

515-545 N. Whisman Project Description

The City's East Whisman Precise Plan ("EWPP") has designated the 515-545 N. Whisman ("Property") in its Mixed Use, Low Intensity Character Sub-Area Area and the proposed new, 195-unit rowhouse development ("Project") aims to create a thoughtfully designed residential community that enhances the neighborhood while addressing local housing needs. The Project provides a mix of 195 three-story attached rowhouse condominiums arranged in a pedestrian-friendly layout with a combination of three- and four-bedroom homes. Each unit is designed with modern living in mind, featuring open floor plans, private outdoor spaces, and private garage parking. The 10-acre Property is currently comprised of two vacant existing office buildings and surface parking, all of which will be demolished. The Project proposes to remove the majority of the existing trees from the Property (316 of 335 trees) and replace them with 293 new replacement trees plus 158 vertical accent trees in the alleyways, all of which shall be native species. The 139 heritage trees removed will be replaced with 278 trees (2:1).

The site is organized into two neighborhoods, each with a different rowhouse floor plan configuration and distinct architectural expression. In each neighborhood, the rowhouses exhibit individual character, consistent with the City's rowhouse guidelines, while at the same time contributing to coherent overall building massing. The styles of the buildings are contemporary takes on traditional styles of architecture that one finds in Mountain View and the surrounding communities. The material palette includes stucco, fiber cement shingles, fiber cement board and batten siding, masonry veneer, and wood look stained siding. The development prioritizes sustainability with features like installed solar power, all electric homes, energy efficient windows and exterior envelope, and improved indoor air quality.

The site plan fulfills the EWPP vision of a compact, walkable development integrated with the surrounding neighborhood through a network of streets and pedestrian greenways and that includes significant common open space. As noted on the Project submittal, we are proposing three Public Access Easement areas across the property in an East/West orientation to meet this vision. These three PAE's all connect to an existing 10-foot-wide trail on the eastern boundary provide public pedestrian corridors. At the south-east corner of the site is a publicly accessible mini park is conveniently located at the intersection of these two public pathways. All homes have convenient access to on-site mini-parks, a dog park, and interior, linear greenways which generally run in a North/South orientation.

The proposed landscape design celebrates sustainability, community engagement, and year-round visual appeal through a carefully curated plant palette and thoughtful spatial planning. The concept features a blend of native species and drought-tolerant evergreens to not only reduce water use but ensure a resilient and low maintenance landscape.

The project site will be subdivided pursuant to the California Subdivision Map Act and the City of Mountain View Subdivision Ordinance to create a condominium subdivision consisting of 195 residential units along with associated common parcels, and easement dedications.

The subdivision will create 195 airspace condominium units within multi-family residential buildings. Each unit will be separately owned, while underlying land and building shells will remain in common ownership through a Homeowners Association (HOA). Internal private streets will be subdivided into separate parcels to be owned and maintained by the HOA and these private street parcels will provide

Griggs Resource Group
935 Moraga Road, Suite 200
Lafayette, California 94549

vehicular and pedestrian access to all residential buildings and parking areas. Emergency vehicle access and utility access will be preserved through recorded private street easements granted to the City and utility providers. Multiple parcels will be designated as common open space. These parcels will accommodate:

- Landscaped courtyards
- Community recreation areas
- Pedestrian paseos and trails
- Required stormwater treatment areas

Utility easements will be recorded across private parcels to allow for gas, water, sewer, storm drain, electricity, and communications infrastructure. Private reciprocal access easements will allow for shared use of drive aisles, guest parking, and pedestrian walkways.

Public utility easements (PUEs) will be granted to accommodate above-ground and underground utilities. Sidewalk easements or public access easements (PAEs) will be provided where project walkways connect to the public right-of-way.

The Final Map will reflect the creation of condominium units, common parcels, and easement dedications and the HOA will assume responsibility for operation and maintenance of all private streets, open space parcels, and shared facilities. Publicly dedicated easements will be maintained by the appropriate utility or the City of Mountain View.

Griggs Resource Group
935 Moraga Road, Suite 200
Lafayette, California 94549

515-545 N. Whisman Density Bonus Application

We proposed a 195-unit townhome project (“Project”) at 515 Whisman (“Property”) in the City of Mountain View (“City”). This memorandum outlines our *updated* Density Bonus application and associated incentives and waivers pursuant to the State of California’s State Density Bonus Law (“SDBL”) (California Government Code § 65915). To facilitate processing of this request, we have included the below explanation of the SDBL and its application to the Project, as well as references to specific SDBL provisions and existing case law.

Base Density Calculation

The East Whisman Precise Plan (“EWPP”) does not establish a dwelling unit/acre density that can be used to establish the Property’s base density. Therefore, City Code section 36.48.75.j provides “[w]here floor area ratio is the density standard, the base units are proportional to the number of project units and maximum allowable residential floor area, with the same ratio of project units to residential floor area, calculated as follows:”

$$\text{Base Units} = \text{Project Units} * \frac{\text{Maximum Allowable Gross Floor Area} - \text{Project Nonresidential Gross Floor Area}}{\text{Project Gross Floor Area} - \text{Project Nonresidential Gross Floor Area}}$$

- Project Units = 195
- Max Allowable Gross Floor Area = 435,717 (site area at 1.0 FAR)
- Project Nonresidential Gross Floor Area = 0
- Project Gross Floor Area = 468,105

The Property’s base density is calculated based on applicable, objective development standards, including FAR (Gov. Code § 65915(o)(6)(A)). For the Property, 1.0 FAR is the maximum FAR allowed under the EWPP’s objective development standards. Therefore, a 1.0 FAR applied to the Property’s 10 acres for the maximum allowable gross floor area (435,717 sf), the Project’s Gross Floor area (468,105 sf), and the 195 Project Units produces a calculated base density of 182 units (181.45, rounded up as required in City Code § 36.48.75(b)).

Density Bonus

The Project has a base density of 182 units (as calculated above). By providing 15% of the base units (28 units) as moderate-income inclusionary units with an overall average of 100% of the Area Median Income (“AMI”), the Project is entitled to a 10% density bonus (18.2 units rounded up to 19 units per (Gov. Code § 65915(f)(4))). The Project will use 13 of the available 19 bonus units to provide a total of 195 Project Units.

Pursuant to the SDBL, the City is required to provide the Project with one “concession” or “incentive” (collectively “Incentive”), unlimited development standard waivers (“Waiver(s)”), and the aforementioned density bonus.

Waivers

For projects that qualify for a density bonus under the SDBL, a city may not “apply any development standard that will have the effect of physically precluding the construction” of the project. (Gov. Code § 65915(e)(1).) To effectuate this provision, the SDBL authorizes an applicant to request from the city a “waiver or reduction” of any development standard that would physically preclude development of the project “at the densities or with the concessions or incentives permitted under [the SDBL].” (*Id.*) A “development standard” includes, but is not limited to, any “site or construction condition,” such as height limits, setbacks, FARs, open space requirements, minimum lot area per unit requirements, and parking ratios imposed by any city ordinance, general plan element, specific plan, charter, or other local condition, or other law, policy, or regulation adopted by the city. (Gov. Code § 65915(o)(2).)

There is no limit to the number of waivers an applicant may request for a project, and a request for a waiver neither increases nor decreases the number of Incentives to which the applicant is entitled. (*See id.*; Gov. Code § 65915(e)(2).)

The SDBL “includes very limited exceptions to its requirements and places the burden on a city to establish an exception applies.” (*Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 770.) To deny a request for a waiver the SDBL requires the city to “find, based on substantial evidence,” that granting a waiver request would: 1) result in a “specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health and safety”; 2) result in an adverse impact to “any real property that is listed in the California Register of Historical Resources”; or 3) be contrary to state or federal law. (Gov. Code § 65915(e)(1); *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 770–771.)

Government Code Section 65589.5 defines a “specific, adverse impact upon health and safety” as “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.” (Gov. Code § 65589.5(d)(2).) Inconsistency with a zoning ordinance or general plan land use designation is not a specific, adverse impact upon the public health or safety. (Gov. Code § 65589.5(d)(2)(A).) Further, the legislature has declared its intent that “the conditions that would have a specific, adverse impact upon the public health and safety, as described in paragraph (2) of subdivision (d)...arise infrequently.” (Gov. Code § 65589.5(a)(3).) If a court finds that a city’s refusal to grant a waiver or reduction of development standards violates the SDBL, “the court shall award the plaintiff reasonable attorney’s fees and costs of suit.” (Gov. Code § 65915(e)(1).)

A city may not deny a request for a waiver on the basis that the project could be redesigned to avoid the need for the waiver (e.g., change in building envelope or elimination of amenities). California courts have consistently rejected this argument, holding that the SDBL allows a qualifying project to request and receive as many waivers as are needed to permit construction of the project, as designed. (*See Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 774 (rejecting plaintiff’s argument that a waiver for height exceedance should have been denied because the project could have been built shorter if a courtyard was eliminated); *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1346-47 (“nothing in the [SDBL] requires the applicant to strip the project of amenities, such as an interior courtyard, that would require a waiver of development standards. Standards may be waived that physically preclude construction of a housing development meeting the requirements for a density bonus, period. (§ 65915, subd. (e)(1).) The [SDBL] does not say that what must be precluded is a project with no amenities, or that amenities may not be the reason a waiver is needed....Had the City failed to grant the waiver and

Griggs Resource Group
935 Moraga Road, Suite 200
Lafayette, California 94549

variances, such action would have had ‘the effect of physically precluding the construction of a development’ meeting the criteria of the density bonus law.”))

Incentive

The Project is entitled to one Incentive in exchange for providing the 15% moderate-income housing (Gov. Code § 65915(d)(2)(A)).

The City must grant the Incentive request unless it can make a written finding, based on substantial evidence, that: “*(1) the incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs; (2) the incentive would have a specific, adverse impact on the public health or safety, or upon an historical resource listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households; or (3) would be contrary to state or federal law*” (Gov. Code § 65915(d)(1)).

In reviewing an applicant's request for an incentive, the City may only require “reasonable documentation” showing cost reductions resulting from the Incentive. (Gov. Code § 65915(j)(1)). The City may not require information, including financial information, that demonstrates that an Incentive is necessary to make a SDBL project “economically feasible.” (*Schreiber v. City of Los Angeles* (2021) 69 Cal.App.5th 549, 557-58.) In *Schreiber*, the court explained that there is a presumption that an Incentive will result in cost reductions and that an applicant “is not required to establish that cost reductions will result.” (*Schreiber* at 555). Instead, the City must approve the Incentive request unless it makes one of the written findings above.

Proposed Incentive

The proposed Incentive modifies the City Code and associated Below-Market-Rate Housing Administrative Guideline (“BMR Guidelines”) which state: “*All BMR units shall be reasonably dispersed throughout the residential development and consistent with Federal and State fair housing laws, have a distribution of units by number of bedrooms proportionate to the market-rate units, and be of comparable size based on net habitable square footage of the units...*” (City Code § 36.40.10.f; BMR Guidelines, p. 8.). The Project will provide the required 25% BMR units (46 total units) in 16 buildings throughout the Project site and in the exact same proportion to the number of bedrooms in the market rate units, as shown below and consistent with the City Code’s Affordable Housing Program and BMR Guidelines. (City Code, §§ 36.40.10; BMR Guidelines.)

BMR Unit Proportionality				
UNIT TYPE	3 Bedroom	3 Bedroom %	4 Bedroom	4 Bedroom %
Market Rate	177	91%	18	9%
BMR Units	42	91%	4	9%

The proposed Incentive modifies the City’s “comparable size” requirement by placing the BMR units in the “Neighborhood 2” buildings where the typical 3-bedroom units have slightly less square footage than the average 3-bedroom units throughout the Project.

Notwithstanding the requested Incentive, the Project meets the requirement that “*The exterior design of the BMR units shall be consistent with the market-rate units in the project and be comparable in terms of interior design, appearance, materials, and quality of finish.*” (BMR Guidelines, p. 8; City Code § 36.40.10.f.) Specifically, the Incentive (1) does not segregate affordable units or limit access to amenities, (2) does not reduce quality or habitability and (3) ensures that these affordable units remain integrated and indistinguishable in finish quality and amenities, aside from floor area.

The SDBL Allows the Requested Incentive

The Incentive requested (1) is consistent with the SDBL, (2) results in identifiable and actual cost reductions that facilitate the provision of affordable units, and (3) complies with state housing laws and the City’s BMR Guidelines.

The City must grant the requested Incentive unless the City makes written findings, based on substantial evidence, that the concession would (1) not result in a cost reduction, (2) have a specific adverse impact on health or safety, or (3) be contrary to state or federal law. (Gov. Code § 65915(d)(1).)

Judicial authority makes this clear: there is a presumption that an Incentive will result in cost reductions and that an applicant “is not required to establish that cost reductions will result.” (*Schreiber* at 555.) Instead, a city must approve the request *unless* it makes one of the written findings set forth in Section 65915(d)(1). (*Id.*) “By requiring the city to grant incentives unless it makes particular findings, the statute places the burden of proof on the city to overcome the presumption that incentives will result in cost reductions.” (*Id.* at 556.) As such, a city is “not required to make an affirmative finding that the incentives would result in cost reductions, or to cite evidence to establish a fact presumed to be true.” (*Id.* at 560.)

The proposed Incentive is also consistent with, and supported by, technical assistance letters from the California Department of Housing and Community Development (“HCD”), explaining that a SDBL Incentive may be used to modify certain local inclusionary requirements.

- “The SDBL can be used to modify or waive provisions of an inclusionary ordinance. For example, a mixed-income project that relies on tax credits may need to waive a requirement that affordable units be dispersed among the market-rate units.” (8500 Santa Monica Boulevard – Letter of Technical Assistance, September 2, 2022, p. 3.)
- “[A] concession can be used to modify certain provisions of an inclusionary ordinance. In addition to requiring that a minimum percentage of units in a project are provided as deed-restricted affordable units, inclusionary ordinances sometimes contain other requirements and development standards, such as dispersal requirements, design comparability requirements, mandated proportions of affordability... An SDBL concession can be used to modify a development standard or zoning code requirement if doing so would result in a construction or operational cost reduction in providing affordable housing (i.e., improve the economic feasibility of the project).” (Sonoma County Sonoma Developmental Center – Letter of Technical Assistance, April 26, 2024, p. 3.)

The requested Incentive to modify local “same size” requirements improves the Project’s financial viability by reducing the subsidy required to deliver the affordable units. Accordingly, it is authorized under the SDBL and the City is required to grant the Incentive, unless the City meets its burden to make one of the three enumerated findings stated above.

Exhibit A

The following Waivers are requested

<u>No.</u>	<u>Standard or Requirement</u> (Citation and Requirement)	<u>Project Proposal</u>	<u>Waiver Justification</u>
1	Maximum FAR EWPP limits the FAR to 1.0 and the RHDG ¹ limits the FAR to .9 [Page 68, Section 3.4 Table 6, EWPP; Page 15, RHDG]	The Project's FAR is 1.07	Absent the waiver, the Project would not be feasible and would preclude construction of the Project as designed and result in a reduction in the number of total housing units. Sheet A0.2.0 shows a loss of 30 units.
2	Site Coverage Maximum Site Area Covered by structures-The RHDG limits the coverage to 35% [Page 15]	Project's coverage is 39.0%	Absent the waiver, the Project, as designed, would not be feasible and would result in a reduction in the number of total housing units. Sheet A0.2.9 shows a loss of 36 units.
3	Minimum Private Open Space The RHDG's requires 100sf per unit of private open space [Page 15]. 6' minimum dimension of private open area per EWPP 3.3.3 (3) pg 62	The Project provides 85 sf per unit on average (16,658 total where 19,500 are required). Private open space dimensions vary from 4'6" to 6'9".	Absent the waiver, the Project, as designed, would not be feasible and would result in a reduction in the number of total housing as shown on Sheet A0.2.2
4	Residential Paseo Minimum Dimensions The EWPP requires a 40' minimum dimension building to building and other dimensions for setbacks from path and path width as provided in the Standard Street and Paseo Sections in Chapter 5 [Table 28 and Figure 39, Pages 152-153, EWPP]	Paseos are approximately 30' building to building and do not meet minimum building to building, walkway, and pathway to building dimensions.	Modification to the Project's design to address these requirements is not required pursuant to SDBL as meeting this requirement would result in a reduction in the number of total housing units. Sheet A0.2.4 shows a loss of 64 units
5	Publicly Accessible Mini-Park Size The EWPP requires a publicly accessible mini park at the site that is between 0.3 and 1.0 acres [EWPP 3.7.2 Fig. 12]	The proposed Privately Owned and Publicly Accessible Mini Park does not meet the minimum 0.3 acres as measured in the precise plan.	The City Staff is not including the access to the POPA in the calculation of the size of the Park subsequently a waiver is required. See Sheet A0.2.16 for the loss of 2 units
6	Street A The EWPP requires dedication and improvement of a new street running along the East of the Property from North to South [EWPP, Chapter 5, Figure 22, Page 131]	The Project is not providing Street A	If Street A were required, the Project, as designed would not be feasible and would result in a reduction in the number of total housing units. See Sheet A0.2.6 for loss of 9 units.
7	Public Circulation Network	The Project is providing PAE's in 3	If additional PAE's were required, the Project, as designed would not be feasible

¹ Mountain View Residential Design Guidelines

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	Provide a PAE and improvements for either Service Street, Greenway, Multi-Use Path or Paseo from East to West. [EWPP page 45-46, Figure 9]	East-West locations but not all of the paths are designed according to the Standards in Chapter 5 of the Mobility Section	as access to the units along the Paseo's and the private spaces adjacent thereto would need to be significantly widened. This would result in a reduction in the number of total housing units by 12 units, as shown on Sheet A0.2.10.
8	Maximum Block Area and Length, block circulation plan The EWPP provides a maximum block length and area in Section 3.7.1 (2) and that those blocks are delineated based on public access network connections.	The project has some blocks that exceed the maximum length and perimeter requirements.	If these were provided, the Project, as designed would not be feasible and would result in a reduction in the number of total housing units. See Sheets A2.4, A2.6, and A2.10
9	Ground-Level Plate Height The EWPP has a maximum ground-level plate height requirement [EWPP Page 58, Sec. 3.3.1 (7)]	The Project's proposed design does not meet this requirement	See Sheet A0.2.8 for the impact and loss of 22 units. The Project, as designed would not be feasible and modification to the Project's design to address this requirement is not required pursuant to SDBL.
10	Maximum Front Setback / Street Wall Location Building facades shall be placed within 30' of back of sidewalk at North Whisman and 20' at local streets and residential streets. [EWPP pg 69 Sec. 3.4 (2)]	The Project's proposed design does not meet this requirement	The Project, as designed would not be feasible and modification to the Project's design to address this requirement is not required pursuant to SDBL. See sheet A0.2.12
11	Property Line Streets and Connections Section 3.3.4(2) from the EWPP requires 20' minimum setbacks at certain locations	The Project's proposed design does not meet this requirement	If these requirements were to be met, the Project, as designed would not be feasible and modification to the Project's design to address this requirement is not required pursuant to SDBL
12	Circulation Network Type Design Standards Service Streets, paseos, greenways, and alleys have design standards such as curb width, sidewalk width, overall width, and other requirements. [EWPP Page 148 et. seq., including table 26 and Figures 34, 35]	Not all circulation network types proposed, such as paseos, alleys, and service streets, meet all the design standards.	If these requirements were to be met, the Project, as designed would not be feasible and modification to the Project's design to address this requirement is not required pursuant to SDBL
13	PUE Requirements The EWPP requires a 10' Public Utility Easement along North Whisman Road [EWPP page 138: Table 19 and Figure 25]	PAE and PUE easements are provided as necessary to develop the Project, as designed and will provide the intended use and benefit to the City,	Absent the waiver, the Project, as designed, would not be feasible and would result in a reduction in the number of total housing units. See Sheet A.0.2.13

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		but are not proposed in conformance with the required PUE for the EWPP.	
14	Street Design and Street Sections Service Streets Standards provided in Table 26 and Figures 34 and 35 (in the EWPP (Page 148 et. seq.) and the Residential Paseos shall be designed in a manner consistent with Table 28 and Figure 39 of the EWPP (page 152 et seq.)	The Project's proposed design does not meet this requirement	If these requirements were to be met, the Project, as designed would not be feasible and modification to the Project's design to address this requirement is not required pursuant to SDBL
15	TDM Requirements from EWPP. Section 3.9.2 from the EWPP require minimum carshare parking, bicycle parking, shared workspace, accessible storage, and bikeshare services	The Project's proposed design does not meet this requirement	If these requirements were to be met, the Project, as designed would not be feasible and modification to the Project's design to address this requirement is not required pursuant to SDBL
16	Minimum Distance Between Buildings The RHDG Sec 6.6.5 requires 15 feet between 3-story buildings	The Project has 12 feet between buildings in a few cases	Absent the waiver, the Project, as designed, would not be feasible and compliance with the standard would physically preclude the construction of the density proposed, resulting in a reduction in the number of total housing units. Sheet A0.2.3 shows a loss of 2 units.
17	Regular Massing Breaks Section 4.1.3 (8) (a) from the EWPP requires 25' breaks	The Project has 12 to 15 feet between buildings but not 25'.	Absent the waiver, the Project, as designed, would not be feasible and compliance with the standard would physically preclude the construction of the density proposed, resulting in a reduction in the number of total housing units.
18	Landscaped Open Area Minimum RHDG 6.8 p. 20 requires 35% open space	The Project provides 28% open space	Absent the waiver, the Project, as designed, would not be feasible and compliance with the standard would physically preclude the construction of the density proposed, resulting in a reduction in the number of total housing units. See Sheet A.0.2.9
19	Driveway Apron Maximum RHDG Sec 7.5.4 p. 41 limits apron to 4'	Project provides 5' to 6'6" due to overhangs and needed fire ladder access	Absent the waiver, the Project, as designed, would not be feasible and compliance with the standard would physically preclude the construction of the density proposed, resulting in a

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			reduction in the number of total housing units. See Sheet A.0.2.11
20	Shared Trash Service Instead of Individual Carts	Project proposes individual carts	Absent the waiver, the Project, as designed, would not be feasible and compliance with the standard would physically preclude the construction of the density proposed, resulting in a reduction in the number of total housing units. See Sheet A.0.2.7