows for municipalities to impose monetary exactions on development projects, but requires that certain procedures are followed. Critically, municipalities must establish that exactions are related to (Gov. Code, § 66001, subd. (b)) and proportionate with (Gov. Code, § 66005, subd. (a)) identified impacts of the new development. Cities normally establish this relationship through a nexus study. Here the parkland dedication requirement is a generally applicable zoning requirement, not an exaction. While other cities have enacted similar policies under the Mitigation Fee Act, Mountain View did not conduct a nexus study or otherwise establish the dedication requirement as mitigating the impacts of the proposed development. Lastly, the dedication requirement, even if viewed as an exaction, is not authorized by law because it violates the U.S. Constitution. (See Section II, *infra*.)

In accordance with general interpretive provisions for statutes, and due to statutory construction rules (Code Civ. Proc., § 1859), such general protections of (f)(1) and (f)(3) do not overrule the particular provisions of Government Code, Section 65589.5, subdivision (d). The City may not condition approval to require the projects to adhere to these various code sections without making health and safety findings as required by the HAA. (*Id*. at subd. (d)(2).) Finally, the legislature clearly establishes that it is the policy of the State that the Housing Accountability Act shall be "interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." (*Id.* at (a)(2)(L).) Allowing cities to apply conditions of approval that render affordable housing developments infeasible through strained interpretations is clearly against the policy of the State of California. (See *California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 854.)

Given that these conditions have a tremendously adverse impact on project viability, if the City insists on applying these various conditions on the proposed builder's remedy projects, the state law (*id*. at subd. (i)) states clearly that it will bear the burden of proof in court (emphasis added):

> "If any city, county, or city and county denies approval or imposes conditions, including design changes, lower density, or a reduction of the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the housing development project's application is complete, that have a **substantial adverse effect on the viability or affordability** of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of conditions on the development is the subject of a court action which challenges the denial or the imposition of conditions, then the **burden of proof shall be on the local legislative body** to show that its decision is consistent with the findings as described in subdivision (d), and that the findings are

supported by a preponderance of the evidence in the record, and with the requirements of subdivision (o)."

II. The Parkland Dedication Requirement is a Per Se Regulatory Taking Under the Fifth Amendment of the US Constitution, and In-lieu Fee is an Unconstitutional Condition

The Fifth Amendment of the Constitution prohibits governments from taking private property without just compensation. The Fifth Amendment has been interpreted by the U.S. Supreme Court to prohibit zoning and land use regulations that effectively deprive an owner of protected property rights. (See *Penn Central Transportation Co. v. New York City* (1978) 438 U.S. 104.) Perhaps the most clear cut regulatory taking occurs when a land use regulation allows for a permanent physical occupation of private property. (*Loretto v. Teleprompter Manhattan Catv Corp.* (1982) 458 U.S. 419.) There is perhaps no more obvious example of a violation of the regulatory taking doctrine than the policy enacted by Mountain View here. The City requires, through zoning regulation, that property owners deed their private property over to the City without just compensation, for public use as a park. The fact that this dedication is only required as a condition of approval for residential development does not allow it to escape constitutional scrutiny. The Supreme Court has long held that regulatory conditions on development approvals that would otherwise constitute takings must be reasonably related to mitigating impacts of that development, and roughly proportional to those impacts. (*Nollan v. California Coastal Comm'n* (1987) 483 U.S. 825 (*Nollan*); *Dolan v. City of Tigard* (1994) 512 U.S. 374 (*Dolan*).) The City has established no such relationship because it cannot. A desire to acquire and develop parkland is not an impact of new development to be mitigated, and even if it were, the $70,000 per unit fee is wildly out of proportion to any purported impact. The City is free to acquire property for new parks by acquiring property on the private market, or by use of eminent domain powers providing just compensation to property owners, but it cannot simply enact a regulation requiring that developers give land to the City without just compensation.

The City perhaps enacted the parkland dedication policy under the mistaken impression that it is rendered legal by allowing developers to pay a fee in-lieu of dedicating land for parks. Prior California caselaw had indicated that legislatively enacted fees are not subject to constitutional takings limits. (*San Remo Hotel v. City and County of San Francisco* (2002) 27 Cal.4th 643, 668.) Recently, the U.S. Supreme Court decided that this is definitely not the case. (*Sheetz v. Cnty. of El Dorado* (2024) 601 U.S. 267.) In *Sheetz*, the California Court of Appeal had ruled that a traffic impact fee was not subject to the requirements of *Nollan* and *Dolan*, because it was a legislatively enacted exaction, following the *San Remo Hotel* decision. (*Sheetz v. County of El Dorado* (2022) 84 Cal.App.5th 394, 407 .) The U.S. Supreme Court overturned this ruling, finding that fees imposed as legislative enactments are subject to *Nollan* and *Dolan*. (*Sheetz*, 601 U.S. at 280.) After the *Sheetz* decision, there is no question that the *Nollan* and *Dolan* standards apply to the parkland dedication and in-lieu fee

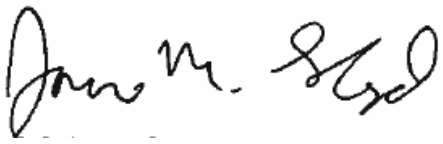
requirements at issue for these developments. Because the City has not established any nexus between new development and the need to acquire and develop parkland, nor that the $70,000 fee is proportionate to any impacts of new housing on parkland, the City is prohibited from applying this policy to new housing development including the five proposals currently under consideration.

As you are well aware, California remains in the throes of a statewide crisis-level housing shortage. If we do not allow sufficient housing development, more and more Californians will become and remain homeless. CalHDF urges the City to approve these builder's remedy projects without imposing the conditions, as is required by state and federal law. If the City declines to heed the above guidance and imposes the park dedication requirements on these or any other housing developments, CalHDF is prepared to bring legal action to invalidate these conditions and the citywide policy.

CalHDF is a 501(c)3 non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels, including low-income households. You may learn more about CalHDF at www.calhdf.org.

Sincerely,

Dylan Casey
CalHDF Executive Director



James M. Lloyd
CalHDF Director of Planning and Investigations

Exhibit C

CONCURRENCE IN SENATE AMENDMENTS
AB 1893 (Wicks)
As Amended August 23, 2024
Majority vote

SUMMARY

Major Provisions

1) Specifies that a local government may not disapprove a "Builder's Remedy project" if the local government's housing element was not in substantial compliance with the HAA on the date the Builder's Remedy project application was deemed complete.

2) Defines "Builder's Remedy project," as a project that meets the following criteria:

    a) The project will comply with one of the applicable affordability or project size criteria, specifically:

        i. The project includes a percentage of units that are set aside for affordable housing for a period of 55 years for rental units, and 45 years for ownership. Specifically a project must meet any of the following:

            a. 100% of the units, excluding the managers unit are affordable to lower income households;

            b. 7% of the units are affordable to extremely low-income households;

            c. 10% of the units are affordable to very low-income households;

            d. 13% of the total units are affordable to lower income households;

            e. 100% of the total units are affordable to moderate income households;

        ii. In lieu of meeting affordability criteria noted above, or local affordability requirements, as applicable, a project may meet the following:

            a. The project contains 10 or fewer units;

            b. The project is located on a site that is smaller than one acre;

            c. The project density exceeds 10 units per acre (4,356 square feet per unit or less); and

            d. The project meets specified density requirements.

        iii. The project does not abut a site where more than one-third of the square footage on the site has been used by a heavy industrial use in the past three years.

3) Provides that the following apply to the approval of Builder's Remedy projects.

a) Local governments may only require a project proposed by an applicant to comply with written objective standards and policies that would have applied to the project if it was proposed on a site that allowed the density and unit type proposed by the applicant. If the local agency does not have applicable standards for the project, the development proponent may identify and apply written objective standards and policies associated with a general plan designation and zoning that facilitates the project's density and unit type, as specified.

b) Local governments are precluded from imposing standards, conditions, or policies that render the project infeasible, as specified.

c) Builder's Remedy projects are not required to receive any additional approval or permit, or be subject to additional requirements including increased fees, as specified, solely because the project is a Builder's Remedy project.

d) Builder's Remedy projects shall be deemed consistent, compliant, and in conformity with applicable local plans and standards, as specified.

4) Expands the scope of local government activities that constitute a local government taking action to "disapprove the housing development project," to include when a local government does the following:

a) Takes a final administrative action, other than a vote of the legislative body, on a project;

b) Violates development review standards of the Housing Crisis Act that limit the number of hearings, including limitations on the number of hearings a local agency may conduct in its review of the development proposal; and

c) Undertakes a course of conduct that effectively disapprove the housing development project, as specified.

Senate Amendments

1) Add legislative findings.

2) Expands the scope of local government activities that constitute a local government taking action to "disapprove the housing development project."

3) Allow a developer utilizing the Builder's Remedy to request and receive two additional density bonus concessions and incentives above the existing amount.

4) Allow a developer that utilizes the Builder's Remedy that restricts 7% of the units for extremely low-income households to receive the same density bonus allowed under current law for restricting 10% of the units for very low income households or a 32.5% density bonus.

5) Prohibits a local government from applying an inclusionary housing ordinance that requires more affordable housing units that required under the Builders Remedy unless it first makes written findings, supported by a preponderance of evidence, that compliance with the local percentage requirement or the affordability level, or both, would not render the housing development project infeasible.

COMMENTS

Housing Accountability Act (HAA)/Builder's Remedy: In 1982, the Legislature enacted the Housing Accountability Act (HAA). The purpose of the HAA is to help ensure that a city does not reject or make infeasible housing development projects that contribute to meeting the housing need determined pursuant to the Housing Element Law without a thorough analysis of the economic, social, and environmental effects of the action and without complying with the HAA. The HAA restricts a city's ability to disapprove, or require density reductions in, certain types of residential projects. The HAA does not preclude a locality from imposing developer fees necessary to provide public services or requiring a housing development project to comply with objective standards, conditions, and policies appropriate to the locality's share of the RHNA

One constraint within the HAA on local governments' authority to disprove housing, which has gained recent attention, is the "Builder's Remedy." The Builder's Remedy prohibits a local government from denying a housing development that includes 20% lower-income housing or 100% moderate-income housing that does not conform to the local government's underlying zoning, if the local government has not adopted a compliant housing element. A number of developers have attempted to use the Builder's Remedy in the last few years.

For example, the City of La Cañada Flintridge failed to adopt a compliant housing element. Using the Builder's Remedy, a developer proposed a project for 80 units of affordable housing on church-owned land that was not zoned for housing or for density to accommodate the proposed project. The City denied the project and the developer sued. The City of La Cañada Flintridge argued they were not required to process an application under the HAA to approve a housing development that did not comply with their underlying zoning because they had "self-certified" their housing element by adopting a housing element, even though it was not certified as compliant by HCD. The court ruled that the city was not in compliance despite the fact that they had "self-certified" and found the housing element the city adopted out of compliance with Housing Element Law for various reasons.

Under existing law, as long as a developer includes 20% of the units in a development for lower income households or 100% for moderate income and the local agency does not have a substantially compliant housing element, a development must be approved. The development is not required to meet the underlying zoning, meaning a development can be proposed on a site regardless of the designated use or density. Anecdotally, it appears that although developers are utilizing Builder's Remedy, few projects are going forward as proposed because developments are still subject to the California Environmental Quality Act (CEQA), but rather, the law is being used as a leverage point to get local agencies to approve developments.

This bill proposes to set parameters around the density, underlying zoning, and objective standards that a development must meet in order to qualify for the Builder's Remedy. It would also reduce the amount of affordable housing a development must include to qualify.

Underlying Zoning: Under existing law, inconsistency with the zoning or general plan cannot be used as a reason to deny a Builder's Remedy project. This bill would set parameters around where the Builder's Remedy could be used. This bill would only allow a development to qualify on a site where housing, retail, office, or parking are permissible uses. A site could be zoned for agricultural use, as long as 75% of the perimeter adjoins site that are for an urban use. Developments that are on a site or adjoined to any site where more than one-third of the square

footage on the site is dedicated to industrial use would no longer be eligible to utilize the Builder's Remedy.

Affordability: To access Builder's Remedy a developer must include 20% of the units for lower income households or 100% for moderate-income households. This bill proposes to change that requirement. For developments less than 10 units, there would be no affordability requirement. For all other developments, the percentage would be reduced from 20% for lower income households to 13% for very low income households. Lower income households are defined as those households that make 60% of area median income or less. Developments with less than 10 units would have no affordability requirement.

Streamlining: A development utilizing the Builder's Remedy is subject to CEQA. This bill would allow a development that conforms to the density and objective standards to use an existing streamlining process – either AB 2011 (Wicks), Chapter 647, Statutes of 2022, or SB 423 (Wiener), Chapter 778, Statutes of 2023. To qualify for streamlining in either of these processes, a developer would have to meet the affordability requirements, which are higher in both AB 2011 and SB 423, than in this bill. In addition, all of the limitations on location in AB 2011 and SB 423 would apply. Both exempt sensitive environmental sites and have some exemptions in the coastal zone. If a development does not use one of these streamlining options, it would remain subject to CEQA.

HAA Limitations on Disapproving Projects. The HAA requires that a local government cannot disapprove a housing development project that is consistent with the jurisdiction's zoning ordinance and general plan designation, unless the preponderance of evidence shows that certain conditions are met. This provision defines what would constitute denial of a Builder's Remedy project, as well as other HAA protected developments, and thus a violation of the HAA subject to enforcement. The HAA currently specifies certain actions by a local government that individually or collectively constitute a local government "disapproving" a project. This bill expands the scope of local government actions that constitute disapproval of a project to include instances where a local government "effectively disapproves" a project through sustained inaction or the imposition of burdensome processing requirements. It is likely that the ultimate scope of this provision would be litigated by developers and local governments.

According to the Author
"It is going to take all of us to solve our housing crisis, and AB 1893 will require all cities and counties to be a part of the solution. It does so by modernizing the builder's remedy to make it clear, objective, and easily usable. A functional builder's remedy will help local governments to become complaint with housing element law. Where they do not, it will directly facilitate the development of housing at all affordability levels. The message to local jurisdictions is clear — when it comes to housing policy, the days of shirking your responsibility to your neighbors are over."

Arguments in Support
According to the sponsor, the Attorney General, "AB 1893 would clarify and modernize the builder's remedy by providing clear, objective standards for builder's remedy projects, including density standards and project location requirements. With these updates, the builder's remedy will be a more effective enforcement tool because local governments will face greater certainty of swift consequences when they do not adopt a timely and substantially compliant housing element. AB 1893 would also align the builder's remedy with laws and policies that have

emerged in the more than 30 years since the builder's remedy was enacted, including sustainable communities strategies like promoting development in urban infill and near transit centers, and promoting higher density housing that is more affordable than single-family homes."

Arguments in Opposition
According to various affordable housing organizations, this bill because the amount of affordable housing a developer must include in a development to qualify for the Builder's Remedy was reduced and the bill imposes an "unworkable project-by-project feasibility study requirement in order for a jurisdiction to apply a local inclusionary requirement to a builder's remedy project. State law already contains safeguards to ensure that local inclusionary requirements are not an impediment to development, including providing for a single feasibility study of a local ordinance in certain circumstances rather than expensive project-by-project studies. This is consistent with the state's recognition of inclusionary housing requirements as an important tool to increase affordable housing production and affirmatively further fair housing."

FISCAL COMMENTS

According to the Senate Appropriations Committee,

1) The Department of Housing and Community Development (HCD) indicates that the workload associated with this bill would not necessitate the addition of a full PY of new staff, but notes that the bill would impose new workload to provide technical assistance to local agencies, developers, and other stakeholders, and to process case complaints from developers, housing advocates, and legal organizations. Depending on the volume of technical assistance requests and increased complaints regarding violations of the HAA, staff estimates HCD could incur ongoing annual costs in the range of $50,000 to $150,000 for staff time associated with this workload. (General Fund)

2) Unknown, potentially significant cost pressures due to increased court workload to adjudicate additional cases filed under the HAA as a result of the expansion of projects to which the HAA would apply and the expanded definition of what constitutes disapproval of a project. Staff notes that, in addition to cases referred to the Attorney General by HCD to enforce violations of the HAA, eligible litigants include, project applicants, persons who would be eligible to reside in a proposed development, and specified housing organizations. (Special Fund – Trial Court Trust Fund, General Fund).

3) Unknown local mandated costs. While the bill would impose new costs on local agencies to revise planning requirements and considerations for builder's remedy housing developments, these costs are not state-reimbursable because local agencies have general authority to charge and adjust planning and permitting fees to cover their administrative expenses associated with new planning mandates. (local funds)

VOTES:

ASM HOUSING AND COMMUNITY DEVELOPMENT: 7-0-2
YES: Ward, Grayson, Kalra, Lee, Quirk-Silva, Reyes, Wilson
ABS, ABST OR NV: Joe Patterson, Sanchez

ASM LOCAL GOVERNMENT: 7-0-2
YES: Juan Carrillo, Valencia, Kalra, Pacheco, Ramos, Ward, Wilson

ABS, ABST OR NV: Waldron, Essayli

ASM APPROPRIATIONS: 11-2-2
YES: Wicks, Arambula, Bryan, Calderon, Wendy Carrillo, Mike Fong, Grayson, Haney, Hart, Pellerin, Villapudua
NO: Sanchez, Dixon
ABS, ABST OR NV: Jim Patterson, Ta

ASSEMBLY FLOOR: 54-1-25
YES: Addis, Aguiar-Curry, Alanis, Alvarez, Arambula, Bains, Berman, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Chen, Flora, Mike Fong, Vince Fong, Garcia, Gipson, Grayson, Haney, Hart, Hoover, Jackson, Jones-Sawyer, Kalra, Lee, Low, Lowenthal, Maienschein, McCarty, McKinnor, Stephanie Nguyen, Ortega, Papan, Jim Patterson, Joe Patterson, Pellerin, Quirk-Silva, Ramos, Reyes, Rodriguez, Blanca Rubio, Santiago, Schiavo, Soria, Ting, Villapudua, Ward, Weber, Wicks, Wilson, Wood, Zbur, Robert Rivas
NO: Essayli
ABS, ABST OR NV: Bauer-Kahan, Bennett, Boerner, Cervantes, Connolly, Megan Dahle, Davies, Dixon, Friedman, Gabriel, Gallagher, Holden, Irwin, Lackey, Mathis, Muratsuchi, Pacheco, Petrie-Norris, Rendon, Luz Rivas, Sanchez, Ta, Valencia, Waldron, Wallis

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