

August 19, 2024

Project Planner
City of San Rafael Planning Division
1400 Fifth Avenue, Top Floor
San Rafael, CA 94901

**Re: Request for Density Bonus and Concessions
555 Northgate Drive | APN 175-060-32**

To Whom It May Concern:

Affordable Housing Preservation Investors, Inc. (AHPI) requests a density bonus and concessions for the aforementioned property pursuant to State Density Bonus Law (SDBL) [Government Code (GC) Section 65915]. According to the City of San Rafael’s general plan and zoning code, the site is classified as Office Mixed Use and Office District, respectively. These classifications permit residential uses with a maximum net density of 43.6 units per acre pursuant to the general plan. The proposed project is an apartment community which is consistent with both the general plan and zoning code.

The project consists of 250 units and 132 parking stalls with a gross floor area of 257,057 square feet. The affordable units will be distributed throughout the project with equal access to community amenities. The below tables illustrate the proposed density bonus and affordability pursuant to applicable City codes and state laws.

Project Base Density	2.22 ac x 43.6 du/ac	97 du
Proposed Density	250	
Density Bonus	$(250 \text{ du} - 96 \text{ du}) \div 97 \text{ du}$	158%
Total Density Bonus Units	153 units	

	AMI Level	Low	Moderate	Manager Unit Market Rate	TOTAL
	# UNITS	200	47	3	250
	%	80%	19%	1%	
Laws / Codes	City Res. #14890	X	X		
	Housing Acct. Act	X			
	State DB Law	X	X		

1. **City of San Rafael’s Affordable Housing Requirement Program [Resolution No. 14890]:** The City requires two tiers of affordability requirements depending on the size of the residential project – primary requirement and secondary requirement.
 - i. **Primary requirement:** Projects with more than 15 units must set aside 5% of its units for low-income households. The project meets and exceeds this requirement by setting aside 80% of its units to low-income households as indicated in the table above.

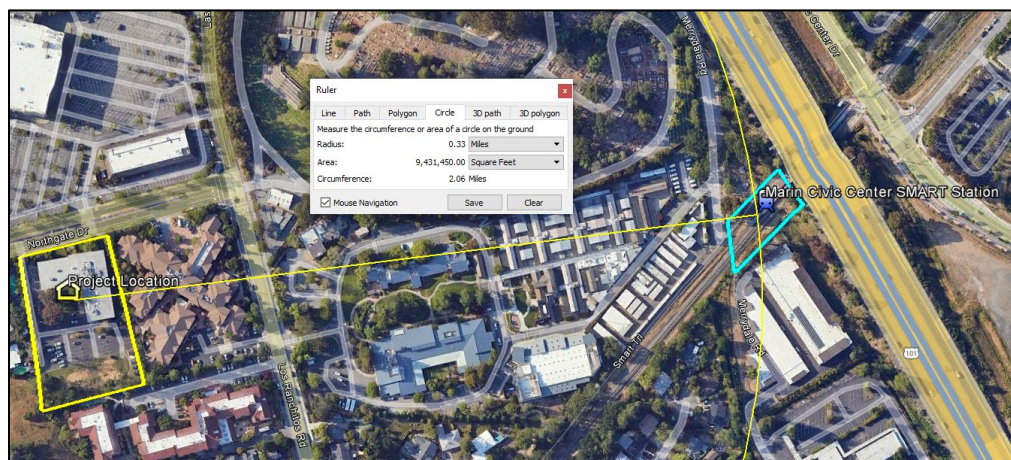
- ii. **Secondary requirement:** Projects with more than 15 units have the choice between four alternative means to provide affordable housing such as additional on-site affordable units, payment of an in-lieu fee, off-site affordable units, or donation of land to the city. AHPI opts to provide additional on-site affordable units by either providing an additional 5% of its units to low-income households or 10% of its units to moderate-income households. Both options are met as indicated in the table above.
2. **Housing Accountability Act [GC §65589.5]:** The Housing Accountability Act (HAA) offers additional protection for housing developments that set aside at least 20% of their units for lower income households (80% AMI) as defined by Health and Safety Code (HSC) §50079.5 [GC §65589.5(h)(3)]. This project meets this requirement by setting aside 80% of its units to low-income households, and therefore qualifies for protection under the HAA.
 3. **SDBL [GC §65915]:** For this project we request a density bonus, concessions, reduced parking standards, and increased height in accordance with SDBL. Below please find descriptions for each item requested.
 - i. **Density Bonus:** Pursuant to SDBL, a housing development is exempt from “maximum controls on density” when it meets two criteria – affordability and proximity to transit. Since this project complies with these criteria, as detailed below, then the City “shall not impose any maximum controls on density.”
 - **Affordability [§65915(b)(1)(G)]:** This section of SDBL states that “One hundred percent of all units in the development, including total units and density bonus units, but exclusive of a manager’s unit or units, are for lower income households, as defined by Section 50079.5 of the Health and Safety Code, except that up to 20 percent of the units in the development.” The project meets this by setting aside units for both low- and moderate-income households as indicated in the table above.
 - **Proximity to Transit [§65915(f)(3)(D)(ii)]:** The project must be located within one-half mile of a major transit stop in order for a city to “not impose any maximum controls on density.” SDBL defines how one-half mile is measured as follows (emphasis added):

*“that **any point on a proposed development**, for which an applicant seeks a density bonus, other incentives or concessions, waivers or reductions of development standards, or a vehicular parking ratio pursuant to this section, is within one-half mile **of any point on the property** on which a major transit stop is located, **including any parking lot** owned by the transit authority or other local agency operating the major transit stop” [§65915(o)(3)].*

The enclosed HCD Technical Memo dated November 17, 2021 (Exhibit A) provides further clarification on how the one-half mile distance should be measured. HCD states that it is a “broad definition” and that the “Legislature intended this broad definition when it chose the very general term ‘any point on the property’”.

SDBL relies on Public Resources Code §21064.3 for the definition of a “major transit stop” which, amongst other things, can be “an existing rail or bus rapid transit station.” The Marin Civic Center SMART station, an existing rail station, is located within one-half mile of the project site when measured from a point on the

development property to a point on the major transit stop property as illustrated below.



- ii. **Concessions & Waivers:** Pursuant to §65915(d)(2)(D) and (e)(3), a project that receives unlimited density shall be eligible for five concessions. As previously indicated “maximum controls on density” do not apply to this project. Please see the “Concessions” section for details on what is being requested at this time. Waivers may be requested but it is up to the City to agree to these waiver requests. At this time no waivers are being requested.
- iii. **Parking Standards:** Pursuant to §65915(p)(3)(A), a project that meets the affordability requirements of (b)(1)(G) and is located with “unobstructed access” to a major transit stop that is within one-half mile is not subject to parking standards. This project meets these items and is not required to provide parking. However, 132 vehicular stalls are proposed for a ratio of 0.53.
- iv. **Additional Height:** Pursuant to §65915(d)(2)(D), a project within one-half mile of a major transit stop is granted a height increase of 33 feet or three stories. In the Office zoning district the maximum height is 36 feet. Therefore, a height of 69 feet is permitted. Per the cover sheet of the plan set, the height of the building is 67’-7” from ground level to the top of the roof.

Concessions

Below are the concessions being requested which result in actual, identifiable costs for the project.

1. **Front Setback [San Rafael Zoning Code §14.05.030 Table 14.05.030]:** This standard requires a front setback of 20 feet. The project is designed with a 7-foot setback. If we complied with this standard then the building needs to be set back an additional 13 feet and at least 10 units would be removed from the project. The difference between land cost per unit at 240 units (without the concession) and 250 units (with the concession) is \$1,350.00 per unit. The request for a reduction in front setback comports with SDBL because the proposed density is necessary in order to provide affordable rents for the targeted units within the Project, and as such we have demonstrated that there will be an actual, identifiable cost reduction within the meaning of §65915(d).

	Project with Concession	Project without Concession
Total Units	250	240
Land Cost/Unit	\$32,400.00	\$33,750.00

2. **Lot Coverage [San Rafael Zoning Code §14.05.030 Table 14.05.030]:** This standard requires a project to have a maximum lot coverage of 40%. The overall size of the property is 96,786 square feet. Therefore, the maximum lot coverage would be approximately 38,714 square feet. The project is designed with 50.3% lot coverage or 48,730 square feet. Meeting this standard would require reducing the building footprint by 10,016 square feet and losing at least 60 units. The difference between land cost per unit at 190 units (without the concession) and at 250 units (with the concession) is \$10,231.58 per unit. The request for a reduction in front setback comports with SDBL because the proposed density is necessary in order to provide affordable rents for the targeted units within the Project, and as such we have demonstrated that there will be an actual, identifiable cost reduction within the meaning of §65915(d).

	Project with Concession	Project without Concession
Total Units	250	190
Land Cost/Unit	\$32,400.00	\$42,631.58

Landscaping [San Rafael Zoning Code §14.05.030 Table 14.05.030]: This standard requires a minimum of 25% landscaping. The size of the property is 96,786 square feet. Therefore, least 24,197 square feet of landscaping should be provided. The project is designed with 15.4% landscaping or 14,905 square feet. Meeting this standard would require adding 9,292 square feet of additional landscaping throughout the property. Assuming that the landscaping is disbursed at the front and rear of the ground floor of the proposed building, we estimate losing at least 65 units. The difference between land cost per unit at 185 units (without the concession) and at 250 units (with the concession) is \$25,601.96 per unit. The request for a reduction in minimum landscaping comports with SDBL because the proposed density is necessary in order to provide affordable rents for the targeted units within the Project, and as such we have demonstrated that there will be an actual, identifiable cost reduction within the meaning of §65915(d).

	Project with Concession	Project without Concession
Total Units	250	185
Land Cost/Unit	\$18,181.82	\$43,783.78

Granting the requested concessions allows us to develop the project at the allowed 250 units pursuant to SDBL. AHPI reserves the right to revise or request additional concessions and waivers should they be needed during the entitlement phase of the project. If you have questions, please contact me at alocke@amgland.com or (818) 600-2518.

Sincerely,



Amanda Locke
Affordable Housing Preservation Investors, Inc.

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



November 17, 2021

Jennifer Carman
City of Morgan Hill
Development Services Director
17575 Peak Avenue
Morgan Hill, CA 95037

Dear Jennifer Carman:

RE: Morgan Hill State Density Bonus Law – Letter of Technical Assistance

The purpose of this letter is to provide technical assistance on the application of State Density Bonus Law (SDBL) (Gov. Code, § 65915.) The California Department of Housing and Community Development (HCD) has reviewed and responded to the questions contained in your letter dated August 31, 2021. Prior to receiving your letter, HCD received a request for technical assistance from AMG & Associates, LLC (AMG) on August 20, 2021, which posed very similar questions. This letter is intended to answer questions and provide clarifications applicable to both letters.

Project Description

HCD understands that AMG proposes to develop 200 units of deed-restricted affordable housing on two parcels located at 17910 and 17920 Monterey Street in Morgan Hill. The approximately 1.7-acre site, consisting of two parcels, currently contains an auto repair shop. One hundred percent of the units of the development would be affordable. These would include 20 units for households earning up to 50 percent of the area median income (AMI), 140 units for households earning up to 80 percent of AMI, and 40 units for households earning up to 120 percent of AMI.

The project site has a general plan land-use designation of Mixed-Use Flex, allowing residential densities of 7-24 dwelling units per acre (du/ac). The site is zoned Mixed-Use Flex, which also allows residential densities from 7 du/ac through 24 du/ac. Since the project site is 1.7 acres with a maximum allowable residential density of 24 du/ac, the base density of the site is 41 units. Given that the proposed development would provide 200 units, which represents an approximately 500 percent density bonus, the development would only be possible if found eligible for the “unlimited” density bonus provided under Government Code section 65915, subdivision (f)(3)(D)(ii). Pursuant to this subdivision, no maximum controls on density may be imposed on a development for which one hundred percent of all units are for lower-income households (containing

up to 20 percent moderate-income units) and that is located within one-half mile of a major transit stop.

As described in the project description, 160 units (80 percent) would be for lower-income households and 40 units (20 percent) would be for moderate-income households. This would qualify the proposed development with respect to affordability. The main question then is whether the project is located within one-half mile of a major transit stop. (Gov. Code, § 65915, subs. (f)(3)(D)(ii), (o)(3); Pub. Resources Code, § 21155, subd. (b).) The City and applicant agree that the nearby Morgan Hill Caltrain station meets the definition of a major transit stop under this definition. The sole question presented here is whether the project site is within one-half mile of the Morgan Hill Caltrain station.

Interpretation of Subdivision (o)(2)

Recently enacted changes to Government Code section 65915, subdivision (o)(2), explain that “Located within one-half mile of a major transit stop” means that “*any point* on a proposed development, for which an applicant seeks a density bonus, other incentives or concessions, waivers or reductions of development standards, or a vehicular parking ratio pursuant to this section, is within one-half mile of *any point* on the property on which a major transit stop is located, including any parking lot owned by the transit authority or other local agency operating the major transit stop.” (Emphasis added.)

Despite the definition contained in state law, it is apparent that approaches vary in the real-world application of these newly adopted measurements. Therefore, HCD offers the following technical assistance in the interpretation of the point of measurement on “any point on a proposed development” and “any point on the property upon which a major transit stop is located”.

Liberal Interpretation. Subdivision (r) of Government Code section 65915 requires that the SDBL be interpreted liberally in favor of producing the maximum number of total housing units. HCD remains mindful of this interpretive directive whenever offering technical assistance on the SDBL.

Point of Measurement–Major Transit Stop. HCD interprets “any point on the property upon which a major transit stop is located” to mean any point on the parcel(s) that make up the property upon which a major transit stop is located. HCD believes that the Legislature intended this broad definition when it chose the very general term “any point on the property”. Had the Legislature specifically intended the boarding platform itself to be the point of measurement, as is suggested by the City, it could have done so. Because land is most commonly understood in terms of parcels, parcels represent a familiar way to establish the boundaries of a “property”. Cities also typically perform

measurements from the edges of parcels in other situations (e.g., public hearing notice mailing radius).

While the edges of a boarding platform should not serve as a point of measurement for the purposes of establishing eligibility under the SDBL, the boarding platform (and by extension, the parcel upon which it sits) is certainly a “point on the property.” Therefore, and based on information provided by the applicant, HCD interprets that a straight-line measurement should be taken from the westernmost point on Parcel Number 726-13-050. This point is coincident with the eastern edge of the East Main Avenue right-of-way.

HCD recognizes that the shape of parcels containing boarding platforms associated with major transit stops are often irregularly shaped and inconsistent in size. Irregular parcel shapes, such as long/narrow railroad rights-of-way, can distort the true proximity of the project site to the major transit stop to a certain extent. For example, the Cottle Light Rail Station in San Jose is located on an I-shaped parcel that extends northward from the boarding platform almost 0.2 miles. Measurements taken from the edges of inconsistently sized and irregularly shape of parcels would, as a matter of chance, advantage certain potential development sites and disadvantage others. However, such variation does not provide adequate justification to allow a local agency to apply a stricter standard than is provided by the statute.

Point of Measurement – Proposed Development. HCD interprets that the point of measurement on the site of a proposed development should be any portion of the parcel(s) containing the structures, parking areas, landscaping, etc., that make up the development. Given the infill nature of the proposed development (and lacking a site plan for the proposed development), HCD anticipates that all or nearly all of the site will meet this requirement. Therefore, an appropriate point of measurement would likely be on or near the parcel edge nearest to the Morgan Hill Caltrain Station.

Project Eligibility for Unlimited Density. Applying the definitions and methodology described in this letter, it appears that the proposed development lies approximately 2,050 feet from the property on which a major transit stop is located. Therefore, the proposed project appears to be located within one-half mile (2,640 feet) of the major transit stop.

Parking Exemption. In subdivision (p) of Government Code section 65915, the SDBL provides for a variety of parking reductions and exemptions. Subparagraph (3) provides that a development that consists solely of housing affordable to lower-income families located within one-half mile of a major transit stop is exempt from local requirements to provide on-site parking. Per the project description, the proposed development contains 20 percent moderate-income units. Moderate-income units (i.e., serving households earning 80-120 percent of AMI) do not serve lower-income families. Therefore, the proposed development does not appear to meet the

requirements of subparagraph (3) in subdivision (p) and is not eligible for that specific parking exemption. As noted in the City's letter dated August 21, 2021, the City recognizes that other reduced parking standards under subdivision (p) may apply and that the applicant may request incentives, concessions, or waivers related to further parking reductions. The ability of an applicant to pursue reductions in off-street parking requirements is described in subdivision (p)(6) of Government Code section 65915.

Conclusion

In conclusion, HCD interprets that the proposed development is located within one-half mile of a major transit stop and therefore qualifies for "unlimited" density under Government Code section 65915, subdivision (f)(3)(D)(ii). HCD interprets that the proposed development does not qualify for the parking exemption described in Government Code section 65915 subdivision (p)(3). HCD strongly supports the development of affordable housing in Morgan Hill generally and on this project site specifically. Morgan Hill has met its RHNA targets for all income levels except Very Low Income (VLI), where it has constructed only 29.3 percent (80 units) of its target of 273 units. The construction of additional VLI units should therefore be a top priority. HCD believes that the residents of the proposed development would benefit greatly from the walkable proximity to a Caltrain station and the other amenities of downtown Morgan Hill.

If you have questions or need additional information, please contact Brian Heaton at Brian.Heaton@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West
Housing Accountability Unit Chief